

No.

23-5301

FILED

JUL 31 2023

OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

Maek West Jr.

— PETITIONER

(Your Name)

vs.

FULLA, ET AL.,

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS IN THE NINTH CIRCUIT

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Maek West Jr.

CDER NO. F66029

(Your Name)

VALLEY STATE PRISON - P.O. BOX 96

(Address)

CRONCHILLA, CA 93610

(City, State, Zip Code)

NA

(Phone Number)

QUESTION(S) PRESENTED

1. DID THE ~~EMERGED~~ STATES COURT OF APPEALS DECIDE AN IMPORTANT FEDERAL QUESTION IN A WAY THAT CONFLICT WITH A DECISION BY A UNITED STATES COURT OF APPEALS?
2. DID THE UNITED STATES COURT OF APPEAL, SO FAR DEPARTS FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS, AS TO CALL FOR EXERCISING OF THIS COURTS SUPERVISORY POWERS?
3. DID THE UNITED STATES DISTRICT COURT ABUSED ITS DISCRETION BY FAILING TO EXERCISE ITS DISCRETION TO CONSIDER OR NOT TO CONSIDER ADDED MATERIAL FACTS AND COMPELLING EVIDENCE, BEFORE IT SUMMARILY ACCEPTED THE R & R AND ENTERING ITS FINAL JUDGMENT?
4. DID THE UNITED STATES DISTRICT COURT ABUSED ITS DISCRETION BY IMPROPERLY TAKE JUDICIAL NOTICE OF UNRELATED CASES AS EVIDENCE, THAT WERE OUTSIDE THE ORIGINAL PLEADING, THAT COULD REASONABLY BE SUBJECTED TO DISPUTED EVIDENCE AT TRIAL?

LIST OF PARTIES

[] All parties appear in the caption of the case on the cover page.

[✓] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

ETORRES, HOGAN, GRAY, LT. WAYNE REOME, SGT. PEREZ, SGT. DAVIS,
SGT. SUDENMICKER, SGT. GONZALEZ, M. WILLIAMS, B. MARTIN, CAPT. B. FRIEDMAN,
COFF. T. RHODES, LT. GRAVES, C. WOOD, DEBBIE ASUNCION, X. CANO, CASTRO
II, RODRIGUEZ, DR. GHASSEMI, DR. T. GARNETT, DR. PAZ, BURNS COFF
WALTERS, J. CURIEL, J. BARNES, AND K. ESTRADA, DR. LEDUC.

RELATED CASES

- GRAY V. SEC. Y OF HHS, 2016 U.S. CLAIMS LEXIS 130
- MILLER V. RUNYON, 77 F.3d 189, 191 (UNITED STATES COURT OF APPEALS OF THE SEVENTH - CIRCUIT _____, 1996)
- TIGER V. YOUNG, 2018 UNITED STATES DISTRICT COURT LEXIS 76016
- JOHNSON V. LUCENT TECHS. INC., _____ UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT _____, 2011)
- UNITED STATES V. HOWELL, 231 F.3d 615, 621 UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT _____ 2000)
- BROWN V. ROE, 279 F.3d 742, 745 (UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT _____, 2002)
- ESPINOZA-MATTHEWS _____
- STOLL V. RUNYON, 165 F.3d 1238, (UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT _____ 1999)
- UNITED STATES V. CAMPBELL, 2020 UNITED STATES APP. LEXIS 4317
- A.G. V. NOBEL BIOCARB FIN. A.G., 688 F.3d 88, 109 (UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT _____ 2012)
- JONES V. BLANAS, 393 F.3d 918, 935 (9TH CIR. 2004)

(CONTINUE ON PAGE: III(a))

III.

CONT. RELATED CASES:

- STEVENS, 676 F.3d at 67
- HOLLAND V. FLORIDA, 560 U.S. 681 (2010)
- WEBB V. CALIFANO, 468 F.Supp. 825 (E.D. Cal. 1979)
- UNITED STATES V. SHAM, 754 F.2d 670 (6th Cir 1985)
- SCOTT V. HARRIS, 550 U.S. 372, 127 S.Ct. 1769, 1776, 167 L.Ed.2d 686 (2007)
- NISSAN FIRE & MARINE INS. Co. V. FRITZ COMPANIES, 210 F.3d 1099 (9th Cir. 2000)
- IN RE EMERGENCY BEACON CORP. 660 F.3d at 760
- DECORTIS V. FERRANDINA, 529 F.Appx. 85, 86 (2nd Cir. 2013)
- HARRIS V. UNITED STATES, 367 F.3d 74, 81 (2nd Cir. 2004)
- LIEBERG V. HEATH SER. ACQUISITION CORP. 486 U.S. 847, 864 (1988)
- DEWEERTH V. BALDINGER, 38 F.3d 1266, 1272 (2nd Cir. 1994)
- HARNEST V. CASTRO, 531 F.3d 737, 749 (9th Cir. 2008)
- CONLEY V. GIBSON, 355 U.S. 41, 45-46 (1957)
- CHANG V. CHEN 80 F.3d 1293, 1296 (9th Cir. 1996)
- MELNARIS V. ROYCE, 2019 U.S. Dist. Lexis 164414
- SMITH V. GOSS, 2013 U.S. Dist. Lexis 110691 (E.D. of Cal. Aug. 6, 2013)
- CLOUD V. BRENNAN 486 F.Supp. 3d 1290 (9th Cir. 2020)
- BRANCIA V. TUNNEL, 14 F.3d 449, 454 (9th Cir. 1994)
- TEREICA, INC. V. INSEMED INC., 2006 U.S. Dist. Lexis 41804, 2006 WL 1626930 (N.D. Cal. June 9, 2006)
- NATIONAL LABOR RELATIONS BOARD V. BROWN & ROOT INC. 206 F.2d 73 (9th Cir 1953)
- ^{8 U.S.C.} ~~7.10000000~~ V. DIAZ, 729 F.3d 1225 (9th Cir 2004)
- LEE V. CITY OF LOS ANGELES, 2010 U.S. App. Lexis 1150
- AKHTAR V. MESA, 698 F.3d 1202, 1213 (9th Cir 2012)
- ALVAREZ V. NBTY, INC., 2020 U.S. Dist. Lexis 983
- BILVER V. TOYOTA MOTOR CORP. 668 F.3d. 655 (9th Cir 2012)

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APPENDIX I - VOLUME 2 OF 4 - SER. 30-280 "

APPENDIX J - VOLUME 3 OF 4 - SER. 281-494 "

