No. _____

IN THE

Supreme Court of the United States

VIDALA AARONOFF,

Petitioner,

v.

CURTIS OLSON.

Respondent.

On Petition for Writ of Certiorari to
The Court of Appeal of the State of California
Second Appellate District

APPENDIX TO PETITION FOR WRIT OF CERTIORARI VOL. II

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TABLE OF CONTENTS

S278941

Redacted Pending Court's Decision

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

JANE DOE

Plaintiff and Appellant

v.

CURTIS OLSON

Defendant and Appellant

Appeal from the Superior Court of
Los Angeles County Superior Court Cases
17SMRO00308/17SMRO00368
Honorable: Michael Convey, Emily Spear, Gregory Weingart and
Wendy Wilcox, Presiding

PETITION FOR REVIEW

After the unpublished decision of the Court of Appeal, Second Appellate District, Division Two, Cases B295388, B298224, B298532, B305935, B314319, B309136

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATE CONSTITUTION

STATUTES

OTHER

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

JANE DOE

Plaintiff and Appellant

v.

CURTIS OLSON

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PETITION FOR REVIEW

After the unpublished decision of the Court of Appeal, Second Appellate District, Division Two, Cases B295388, B298224, B298532, B305935, B314319, B309136

TO THE HONORABLE CHIEF JUSTICE PATRICIA GUERREO AND TO THE HONORABLE ASSOCIATE JUSTICES OF THE SUPREME COUR OF THE STATE OF CALIFORNIA:

This petition for review follows the unpublished decision of the Court of Appeal, Second Appellate District, Division Two, filed on January 24, 2023. A copy of the opinion is attached to this petition as an appendix.

I. QUESTIONS PRESENTED

A. Should California courts allow ineffective assistance of counsel claims in restraining order cases?

B. When neither party prevails on "dueling lawsuits," is it an abuse of discretion to award attorney's fees?

C. If courts consider a party's ability to pay in awarding attorney's fees, is it an abuse of discretion to order an indigent party to pay attorney's fees that exceed their annual income?

D. When a party raises allegations of extrinsic fraud by not being providing a true and accurate copy of the trial record for the courts to consider, is the remedy to grant a new trial for the party prejudiced by such conduct? How should courts handle such allegations?

E. When a party makes a substantial showing of fraud upon the court, can the courts refuse to consider the issue?

II. NECESSITY FOR REVIEW

This case presents four distinct areas of legal questions that have broad implications for California: the right to effective counsel, attorney's fee determinations, fraud upon the court, and preservation of issues at the trial court for appeal.

Over the past few decades, states have passed innumerable laws and court rules guaranteeing the right to counsel in a wide variety of civil cases. They number in the hundreds and cover many different types of cases including family law matters, involuntary commitment proceedings, medical treatment cases, and many others. They all seek to ensure that the counsel provided is competent and effective. Given the liberty and personal safety interests at stake in restraining order hearings, both for the person seeking protection from the court, and for the person being restrained, the question of whether participants have the right to competent and effective counsel is extremely important, and yet not directly addressed by this Court. In the present case, the Petitioner raised the argument at the trial court, that her counsel was ineffective, and thereby caused her to continue to fear for her safety. (Opn. 8, Petition for Rehearing 21-22 [PR].) Given the increasing recognition of the importance of effective counsel in civil cases of significance such as restraining orders against domestic violence and civil harassment, the Court of Appeal was too dismissive of Petitioner's claim. (Opn. 8.)

Likewise, attorney's fee determinations arise in a variety of cases, and questions when neither party prevails on dueling lawsuits is it an abuse of discretion to award attorney fees, (Opn.

3.) and whether the court should consider the ability of a party to pay a fee award, and its ability to disregard such ability, are important questions with broad implications across the legal landscape. Here, the lower family court, a court of equity, exercised its discretion to consider the parties' ability to pay, according to custom and practice. (PR 21-26.) However, the Court of Appeal abused its discretion to deny any consideration of the parties' ability to pay, even though the Petitioner had fee waivers throughout the litigation. (*Id.,* Opn. 13-14.)