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TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
• <u>UNITED STATES V. MIGENO, 789 F.3d, 768 (9th Cir. 2015)</u>	5()
• <u>UNITED STATES V. RADDATZ, 447 U.S. 667, 100 S.Ct. 2406 (1980)</u>	5()
• <u>GRAY V. SEC'y OF HHS, 2016 U.S. CLAIMS DENIAL 130</u>	5()
• <u>ERWIN V. DEPARTMENT OF ^{VETERANS} AFFAIRS, 498 U.S. 89, 95-96 (1990)</u>	5()
• <u>HOLLAND V. FLORIDA, 580 U.S. 631, 130 S.Ct. 2547 (2016)</u>	5()
• <u>SCOTT V. HARRIS, 550 U.S. 372, 127 S.Ct. 1769, 1776 (2007)</u>	5()

STATUTES AND RULES

• FEDERAL RULES OF CIVIL PROCEDURES - RULE 60(b)(6)	5()
• FEDERAL RULES OF CIVIL PROCEDURES - RULE 15(c)(B)	5()
• FEDERAL RULES OF CIVIL PROCEDURES - RULE 12(b)(6)	5()
• 28 U.S.C. § 636	5()
• FEDERAL RULES OF APPELLATE PROCEDURES - 10(e)	5()
• FEDERAL RULES OF APPELLATE PROCEDURES - 40	5()
• FEDERAL RULES OF CIVIL PROCEDURES - RULE 56	5()
• FEDERAL RULES OF EVIDENCE 201	5()
• 28 U.S.C. § 1254 et seq.	5()
• RULES OF THE SUPREME COURT OF THE UNITED STATES - RULE 10, et seq.	5, 5()
• FEDERAL RULES OF CIVIL PROCEDURES - RULE 8(c)	5()
• 28 USC SECTION 1253	5
• 28 USC SECTION 2106	5

OTHER

• UNITED STATES CONSTITUTION, ART. III	5()
• EIGHTH AMENDMENT OF THE UNITED STATES CONSTITUTION	5()
• FIRST AMENDMENT OF THE UNITED STATES CONSTITUTION	-
• D.D.C.R. - MENTAL HEALTH SERVICES DELIVERY SYSTEM PROGRAM GUIDE, CHAPTER 4, E-OP	-

IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

The opinion of the United States district court appears at Appendix H to the petition and is

☒ reported at SER. VOL. 1 OF 4 AT P. 2-4; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was December 5, 2022.

☐ No petition for rehearing was timely filed in my case.

☒ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: MARCH 3, 2023, and a copy of the order denying rehearing appears at Appendix B.

☒ An extension of time to file the petition for a writ of certiorari was granted to and including JULY 31, 2023 (date) on JUNE 3, 2023 (date) in Application No. 22 A 1059.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

- UNITED STATES CONSTITUTION ART. III,
- 28 U.S.C. §. SECTION 636 et seq.
- ~~UNITED STATES~~
- ~~ENACTED AMENDMENT OF THE UNITED STATES CONSTITUTION~~
- ~~FIRST AMENDMENT OF THE UNITED STATES CONSTITUTION~~
- 28 U.S.C. §. SECTION 1254
- FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION
- 18 USC §. SECTION 3626
- FEDERAL RULES OF CIVIL PROCEDURE - RULE 65 et seq.
- 28 USC §. SECTION 1253
- 29 USC §. SECTION 791

STATEMENT OF THE CASE

(1) PLAINTIFF FILED A TEMPORARY RETAINING ORDER/ PRELIMINARY INJUNCTIONS IN JULY OF 2017 (SEE, APPENDIX "K" VOL. 4 OF 4 - SER. - 728 AT DOC. NO. 1, ON OR ABOUT JULY 21, 2017, THE DISTRICT COURT ORDER PLAINTIFF TO USE THE CIVIL RIGHTS COMPLAINT FORM IF HE WISHES TO PROCEED, AMONG OTHER THINGS (SEE, APPENDIX "K" VOL. 4 OF 4 - SER. - 728 AT DOC. NO. 7. THE DISTRICT COURT ERRED IN RULING THIS ORDER TO THE WRONG PERSON, WHICH WAS RETURN BACK TO THE COURT ON OR ABOUT AUGUST 9, 2017 (SEE, APPENDIX "K" VOL. 4 OF 4 - SER. AT 728 AT DOC. NO. 9. ON OR ABOUT AUGUST 10, 2017, PLAINTIFF WAS TRANSFERRED TO HIGH DESSERT STATE PRISON - ADSCG, CAUSING AN EXTRAORDINARY CIRCUMSTANCES BEYOND HIS CONTROL OF RECEIVING AND RESPONDING THE DISTRICT COURT MAIL / ORDERS. (SEE, APPENDIX "K" VOL. 4 OF 4 SER. - 728-729 AT DOC. NO. 7, & DOC. NO. 8, & DOC. NO. 10, & DOC. NO. 15, - 15. HE FILED A CHANGE OF ADDRESS. A EXTENSION OF TIME DUE TO EXTRAORDINARY CIRCUMSTANCES, ON ABOUT SEPTEMBER 1, 2017 (SEE, APPENDIX "K" VOL. 4 OF 4 - SER. AT 729 AT DOC. NO. 11, & 12. HE FILED ANOTHER CHANGE OF ADDRESS AND AMENDED HIS TRO/PI ON OR ABOUT SEPTEMBER 8, 2017 (SEE, APPENDIX "K" VOL. 4 OF 4 - SER. AT 729 AT DOC. NO. 17, 18, & 19. WHEN THE DISTRICT COURT'S MAIL / ORDERS FINALLY WAS RECEIVED, PLAINTIFF WITHDREW HIS AMENDED TRO/PI ON OR ABOUT SEPTEMBER 21, 2017 (SEE, APPENDIX "K" VOL. 4 OF 4 - SER. AT 729 AT DOC. NO. 24.)

(2) PLAINTIFF COMPLIED WITH THE DISTRICT COURT ORDER TO USE THE CIVIL RIGHTS COMPLAINT FORM WHEN HE FILED HIS FIRST AMENDED COMPLAINT ON OCTOBER 12, 2017 (SEE, APPENDIX "K" VOL. 4 OF 4 - SER. AT 730 AT DOC. NO. 28. PLAINTIFF IN GOOD FAITH BELIEVED THAT HE FILED AN INCOMPLETE 1ST AMENDED COMPLAINT THAT WERE MISSING 1 TO 2 PAGES, AND INSTANTLY, WHICH CAUSED HIM TO FILE A COMPLETE 1ST AMENDED COMPLAINT IN A GOOD FAITH EFFORT TO CORRECT HIS MISTAKE, ON OCTOBER 30, 2017 (SEE, APPENDIX "K" VOL. 4 OF 4 - SER. AT 730 AT DOC. NO. 33. WHICH WAS FILED BEFORE HE RECEIVED THE DISTRICT COURT ORDER DIRECTING THE U.S. MARSHAL TO SERVE THE DEFENDANTS HIS 1ST AMENDED COMPLAINT ON OCTOBER 26, 2017, (SEE, APPENDIX "K" VOL. 4 OF 4 - SER. AT 730 AT DOC. NO. 30, 31, 32. THROUGH THE DISTRICT COURT'S RULING / ORDER HE DISCOVERED THAT HIS 1ST AMENDED AND 2ND AMENDED COMPLAINTS WERE IDENTICAL, INDICATING NO DEFECTS IN FILING. (SEE, APPENDIX "K" VOL. 4 OF 4 - SER. AT 730 AT DOC. NO. 34, & 35.

(CONT. ON PAGE 9(a).)

STATEMENT OF THE CASE

- (3) PLAINTIFF SOUGHT TO AMEND HIS COMPLAINT A THIRD TIME TO IDENTIFY JANE DOE #1 AND JANE DOE #2 ON DECEMBER 14, 2017. (SEE, APPENDIX "K" VOL. 4 OF 4 - SER. AT 730 AT DOC. NO. 38, WHICH WAS IN ABEYANCE UNTIL THE U.S. MARSHAL SERVED THE DEFENDANTS THE 2ND AMENDED COMPLAINT (SEE, APPENDIX "K" VOL. 4 OF 4 - SER. AT 730 AT DOC. NO. 39. AFTER THE DEFENDANTS WERE SERVED BY THE U.S. MARSHAL FROM JANUARY 10, 2018 TO FEBRUARY 9, 2018 (SEE, APPENDIX "K" VOL. 4 OF 4 - SER. AT 731-735 AT DOC. NO. 43, - DOC. NO. 116, DEFENDANT FILED IN EX PARTE EXTENSION OF TIME ON FEBRUARY 15, 2018. (SEE APPENDIX "K" VOL. 4 OF 4 - SER. 735 AT DOC. NO. 117.
- (4) THE PETITIONER BECAME MENTALLY INCAPACITATED AS A RESULT FROM THE UNDERLYING DEFENDANTS ONGOING WRONGDOING, WHICH ARE PART OF HIS CLAIM, AND DURING MARCH, 2018 THROUGHOUT ABOUT MARCH OR APRIL OF 2019, HE WAS DECLARED UNDER PENALTY OF PERJURY GRAVELY DISABLED AND A THREAT DANGER TO HIS SELF BY CDCR PSYCH-DOCTOR IN MARCH, 2018, AND IT WAS ORDERED THRU A PETITION UNDER PENAL CODE 2601 THAT HE BE RESTRICTED FOR A YEAR BY WHICH WAS GRANTED (SEE, APPENDIX "I" VOL. 2 OF 4 - SER. 85-87 (HIS OBJECTIONS AND COMPELLING EVIDENCE) AT SER-242-264. PETITIONER SOUGHT EQUITABLE TOLLING RELIEF UNDER FED. R. CIV. PROC. 60(b)(6) IN HIS OBJECTION, BECAUSE AS A RESULT OF HIS UNSTABLE MENTAL IMPAIRMENT HE WAS UNABLE TO ASSESS A COGNIZABLE CLAIM AGAINST DEFENDANTS, TAKEN AS TRUE, WOULD GRANT HIM RELIEF (SEE, APPENDIX "I" VOL. 2 OF 4 - SER. - 85-87, AND IN THE INTEREST OF JUSTICE HE SOUGHT TO AMEND HIS COMPLAINT A FIFTH TIME. (SEE, AT SER. 87 AND AT SER. -181-183.
- (5) THE DISTRICT COURT FAILED TO EXERCISE ITS DISCRETION PURSUANT TO 28 USC 636(b)(1) & TO REVIEW NOR DETERMINE THE LEGAL STANDARD FOR EQUITABLE TOLLING RELIEF UNDER FED. R. CIV. PROC. - RULE 60(b)(6) AS JUSTICE REQUIRED OR IN THE INTEREST OF JUSTICE, BEFORE SUMMARILY ACCEPTING THE ASSISTANT SUGGEST REPORTS & RECOMMENDATIONS AND BEFORE IT ENTERED ITS FINAL JUDGMENT TO DISMISS PLAINTIFF'S FOURTH AMENDED COMPLAINT WITH PREJUDICE WITHOUT LEAVE TO AMEND (SEE, APPENDIX "H" VOL. 1 OF 4 - SER. -1-2, AND AT 5-29, WAS AN ABUSE OF DISCRETION

STATEMENT OF THE CASE

(5) THE PETITIONER FILED AN APPEAL IN THE U.S. COURT OF APPEALS IN THE NINTH CIRCUIT (9TH CIR.) ON OR ABOUT _____ 20____, APPEAL CASE NO. 20-56167 (SEE APPENDIX "K" VOL. 4 OF 4 -SER. _____) AND HE RAISED THE ISSUES ~~IN THE DISTRICT~~ ^{HIS INFORMAL} OPENING BRIEF - EXTRAORDINARY CIRCUMSTANCES OF HIS MENTAL INCAPACITY DURING THE PERIOD OF MARCH, 2018 TO ABOUT APRIL OF 2019; THE TIME THE DISTRICT COURT GRANT LEAVE TO AMEND IN _____ TO _____ WAS BEYOND HIS CONTROL THAT MADE IT IMPOSSIBLE TO ASSERT HIS COGNIZABLE CLAIM AGAINST DEFENDANTS. DUE TO HIS DISORGANIZED THINKING, DELUSIONS, AND HALLUCINATIONS... CAUSED HIM TO MISIDENTIFY DEFENDANTS, MISS DATES, DROP CLAIMS, REPEAT THE SAME PARAGRAPHS AND CAUSED HIM LACK OF FOCUS AND CAUSED HIM CONFUSION, ETC., (SEE APPENDIX "D" & APPELLANT'S INFORMAL OPENING BRIEF AT P. ____ TO ____ AND SEE APPENDIX "I" VOL. 2 OF 4, SER. -85-87, AND AT SER. 247-264; AND SER. -181-183

(6) THE 9TH CIR. COURT OF APPEAL DID NOT REVIEW NOR CONSIDERED ~~THE~~ TIMELY RAISED LEGAL ISSUE OF EQUITABLE TOLLING RELIEF THAT APPELLANT WAS ENTITLED TO SEEK AND IT WAS CONTRARY TO LAW AND CLEARLY ERRONEOUS FOR THE DISTRICT COURT ~~TO~~ FAIL TO EXERCISE ITS DISCRETION, IN HIS EXTRAORDINARY CIRCUMSTANCES, ^{INSTEAD} ~~TO~~ ^{NOT} TO CONSIDER THE EQUITABLE TOLLING RELIEF THAT HE WAS ENTITLED TO, AND FAILED THE CONTROLLING AUTHORITY NOR THE LEGAL STANDARD, ~~BEFORE MAKING~~ A DE NO VO. REVIEW / DETERMINATION IN VIOLATION OF 26 U.S.C.S. 636 (b)(1) AND RULE 60(C)(6) OF FED. R. CIV. P., BEFORE THE 9TH CIR. ENTERED ITS OPINION AND RECOMMENDATION, ON OR ABOUT DECEMBER 3, 2022 (SEE APPENDIX "A" - COURT OF APPEAL OF THE 9TH CIR. MEMORANDUM P. ____ TO ____ WAS PROCEDURALLY UNFAIR.