Third, issues pertaining to fraud upon the court are also important and wide-ranging. However, the question of how a court should address allegations of fraud committed by an officer of the court in a case on appeal is a novel and unique issue that also should be addressed. (Opn. 7. PR 19-20.) Here, Petitioner alleges both that there was fraud committed upon the trial court by Olson, who submitted fraudulent real estate documents, (PR 21.) which dramatically influenced its decision, but also fraud was committed upon the Court of Appeal, in that the court reporter altered the transcript of critical testimony in the proceedings below, omitting key testimony and statements pertinent to Petitioner's case. (Opn. 7-8; PR 18-20.)

Finally, the last question presented is crucial to the present case, and many others. Here, the Court of Appeal correctly cited the rule that "[O]nly those issues tendered in the trial court may be raised on appeal." (*County of Sacramento v. Llanes* (2008) 168 Cal.App.4th 1165, 1173.) The Court of Appeal then cited the reasoning behind such a rule: "'[a] party is not permitted to

change his position and adopt a new and different theory on appeal. To permit him to do so would not only be unfair to the trial court, but manifestly unjust to the opposing litigant.'" (*Cable Connection, Inc. v. DIRECTV, Inc.* (2008) 44 Cal.4th 1334, 1350, fn. 12.) (Opn. 8.) However, where the record shows that the party, did, in fact, preserve the issue for appeal in its motion for new trial and motion to reconsider, it is likewise "manifestly unjust" to deny that party the right to assert the argument (again) on appeal.

Because of the importance of these legal questions, not only for the present case, but for all of California, this Court should grant review to settle these important questions of law. (Rules of Ct., rule 8.500, subd. (b)(2))

III. FACTUAL AND PROCEDURAL HISTORY

This case represents six consolidated appeals involving the same parties. Plaintiff-Appellant [Redacted] Jane Doe, the Petitioner in the present case (hereinafter "Petitioner")[1] sought a civil harassment restraining order in 2015 against Defendant and Appellant Olson (hereinafter "Olson") pursuant to Code of Civil Procedure section 527.6. (Opn 3.) Petitioner obtained a three year

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[1] Petitioner is "Jane Doe" in the related case *Olson v. Doe,* S258498, in which this Court unanimously reversed an unanimous decision of the Court of Appeal, Second Appellate District, in B286105, which erroneously held that the nondisparagement clause in Petitioner and Olson's mediation agreement arising from Petitioner's civil harassment restraining order against Olson limited Petitioner's ability to bring a subsequent unlimited civil lawsuit against Olson seeking damages for sexual harassment.

court-mediated "Stay Away" agreement, in which the court retained jurisdiction to enforce its terms per Code of Civil Procedure section 664.6 until December 2018. (*Id.*, PR 6-8.) Clearly, the trial court continued to hold jurisdiction in 2017, when Petitioner alleged that Olson had violated the terms of the "Stay Away" and sought enforcement by filing a subsequent civil harassment restraining order pursuant to Code of Civil Procedure section 527.6 in 2017. (*Id.*) Olson also sought a cross-restraining order against Petitioner that was combined and heard together. (*Id.* Opn. 2-3.)

At the hearing, the trial court abused its discretion when it refused its continuing jurisdiction to enforce Petitioner's prior 2015 "Stay Away" orders. This ruling cut off the critical historical context of Olson's pattern of misconduct and modus operandi as retaliatory acts, which included Olson's violent attempt to rape Petitioner in 2015, (PR 9) thus marginalizing the following events occurring in 2017: Olson taking pictures through Petitioner's window; Olson looking through Petitioner's window while she was using the bathroom; there was also evidence of an incident in which Olson ran at Petitioner in a parking area, speaking quickly and appearing angry and agitated; Petitioner appeared to be afraid of him. Olson's repeated misconduct made the witness feel that Petitioner should call the police and carry a taser or other nonlethal weapon. (Opn. 9-10.)