(7) THE 9TH CIR. IMPROPERLY ALLOW THE APPELLEES TO RAISE NEW ISSUES ON APPEAL, IN THEIR APPELLEES' ANSWERING BRIEF, THAT WAS NOT PRESERVED IN LOWER UNITED STATES DISTRICT COURT ~~DEBATE~~ ^{AS} AS A MISAPPLICATION OF THE CONTROLLING AUTHORITY AND A MISAPPROPRIATION

(CONT. ON P. 4(C),)

REASONS FOR GRANTING THE PETITION

(1) THE FOLLOWING REASONS FOR GRANTING THIS PETITION, ARE DUE TO THE COMPELLING REASONS OF THE COURT OF APPEALS AND DISTRICT COURT MAKING A CLEAR ERROR OF IMPORTANT FEDERAL QUESTION INVOLVED THAT WAS IN CONFLICT WITH OTHER CONTROLLING AUTHORITIES FROM THE U.S. COURT OF APPEALS, AND THAT HAVE DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS, AS TO CALL FOR AN EXERCISE OF THIS COURT'S SUPERVISORY POWER, PURSUANT TO U.S.S.C. RULE 10(c) :

(2) HE CONTENTS THE RULES OF THE SUPREME COURT OF THE UNITED STATES RULE 10. (CONSIDERATION GOVERNING REVIEW OF CERTIORARI, IN PERTINENT PARTS IS AS FOLLOWS: (a) A UNITED STATES COURT OF APPEAL HAS ENTERED A DECISION IN CONFLICT WITH DECISION OF ANOTHER UNITED STATES COURT OF APPEALS ON THE SAME IMPORTANT MATTER; HAS DECIDED AN IMPORTANT FEDERAL QUESTION IN A WAY THAT CONFLICTS WITH THE DECISION BY A STATE COURT OF LAST RESORT; OR HAS SO FAR DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS OR SANCTIONED SUCH A DEPARTURE BY A LOWER COURT AS TO CALL FOR AN EXERCISE OF THIS COURT'S SUPERVISORY POWERS..." WHICH APPLIES IN PETITIONER CASE.

(3) HE FURTHER CONTENTS THAT UNDER 28 U.S.C.S. SECTION 1253 (DIRECT APPEALS FROM DECISIONS) WHICH PROVIDES IN PERTINENT PARTS AS FOLLOWS: EXCEPT AS OTHERWISE PROVIDED BY LAW, ANY PARTY MAY APPEAL TO THE SUPREME COURT FROM AN ORDER GRANTING OR DENYING AFTER NOTICE AND HEARING AN INTERLOCUTORY OR PERMANENT INJUNCTION IN ANY CIVIL OR CRIMINAL ACTION, SUIT, OR PROCEEDINGS REQUIRED BY ANY ACT OF CONGRESS TO BE HEARD AND DETERMINE BY A DISTRICT COURT OF THREE JUDGES.

(4) HE ALSO CONTENTS THAT UNDER 28 U.S.C.S. SECTION 2106 (DETERMINATION), WHICH PROVIDES AS FOLLOWS: THE SUPREME COURT OR ANY OTHER COURT OF APPELLATE JURISDICTION MAY AFFIRM, MODIFY, VACATE, SET ASIDE OR REVERSE ANY JUDGMENT, DECREE OR ORDER OF A COURT LAWFULLY BROUGHT BEFORE IT FOR REVIEW AND MAY REMAND THE CASE AND DIRECT THE ENTRY OF SUCH APPROPRIATE JUDGMENT, DECREE OR ORDER OR REQUIRE SUCH FURTHER PROCEEDINGS TO BE HAD AS MAY BE JUST UNDER THE CIRCUMSTANCES, WHICH APPLIES TO PETITIONER CASE.

(CONT. ON P. 5(a).)

REASONS FOR GRANTING THE PETITION

(5) PETITIONER CONTENDS THAT UNDER FEDERAL RULES OF CIVIL PROCEDURE - RULE 60(b)(6), PROVIDES AN PART THE FOLLOWING: "... EQUITABLE TOLLING RELIEF OF EXTRAORDINARY CIRCUMSTANCES EXIST THAT IS BEYOND A PARTIES CONTROL, WARRANTS THE QUALIFYING PARTY TO ENTITLEMENT TO EQUITABLE REMEDY OR RELIEF, AS A MATTER OF IMPORTANT PRINCIPLES SETTLED OR SETTLEMENT PRINCIPLES, AS A MATTER OF FEDERAL PRINCIPLES, AND

(6) FURTHER, PETITIONER CONTENDS UNDER 29 U.S.C.S. SECTION 791 THAT HIS UNDERLYING MENTAL ILLNESSES ~~WAS~~ JUSTIFY EQUITABLE TOLLING AND IN HIS CIRCUMSTANCES ~~WAS~~ BEYOND HIS CONTROL THAT MADE IT IMPOSSIBLE TO ASSERT A COGNIZABLE CLAIM, TAKEN AS TRUE, WARRANTS REQUEST RELIEF SOUGHT THAT PLAUSIBLE ON ITS FACE, DURING THE TIME PERIOD OF TIME. THE DISTRICT COURT GRANTED HIM LEAVE TO ATTEND THE FOURTH TIME, AS A RESULT OF THE ~~WAS~~ DEFENDANT'S 'UNDERLYING CLAIMED WRONGDOING AS PART OF HIS PLEADING'. THE CONTROLLING AUTHORITY OF IMPORTANCE ARE HELD IN STOLL V. RUNYON, 165 F.3 D.1238, _____ (9TH CIR. 1999) (JANUARY 15, 1999), WHICH OTHER U.S. COURT OF APPEALS IN SEVERAL CIRCUITS HAS DECIDED ON AND IS A IMPORTANT FEDERAL PRINCIPLE THAT WAS SETTLED, AND GRAY V. SEC'Y OF HHS, 2016 U.S. CLAIMS LEXIS 130, *12-13. QUOTING IRWIN V. DEPARTMENT OF VETERANS AFFAIRS, 498 U.S. 89, 95-96, 111 S. CT. 453, 112 L. Ed. 2d. 435 (1990) AND QUOTING THE SUPREME COURT, IN MENOMINEE INDIAN TRIBE OF WISCONSIN V. UNITED STATES, 136 S. CT. 750, 193 L. Ed. 2d. 652 ~~Id.~~ AT *4 (CITING TO HOWLAND V. FLORIDA, 580 U.S. 631, 130 S. CT. 2549, 177 L. Ed. 2d. 130 (2016)). (1) HEARD THAT (1) THAT HE ~~BE~~ HAS BEEN PURSUING HIS RIGHTS DILIGENTLY, AND (2)