Furthermore, there was evidence of tampering with Petitioner's bathroom window; damage to a back door that suggested an attempted break-in; eyewitness reports of people

sitting in their cars on a daily basis listening, watching and filming Petitioner's rental home. (*Id.)*

One witness, Olson's agent-attorney Mr. Lamdien Le, threatened Petitioner that Olson would physically "hurt" her. (Opn. 10-12.) Another eyewitness, Mr. Amado Moreno, saw Olson with thugs, whom Moreno later witnessed stalk, photograph, and attempt to find Petitioner, prompting Moreno to warn Petitioner to go into hiding. (PR 23-23.) Petitioner spent time in hiding because she was in fear for her life. (*Id*. PR 7.) Petitioner decided to change the locks on her home, as the police advised her to, because she felt unsafe. Further evidence was presented by another eyewitness, Mr. Titus Fotso, confirming Moreno declarations that persons were following and taking photographs of Petitioner, (Opn. 10) and that documents relating to Petitioner's lawsuit against Olson were stolen from the apartment. (*Id*.)

The trial court denied both parties' requests for restraining orders. (Opn. 3.) The court considered the evidence of declarations from eyewitness Moreno. After Moreno's initial declarations were submitted, connecting Olson to thugs stalking Petitioner, Moreno himself became a target and was threatened by an unknown person at gun-point not to testify. (PR 22-23.) Eyewitness Moreno subsequently fled the State of California in fear of *his* life. (*Id.)* Ignoring the hearsay exception, the trial court determined that, because eyewitness Moreno did not physically appear at the hearing to be cross-examined, his declarations should be viewed with distrust and not considered.

In sum, the trial court effectively eliminated and refused to consider: (1) the historical context evidence from continued jurisdiction from the 2015 "Stay Away" including Olson's violent rape attempt *and* (2) eyewitness Moreno's declarations, *and* (3) Olson's agent-attorney Le's threatening statements to Petitioner, *and* (4) acquiesced to the destruction of the court's official record, per the court reporter's transcript, of Olson's live testimony on the witness stand, *by deleting* Olson's admission of a close "golf-buddy" relationship with Lenny Dykstra (one of the thugs stalking Petitioner) *and deleting* Petitioner's counsel Benjamin Kanani's statements to show cause *and deleting* Olson's counsel Eric Kennedy's follow-up objection statements, *and deleting* the trial court's statements to sustain those objections, which is a reversable error, *and replacing* all of that clear and convincing evidence with fraudulent testimony that not only did Olson not know Lenny Dykstra, but that they had no relationship whatsoever. (PR 18-20.) The trial court and its judicial officers utterly crushed and excluded Petitioner's material evidence and negated her constitutional rights to petition the courts for a fair trial.

Thus, the trial court was left to only consider evidence that Petitioner believed she was being watched and followed. The trial court found she had failed to connect the stalking activity to Olson by clear and convincing evidence. (Opn. 10.) Petitioner appealed from the denial of her restraining order (appeal B295388). (Opn. 3.)

Next, regarding attorney's fees awards, given that neither party won a restraining order, there was no prevailing party for what both parties had sought*, i.e.* qualified win (entitlement), yet the trial court awarded attorney's fees to one party (Olson) based on Olson's wealth and ability to hire a large Los Angeles law firm and hence dramatically outspend Petitioner, creating a *de facto* prevailing party based on Olson's means, even though both parties had the same results. (PR 23-26.)

Although the dueling civil harassment cases were combined, heard together, and were considered overlapping such that the trial court did not separate the case-in-chief from the defense, the trial court erroneously awarded fees based on the (bizarre) theory that both parties equally prevailed in defense. (Opn. 3-4.)

Upon the determination that both parties equally prevailed defending against the other's claims, the family court ostensibly sought, in the interest of justice, to consider the parties' ability to pay, according to family court's equitable doctrine, a custom and practice. (PR 21.) The trial court erroneously found, based on false evidence that Olson submitted with his attorney's fees reply brief.[2] that Petitioner had an ability to pay, and thus awarded fees to Olson for prevailing in defense against Petitioner's affirmative claim. *(Id*.)

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[2] Two years later, in April 2021, Petitioner discovered and brought evidence to the trial court that Olson procured his attorney's fees award via submitting fraudulent real estate documents that she was "worth seven figures" and thus had the "ability to pay." This constituted a fraud upon the court.

By the same (flawed) reasoning, the trial court found that Petitioner was the prevailing party in defense against Olson's affirmative claim and awarded attorney's fees to Petitioner. (Opn.3-4, 12-14.) However, because Olson was infinitely wealthier then indigent Petitioner, he had the means to spend three times the amount in attorney's fees over the course of the proceeding for the same result. (PR 7.) The trial court awarded Olson, in defense, $118,897.03 in fees (Opn. 13.) and $1,582.48 in costs. The trial court awarded Petitioner fees incurred by her deferred billing attorney, in defense, $40,295. (Opn 13.)

Then the trial court ordered indigent Petitioner to pay Olson the off-set amount of approximately $80,184.51, after deducting Petitioner's attorney's fees award of $40,295. (Opn. 13.) Essentially, "winning in defense" just became a contest of who had the means to spend more on fees. Although Olson had no qualified win (entitlement), he was declared the *de facto* prevailing party. (*Id*.) Petitioner appealed from the fee award against her. (Appeal B298244.) Olson also appealed from the fee award against him seeking more fees. (Appeal B298532.) (Opn 3-4, 12-14.)

In resisting the fee award, Petitioner had argued that she is indigent and had neither income nor assets. (Opn. 13.: PR 23-26.) Olson therefore sought to prove that (1) ATW Trust is Petitioner's alter ego, and (2) ATW Trust owns a condominium in West Los Angeles. (Opn. 4, 17; PR15-18.) Petitioner objected that the Trust's property was merely her rental home. Olson moved *ex parte* to add the ATW Trust and its trustees as

additional judgment debtors. (*Id.)* The trial court granted Olson's *ex parte* application. (*Id*.) Petitioner and ATW Trust representative, John Walkowiak, appealed from this order and from related post- judgment orders (appeal B305935). (Opn. 4.)

On appeal, the Court of Appeal affirmed (B295388, B298224 and B298532), reversed (B305935), vacated (B314319), and dismissed (B309136) the trial court's various rulings. (Opn. 18.) Specifically, the Court of Appeal affirmed the judgment denying and dismissing Petitioner's restraining order petition against Olson. The court affirmed that both parties lost their combined restraining orders against each other and that they both "won" in defense. (*Id*., PR 4.)

However, merely because Olson had the means to outspend indigent Petitioner, Olson was affirmed an off-setting attorney's fees award in defense ($80,184.51). (*Id*.)

The Court of Appeal reversed the later orders amending Olson's attorney's fee award to add the ATW Trust as a judgment debtor and vacated the second order. The remaining challenge to the void order amending Olson's award of attorney fees was dismissed as moot. (Opn.18.)

The Court of Appeal's Opinion is attached as exhibit A. Petitioner filed a Petition for Rehearing in the Court of Appeal, which was denied.

IV. ARGUMENT

A. This Court Should Grant Review to Determine the Ability of Participants in Restraining Order Cases to Claim Ineffective Assistance of Counsel.

With regard to appeal B295388, in its Opinion on page 8, concerning Petitioner's allegation of ineffectiveness of counsel, the Court of Appeal incorrectly held that an ineffective assistance of counsel claim is not available in an ordinary civil proceeding because there is no constitutional right to counsel. However, there are instances of civil litigation in which ineffective assistance of counsel is allowed, for example in civil immigration cases pursuant to a *Lozada* motion. (*Matter of Lozada* (BIA 1988) 19 I&N Dec. 637; *Matter of Legar* (BIA 2020) 28 I&N Dec.169; *Lo v. Ashcroft* (9th Cir. 2003) 341 F.3d 934, 939 (holding that counsel's secretary's statement that hearing was on wrong day constituted ineffective assistance, which was an exceptional circumstance).)