(CONT. ON P. 5(b).)

REASONS FOR GRANTING THE PETITION

THAT SOME EXTRAORDINARY CIRCUMSTANCES STOOD IN HIS WAY AND PREVENTED TIMELY FILING... AND SO THE COURT FURTHER CLARIFIED THAT FOR A CIRCUMSTANCE TO BE SUFFICIENTLY EXTRAORDINARY TO SUPPORT EQUITABLE TOLLING IT MUST HAVE BEEN BEYOND THE LITIGANT'S CONTROL AND NOT THE PRODUCT OF THE LITIGANT'S OWN MISUNDERSTANDING OR TACTICAL ~~MISTAKE~~ MISTAKE IN LITIGATION...

(7) ALSO, PETITIONER CONTENDS THAT UNDER 28 U.S.C. SECTION 2101 (SUPREME COURT, TIME FOR APPEAL, OR CERTIORARI OF DECISION, ETC.), PROVIDES IN PART:

(a) A DIRECT APPEAL TO THE SUPREME COURT FROM ANY DECISION UNDER SECTION 1253 OF THIS TITLE [28 U.S.C. SECTION 1253], HOLDING UNCONSTITUTIONAL IN WHOLE OR IN PART, ANY ACT OF CONGRESS SHALL BE TAKEN WITHIN THIRTY DAYS AFTER THE ENTRY OF THE INTERLOCUTORY OR FINAL ORDER, JUDGMENT OR DECREE. THE RECORD SHALL BE MADE UP AND THE CASE DECKETED WITHIN SIXTY DAYS FROM THE TIME SUCH APPEAL IS TAKEN UNDER RULES PRESENTED BY THE SUPREME COURT.

(b) ~~...~~

(c) ANY OTHER APPEAL OR ANY WRIT OF CERTIORARI INTENDED TO BEING ANY JUDGMENT, OR DECREE IN A CIVIL ACTION SUIT OR PROCEEDING BEFORE THE SUPREME COURT FOR REVIEW SHALL BE TAKEN OR APPLIED FOR WITHIN NINETY DAYS AFTER ENTRY OF SUCH JUDGMENT OR DECREE. [.] "

(8) PETITIONER CONTENDS THAT UNDER 28 U.S.C. SECTION 1254, (COURTS OF APPEALS; CERTIORARI; CERTIFIED QUESTION) CASES IN THE COURTS OF APPEALS MAY BE REVIEWED BY THE SUPREME COURT BY FOLLOWING METHOD 8:

(1) BY WRIT OF CERTIORARI GRANTED UPON THE PETITION OF ANY PARTY TO ANY CIVIL OR CRIMINAL CASE, BEFORE OR AFTER RENDERING OF JUDGMENT OR DECREE. (2) BY CERTIFICATION AT ANY TIME BY A COURT OF APPEALS OF ANY QUESTION OF LAW IN ANY CIVIL OR CRIMINAL CASE AS TO WHICH INSTRUCTIONS AND DESIRED UPON SUCH CERTIFICATION THE SUPREME COURT MAY GIVE BINDING INSTRUCTIONS OR REQUIRE THE ENTIRE MATTER IN CONTROVERSY."

Ague

REASONS FOR GRANTING THE PETITION

(9) PETITIONER CONTENDS THAT ANOTHER IMPORTANT CONTROLLING AUTHORITY, HELD THAT, FINALLY, RULE 60(b)(6) RELIEF IS ONLY AVAILABLE IF RULE 60(b)(1) THROUGH (5) DO NOT APPLY." ISC HOLDING A.G.V. NOBEL BIOCHROME FIN., A.B. 688 F.3d 98, 109 (2nd Cir. 2012) STEVENS 676 F.3d at 67 (RULE 60(b)(1) AND RULE 60(b)(6) ARE MUTUALLY EXCLUSIVE SUCH THAT ANY CONDUCT WHICH GENERAL FAILS UNDER THE FORMER CAN NOT STAND AS A GROUND FOR RELIEF UNDER THE LATTER." QUOTING IN RE EMERGENCY BEACON CORP. 666 F.2d. at 760) IN ORDER TO QUALIFY FOR RULE 60(b)(6) RELIEF, A PLAINTIFF MUST ALSO DEMONSTRATE EITHER EXTRAORDINARY CIRCUMSTANCES OR EXTREME HARDSHIP "DE CURTIS V. FERRANDINA 529 F. Appx. 85, 86 (2nd Cir. 2013) QUOTING HARRIS V. UNITED STATES, 367 F.3d. 74, 81 (2nd Cir. 2004) ALSO, SEE, STEVENS, 676 F.3d. at 67 (NOTING THAT COURTS REQUIRE THE PARTY SEEKING TO AVAIL ITSELF OF RULE 60(b)(6) TO DEMONSTRATE THAT EXTRAORDINARY CIRCUMSTANCES WARRANT RELIEF." CITING WILLBOUGH V. HEALTH SEAVS. ACQUISITION CORP, 486 U.S. 847, 864 (1988), WHICH APPLIES TO PETITIONER CIVL SUIT.

(10) FURTHER ANOTHER IMPORTANT CONTROLLING AUTHORITY, WHICH HELD, RULE 60(b)(6) ALLOWS THE COURT TO RELIEVE A PARTY FROM AN ORDER FOR ANY REASON THAT JUSTIFY RELIEF. RULE 60(b)(6) IS TO BE USED SPARINGLY AS AN EQUITABLE REMEDY TO PREVENT INJUSTICE AND IS TO BE UTILIZED ONLY WHERE EXTRAORDINARY CIRCUMSTANCE EXIST. SEE HARVEST V. CASTRO 531 F.3d. 737, 749 (9th Cir. 2008)

(11) PETITIONER CONTENDS THAT ANOTHER IMPORTANT CONTROLLING AUTHORITY, HELD THAT FED. R. CIV. P. RULE 8(a)(2) STATES THAT A PLEADING WHICH SETS FORTH A CLAIM FOR RELIEF SHALL CONTAIN A SHORT AND PLAIN STATEMENT OF THE CLAIM SHOWING THAT THE PLEADER IS ENTITLED TO RELIEF. FED. R. CIV. P. RULE 8(a) THE RULE MEANS VERBALLY WHAT IT SAYS, AND TAKEN JUDICIAL NOTICE OF MATTER OF PUBLIC RECORD... BUT A COURT MAY NOT TAKE JUDICIAL NOTICE OF A FACT THAT IS SUBJECT TO REASONABLE DISPUTE. FED. R. EVID. 201(b). IN LEE V. CITY OF LOS ANGELES, 250 F.3d. 668 (9th Cir. 2008) AT HN. 3.

(CONT. ON P. 5(d).)

REASONS FOR GRANTING THE PETITION

(12) PETITIONER CONTENDS THAT ANOTHER IMPORTANT CONTROLLING AUTHORITY HELD THAT AS A GENERAL RULE "A DISTRICT COURT MAY NOT CONSIDER ANY MATERIAL BEYOND THE PLEADING ~~IN~~ IN RULING ON A 12(b)(6) MOTION" BRANCH 14 F. 3d, AT 453 (CITATION OMITTED) RULE 12(b)(6) EXPRESSLY PROVIDES THAT WHEN A MATTER OUTSIDE THE PLEADING ARE PRESENTED TO AND NOT EXCLUDED BY THE COURT THE MOTION "SHALL BE TREATED AS ONE SUMMARY JUDGMENT AND DISPOSED OF AS PROVIDED IN RULE 56 AND ALL PARTIES SHALL BE GIVEN REASONABLE OPPORTUNITY TO PRESENT ALL MATERIAL MADE PERTINENT TO SUCH A MOTION BY RULE 56 FED. R. CIV. PROC. RULE 12(b)(6) (EMPHASIS ADDED) THERE ARE HOWEVER TWO EXCEPTIONS TO THE REQUIREMENT THAT CONSIDERATION TO EXTRINSIC EVIDENCE CONVERTS A 12(b)(6) MOTION TO A SUMMARY JUDGMENT MOTION. FIRST A COURT MAY CONSIDER MATERIAL WHICH IS PROPERLY SUBMITTED AS PART OF THE COMPLAINT "ON A MOTION TO DISMISS WITHOUT CONVERTING THE MOTION TO DISMISS INTO A SUMMARY JUDGMENT Id. AT 453 (CITATION OMITTED) IF THE DOCUMENT ARE NOT PHYSICALLY ATTACHED TO THE COMPLAINT THEY MAY BE CONSIDERED IF THE DOCUMENTS AUTHENTICITY... IF NOT CONTESTED AND THE PLAINTIFF'S COMPLAINT NECESSARILY RELIES ON THEM PARRINO V. PHP INC. 146 F. 3d. 699, 705-06 (9TH CIR. 1998) SECOND, UNDER FED. R. EVID. 201 A COURT MAY TAKE JUDICIAL NOTICE OF MATTERS OF PUBLIC RECORDS. "MACK V. SOUTH BAY BEER DISTRIB. 798 F. 2d. 1279, 1289 (9TH CIR. 1986) WE REVIEW A DISTRICT COURT DECISION TO TAKE JUDICIAL NOTICE FOR A ABUSE OF DISCRETION. RUTTER V. HUGHES AIRCRAFT CO., 58 F. 3d. 449 (9TH CIR 1995) (SEE, BRANCH V. TUNNELL, 14 F. 3d. 449 (9TH CIR. 1993)... AND PURSUANT TO FED. R. EVID. 201, COURT MAY TAKE JUDICIAL NOTICE OF FACTS NOT SUBJECT TO REASONABLE DISPUTE IF FACTS IS EITHER (1) GENERALLY KNOWN WITHIN TERRITORIAL JURISDICTION OF ~~THE~~ TRIAL COURT, OR (2) CAPABLE OF ACCURATE AND READY DETERMINATION BY REFORT TO SOURCES WHOSE ACCURACY CAN NOT REASONABLY BE QUESTIONED, EACH OF THE EXHIBITS SUBMITTED BY DEFENDANTS ~~REQUIRE~~ THAT WERE ATTACHED TO DECLARATION IN SUPPORT OF DEFENDANTS' REQUEST FOR JUDICIAL NOTICE AND APPENDIX OF AUTHORITIES MET THIS STANDARD (IN RE FANNIE MAE SEC. 503 F. SUPP. 2d. 9 (D.D.C. 2007) AFF'D 534 F. 3d 779, 383 U.S. APP. D.C. 52 (D.C. CIR. 2008).

REASONS FOR GRANTING THE PETITION

(13) PETITIONER CONTENDS THAT THE COURT OF APPEAL DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS, AS TO CALL FOR AN EXERCISE OF THIS COURT'S SUPERVISORY POWER; PURSUANT TO RULES OF THE SUPREME COURT OF THE UNITED STATES - RULE 10(a); WHEN THE DISTRICT COURT IS REQUIRED OR OBLIGATED TO MAKE A DE NOVO REVIEW AND DETERMINATION OF PORTIONS OF THE MAGISTRATE JUDGE REPORT TO WHICH OBJECTIONS IS MADE IS BOTH STATUTORILY AND CONSTITUTIONALLY REQUIRED UNDER UNITED STATES V. SHAMI, 754 F.2d 670 (6TH CIR, 1985) THIS REQUIREMENT IS A STATUTORY RECOGNITION THAT UNITED STATES CONSTITUTION ARTICLE III, MANDATES THAT THE JUDICIAL POWER OF THE UNITED STATES BE VESTED IN JUDGES WITH LIFE TENURE... IT IS NECESSARY TO PROVIDE FOR A REDETERMINATION BY THE COURT IF REQUESTED OF MATTERS FALLING WITHIN 28 U.S.C. SECTION 636(b)(1)(B).