As stated above, right-to-counsel laws in civil cases have increased in recent years. Some of these laws are a direct response to court decisions establishing a constitutional right to counsel in one or more types of proceedings. (*See Rodriguez v. Rosenblatt* (N.J. 1971) 58 N.J. 281; 277 A.2d 216, 223 (Clearinghouse No. 7684); *Crist v. New Jersey Division of Youth & Family Services* (N.J. 1975) 135 N. Super. 573; 343 A.2d 815, 816 (Clearinghouse No. 12,695).) Others implement federal laws requiring the provision of counsel to specific types of individuals, such as members of the military or Native American children facing removal from their parents. Finally, others originate from

a legislature's belief that providing counsel in a particular type of case is good social policy. For example, the State of New York guarantees a right to counsel for petitioners and respondents in domestic violence proceedings . (N.Y. Fam. Ct. Act §262(a).) However, other states, like California, give courts the discretion to appoint counsel for the petitioner in such cases. (*See*, Alaska Stat. §18.66.100 (permitting court to appoint counsel for minor who is the subject of a petition for a domestic violence protective order); Fam. Code §6386 (permitting court to appoint counsel for minor or adult who is the subject of a petition for a domestic violence protective order).)

In *Lassiter v. Department of Social Services* (1981) 452 U.S. 18, 32-33, the United States Supreme Court held that the Federal Constitution does not require the appointment of counsel for parents in every civil case involving liberty interests, such as in termination of parental rights cases. (452 U.S. at 31. (The *Lassiter* Court noted that it was "neither possible nor prudent to attempt to formulate a precise and detailed set of guidelines to be followed in determining when the providing of counsel is necessary to meet the applicable due process requirements." (*Id.*, 452 U.S. at 32 (quoting *Gagnon v. Scarpelli* (1973) 411 U.S. 778, 790.) The Supreme Court instead left the decision of whether due process requires appointment of counsel in a particular case to be decided by the trial court, subject to appellate review. (*Id.*) But the Supreme Court also recognized that states may adopt their own standards, and that "[a] wise public policy . . . may require

that higher standards be adopted than those minimally tolerable under the Constitution." (*Id.*, 452 U.S. at 33.)

Consistent with *Lassiter*, the California Legislature chose to allow courts to appoint counsel for a minor or adult who is the subject of a petition for a domestic violence protective order. (Fam. Code § 6386.) Thus, the California legislature recognized the importance of counsel in these types of cases. Also, it is fair to assume that this statutory right to an attorney is not a "hollow right" (*See In re Kristin H.* (1996) 46 Cal.App.4th 1635 (affirming right to ineffective assistance of counsel claim in child dependency cases); and *In re M.S.* (Tex. 2003) 115 S.W.3d 534, 544 "[i]t would seem a useless gesture on the one hand to recognize the importance of counsel in termination proceedings, as evidenced by the statutory right to appointed counsel, and, on the other hand, not require that counsel perform effectively.").

Moreover, courts have held that it does not matter whether counsel was appointed by the court or whether counsel was retained privately. In criminal cases in which the right to counsel derives from the Sixth Amendment, the United States Supreme Court long ago concluded defendants may bring an ineffective-assistance-of-counsel claim regardless of whether counsel is appointed or retained. (*See Cuyler v. Sullivan* (1980) 446 U.S. 335, 344–45.) Likewise, courts have come to the same conclusion in certain civil cases. (*See e.g., In re Interest of D.T.* (Tex. 2021) 625 S.W.3d 62 (allowing ineffective assistance of counsel claim in termination of parental rights case involving privately retained attorney).)

Further, various United States Supreme Court decisions have left the door open for expansion of ineffective assistance of counsel claims into other civil litigation. (See *Lassiter*, *supra*, 452 U.S. at 32-33.) Because restraining order cases are quasi-criminal cases that affect a person's liberty interest, this issue is ripe for review.

The similarities between criminal cases and civil cases like termination of parental rights cases, involuntary commitment hearings, immigration cases and restraining order cases such as this one are strong enough to warrant this Court's intervention to settle this important question. Further, the need for review is heighted, given the veritable crime wave of violence against women, LGBTQ communities and other vulnerable people afflicting this country and California.

B. This Court Should Grant Review to Determine Whether the Court Abused its Discretion in Awarding Attorney's Fees When Neither Party Prevailed On "Dueling Lawsuits."