(14) ALSO ANOTHER CONTROLLING AUTHORITY THAT IS BINDING ON THE LOWER COURTS WHICH HELD THAT A PARTY'S OBJECTIONS AGAINST THE MAGISTRATE JUDGE'S REPORTS AND RECOMMENDATIONS, THAT THE DISTRICT COURT MUST ~~MAKE~~ MAKE A DE NOVO REVIEW AND DETERMINATION OF THE SPECIFIED PORTIONS OF ALL OF HIS OBJECTIONS CONTAINING ADDED MATERIAL FACTS THAT SHOWS THAT HE COULD AMEND HIS COMPLAINT A FIFTH TIME TO STATE A COGNIZABLE CLAIM AGAINST DEFENDANTS AND PREPARED COMPELLING EVIDENCE OF MENTAL INCAPACITY DURING THE PERIOD OF TIME HE WAS GRANTED LEAVE TO AMEND ~~HIS~~ AND HIS NEW ARGUMENTS AND CLAIM FOR RELIEF FROM ITS ORDER DUE TO SUPERVISING EXTRAORDINARY CIRCUMSTANCES BEYOND HIS CONTROL, THAT PREVENT HIM FROM ASSERTING A COGNIZABLE CLAIM AGAINST DEFENDANTS, AND THE DISTRICT COURT CLEARLY ERRED IN NOT APPLYING THE PROPER LEGAL STANDARDS OF EXERCISING ITS DISCRETION IN CONSIDERING OR NOT CONSIDERING ADDITIONAL MATERIAL FACTS, NEW ARGUMENTS, AND COMPELLING EVIDENCE, AND CLEARLY ERRED IN FAILING TO MAKE A DE NOVO REVIEW AND DETERMINATION TO THE SPECIFIED PORTIONS OF HIS OBJECTIONS, WAS AN ABUSE OF DISCRETION, VIOLATING U.S. CONSTITUTION - ARTICLE III, AND FEDERAL STATUTE 28 U.S.C. SECTION 636(b)(1)(C) UNITED STATES AND DARTZ, 447 U.S. 667, 643-76, 65 LEd 2d 424, 105 S.Ct. 2400 (1980); HOWLAND V. FLORIDA, 560 U.S. 681.

REASONS FOR GRANTING THE PETITION

(15) PETITIONER CONTENDS THAT UNDER 28 U.S.C. § 636 et seq.
() WHICH PROVIDES AS FOLLOWS, IN PART:

b(1)(C)... THE MAGISTRATE JUDGE SHALL FILE HIS PROPOSED FINDINGS AND RECOMMENDATIONS UNDER SUBPARAGRAPH (B) WITH THE COURT AND A COPY SHALL FORTHWITH BE MAILED TO ALL PARTIES ... WITHIN 14 DAYS AFTER BEING SERVED WITH A COPY, ANY PARTY MAY SERVE AND FILE WRITTEN OBJECTIONS TO SUCH PROPOSED FINDING AND RECOMMENDATION AS PROVIDED BY THE RULE OF THE COURT. A JUDGE OF THE COURT SHALL MAKE A DEMOND DETERMINATION OF THESE PORTIONS OF THE REPORT OR SPECIFIED PROPOSED FINDINGS OR RECOMMENDATIONS TO WHICH OBJECTIONS IS MADE. A JUDGE OF THE COURT MAY ACCEPT, REJECT, OR MODIFY IN WHOLE OR IN PART THE FINDINGS OR RECOMMENDATIONS MADE BY THE MAGISTRATE JUDGE. THE JUDGE MAY ALSO RECEIVE FURTHER EVIDENCE OR COMMIT OR RECOMMIT THE MATTER TO MAGISTRATE JUDGE WITH INSTRUCTIONS. ... THIS APPLIES TO ~~PART~~ PETITIONER'S INSTANT CASE.

(16) PETITIONER CONTENDS THAT UNDER FEDERAL RULES OF CIVIL PROCEDURE - RULE 15(C)(1)(B) ~~Relation Back of Amendments~~ (f), PROVIDES AS FOLLOWS: IN PART:

(f) WHEN AN AMENDMENT RELATES BACK. AN AMENDMENT TO A PLEADING RELATES BACK TO THE DATE OF THE ORIGINAL PLEADING WHEN:

(A)...

(B) THE AMENDMENT ASSERTS A CLAIM OR DEFENSE THAT AROSE OUT OF THE CONDUCT, TRANSACTION, OR OCCURENCE SET OUT - OR ATTEMPTED TO BE SET OUT - IN THE PLEADING, OR

(CONT. ON P. 5(g).)

5(f))

Arguing

REASONS FOR GRANTING THE PETITION

(17) PETITIONER CONTENDS THAT ANOTHER IMPORTANT CONTROLLING AUTHORITY, WHICH APPLIES IN HIS CASE, THAT USED FED. R. CIV. P. RULE 15(C) PROVIDES THAT AN AMENDMENT TO A PLEADING WHEN THE AMENDMENT ASSERTS A CLAIM OR DEFENSE THAT AROSE OUT OF CONDUCT, TRANSACTION OR OCCURRENCE SET OUT - OR ATTEMPTED TO BE SET OUT IN THE ORIGINAL PLEADING "FED. R. CIV. P. RULE 15(C) (B) BY ~~ADDRESS~~ ALLOWING RELATION BACK EVEN IN SITUATIONS WHERE PLAINTIFF ATTEMPTED TO BE SET OUT A CLAIM RULE 15(C) MAKES CLEAR THAT THE TECHNICAL FAILURES IN THE ~~ADDITIONAL~~ ORIGINAL PLEADING ALONE DO NOT PRECLUDE LATER AMENDMENT, CERICOLA V. FED. NAT. MORTG. ASS'N, 529 F. SUPP. 2d, 1139, 1148-49 (C.D. OF CAL. 2007).

(18) ALSO, HE CONTENDS THAT ANOTHER IMPORTANT CONTROLLING AUTHORITY, USED SO WHILE THE DESSENT MAY CLAIM TO AGREE THAT THE MERE FAILURE TO BRIEF AN ISSUE ON APPEAL WHEN THAT ISSUE WAS ALSO NOT RAISED IN THE DISTRICT COURT REQUIRING A DOUBLE FORFEITURE TO EXCUSE A FORFEITURE ON APPEAL WOULD BE A STRANGE RULE, ~~INDEED~~ INDEED AND ONE THAT WOULD EFFECTIVELY EXTINGUISH MUCH OF THE DISCRETION WE HAVE TO CONSIDER IMPORTANT ISSUES NOT RAISED BY THE PARTIES IN EXTRAORDINARY CIRCUMSTANCES, WE BELIEVE TREATING THE MERE FAILURE TO BRIEF AN ISSUE AS FORFEITURE STRIKES THE APPROPRIATE BALANCE BETWEEN RESPECTING THE PARTY PRESENTATION PRINCIPLE AND RETAINING THE DISCRETION TO ADDRESS IMPORTANT ISSUES IN EXTRAORDINARY CIRCUMSTANCES, SEE UNITED STATES V. CAMPBELL, 2020 U.S. APP. LEXIS 4317 AT P. *17 - *28.

REASONS FOR GRANTING THE PETITION

(19) PETITIONER CONTENDS THAT THE IMPORTANT CONTROLLING AUTHORITY, HOLDS THAT NORMALLY WHEN ADJUDICATING A MOTION TO DISMISS BROUGHT ~~BY~~ PURSUANT TO RULE 12(b)(6), THE COURT CONSIDERATION OF EXTRA-PLEADING MATERIAL IS LIMITED AND MATTERS OUTSIDE OF THE PLEADING CAN NOT BE CONSIDERED WITHOUT CONVERTING THE MOTION INTO A MOTION FOR SUMMARY JUDGMENT (SEE, FED. R. CIV. P. RULE 12(b)(6))... HOWEVER, THE NINTH CIRCUIT HAS DETERMINED THAT COURTS MAY CONSIDER DOCUMENTS ALLEGED IN A COMPLAINT AND ESSENTIAL TO A COURT MAY ALSO TAKE JUDICIAL NOTICE OF DOCUMENTS ON WHICH ALLEGATIONS IN THE COMPLAINT NECESSARILY RELYS, EVEN IF NOT EXPRESSLY REFERENCED IN THE COMPLAINT, PROVIDED THAT THE AUTHENTICITY OF THESE DOCUMENTS IS NOT IN DISPUTE. "TERCIOR INC. V. INSEMED INC., 2006 U.S. DIST. LEXIS 41864, 2006 WL 1626930 AT P. *8 (N.D. OF CAL. JUNE 6, 2006) (SEE, CLOUD V. BRENNAN, 436 F. SUPP. 3d, 1290 (9TH CIR. 2020))

(20) THE U.S. COURT OF APPEAL DECISION TO DEPART FROM THE NORMAL AND USUAL COURSE OF JUDICIAL PROCEEDINGS, AS TO CALL FOR AN EXERCISE OF THIS COURTS SUPERVISORY POWERS, BECAUSE A IMPORTANT CONTROLLING AUTHORITY THAT HELD, THE OBJECTIONS MOSTLY REITERATED PLAINTIFFS ALLEGATIONS IN THE FIFTH AMENDED COMPLAINT AND ATTACHMENTS THERETO, AND DID NOT AFTER THE COURTS ASSESSMENT THAT THE FIFTH AMENDED COMPLAINT FAILED TO STATE ANY VIABLE CLAIM OF RELIEF, HOWEVER THE OBJECTIONS INCLUDED A NEW ALLEGATION THAT WAS NOT INCLUDED IN THE FIFTH AMENDED COMPLAINT, THAT THE NURSE DEFENDANTS DUTY IS TO PERFORM MINOR MEDICAL TREATMENT, THAT THEY LACKED THE MEDICAL MEDICATIONS (Id. AT *8) THE COURT EXERCISED ITS DECISION TO CONSIDER PLAINTIFFS' NEW ARGUMENT AND WITHDREW THE REPORT & RECOMMENDATIONS TO GIVE PLAINTIFF AN OPPORTUNITY TO ~~STATE~~ FILE A SIXTH AMENDED COMPLAINT TO INCLUDE AN EIGHTH AMENDMENT CLAIM FOR THE NURSE DEFENDANTS PURPORTED LACK OF MEDICAL EXPERTISE TO TREAT PLAINTIFF Id. AT *2-*3, (SEE, CARTER V. GASTELO, 2021 U.S. DIST. LEXIS 116287)

REASONS FOR GRANTING THE PETITION

- (21) PETITIONER CONTENDS THE IMPORTANCE OF THIS CONTROLLING AUTHORITY THAT THE PURPOSE OF A PETITION FOR REHEARING IS TO DIRECT THE COURT'S ATTENTION TO SOME MATERIAL POINT OF FACT AND/OR LAW WHICH IS OVERLOOKED IN DECIDING A CASE AND WHICH HAD IT BEEN GIVEN CONSIDERATION WOULD PROBABLY HAVE BROUGHT ABOUT A DIFFERENT RESULT. NATIONAL LABOR RELATIONS BOARD V. BROWN & ROOT (8TH CIR. 1953), 206 F.2d 773; AND SEE UNITED STATES V. MAGENO, 786 F.3d 766 (9TH CIR. 2013) AND FEDERAL RULE OF APPELLATE PROCEDURE 10.1(e). APPLIES TO PETITIONER CASE / SUIT.
- (22) ANOTHER IMPORTANT CONTROLLING AUTHORITY. HELD THAT A OPPOSITION THAT PRESENTED MATERIAL FACTS WHICH STATES A COGNIZABLE CLAIM AND THE FAILURE OF THE DISTRICT COURT TO EXERCISE DISCRETION TO NOT CONSIDER IT WAS AN ABUSE OF DISCRETION. (SEE AKHTAR V. MESA, 698 F.3d 1202, 1213 (9TH CIR. 2012), APPLIES TO PETITIONER CIVIL ACTION / SUIT.
- (23) ANOTHER IMPORTANT CONTROLLING AUTHORITY, WHEN A OBJECTIONS TO THE MAGISTRATE JUDGE REPORT AND RECOMMENDATIONS, IN CERTAIN CIRCUMSTANCES A DISTRICT COURT ABUSES ITS DISCRETION WHEN IT FAILS TO CONSIDER NEW ARGUMENTS OR EVIDENCE PROFFERED BY A PRO SE PLAINTIFF IN OBJECTING TO A MAGISTRATE JUDGE'S REPORT AND RECOMMENDATIONS, SEE, SUSSA V. DIAZ, 729 F.3d 1225 (227), (9TH CIR. 2013), ALSO THE DISTRICT COURT MUST ACTUALLY EXERCISE ITS DISCRETION RATHER THAN SUMMARILY ACCEPT AND ADOPT THE DEFENDANTS MOTION TO DISMISS. SEE, JONES V. BLANIS, 393 F.3d 918, 935 (9TH CIR. 2004), APPLIES TO PETITIONER CIVIL ACTION / SUIT.
- (24) ANOTHER IMPORTANT CONTROLLING AUTHORITY OF MENTAL ILLNESS QUALIFIES AS AN EXTRAORDINARY CIRCUMSTANCES. (SEE, GRAY V. SEC. Y OF HHS, 2016 U.S. CLAIMS LEXIS 130, MENTAL ILLNESS MAY JUSTIFY EQUITABLE TOLLING (SEE, MILLER V. RUNYON, 77 F.3d 189, 191 (7TH CIR. 1996) AND BINDING PRECEDENT OF HOWARD V. FLORIDA, 560 U.S. 631.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

MUR

Date: 7/31/23