Both parties appealed the lower courts' method for determining an award of attorney's fees. Neither party prevailed in a "simple unqualified win (entitlement)," as set forth in *Hsu v. Abbara* (1995) 9 Cal.4th 863 ("*Hsu*"), where there was "purely good news for one party and bad news for another" (*Id.* at p. 876), obtaining all relief requested (*Id.)* and "litigation success is not fairly disputable..." (*Id.*) The courts ignored the *Hsu* opinion which represents the effort of the California Supreme Court to reconcile what might be called the "discretion clause" of section 1717 of the Civil Code with the "entitlement clause" of section

1717. (*SeeHsu, supra,* 9 Cal.4th at pp. 871-876.) Both clauses are set forth in subdivision (b)(1) of the Civil Code statute. Structurally, the entitlement clause comes first, with the statute first declaring that (a) the trial court must determine who is the "prevailing party", and then (b) defining the "prevailing party" as the party who recovered a greater relief in the action.

Here both parties equally lost what they sought, restraining orders against the other. And they both purportedly "won" in defense, yet because of their vast financial disparities, Olson was had the means to afford expensive "Big Law" counsel, whereas Petitioner was often in pro per or had contingency, pro bono or discount attorney representation based on what funds she could raise from family and friends.

Yet, for over four years, the courts' resources have been tied up with Olson spending over one million dollars ($1,000,000) to collect ($80,184.51), for his off-set attorney's fees award in defense of Petitioner's restraining order proceeding. The Court of Appeal's Opinion thus presents a direct conflict with *Hsu* and should be reviewed in conjunction with "ability to pay."

C. This Court Should Grant Review to Determine Whether the Courts Abused Their Discretion When They Awarded Only One of Two Parties Attorney's Fees, Who Equally Prevailed in Defense Against the Other's Claim, Notwithstanding the Indigent Party's Inability to Pay.

In awarding statutory attorney fees, the proper exercise of discretion includes consideration of the financial circumstances of the losing party and the impact of the award on that party. (*Garcia v. Santana* (2009) 174 Cal.App.4th 464, 476-477; *see also*

Roman v. BRE Properties, Inc. (2015) 237 Cal.App.4th 1040, 1062-1063.) "A judge has the discretion to determine that a reasonable award is $0 when the losing party is unable to pay any fee award without financial ruin." (Cal. Judges Benchbook Civ. Proc. Trial (2022) § 16.102.)

A family court is a court of equity and as such, the family courts have the discretion to consider the financial impact of the award of attorney fees on a party in determining reasonable fees. For example, in *Garcia*, *supra*, the court reviewed a trial court's decision to deny an award of statutory attorney fees against the unsuccessful indigent plaintiff, because of the plaintiff's financial condition. (174 Cal.App.4th at p. 468.) (PR 23-26.)

"[L]itigation costs are not intended to be used as a tool to deny access to the courts, nor to deter persons from asserting their rights at the cost of their ability to provide for the necessities of life." (*Id.* at 472.) Characterizing the award of fees as a sanction, the court of appeal authorized the consideration of the financial circumstances of the losing party to ensure the fees do not "impose an unreasonable financial burden upon the sanctioned party." (*Id.* at 476-77.) Further, "[a]s a result, among other things, an award of attorney's fees under the statute could not subject a plaintiff to financial ruin, and where opposing parties had vastly disparate economic resources the trial court could scale any financial incentives accordingly." (*Id.*)

The Court of Appeal's Opinion reverses those polices, stating, "Petitioner is correct there can be a statutory obligation for the trial court to assess a party's ability to pay in awarding

attorney's fees (See, e.g. Fam. Code §271. subd. (a) But [restraining order] Code of Civil Procedure 527.6 (s), upon which the trial court relied, contains no such requirement. Nonetheless, at the hearing the court advised it was taking into account each party's ability to pay to do substantial justice." (Opn. 13.)

The trial court was correct in using an equitable doctrine to determine ability to pay, however, the trial court was misled by Olson's fraudulent misrepresentations that Petitioner had owned a real property since 2009, and then transferred it into a trust as an alter ego. Thus, the trial court's (and the Court of Appeal's) misinformed ruling was utterly antithetical to the core principle of *Garcia* -- reasonableness.

The Opinion will leave vulnerable people and indigent women such as Petitioner unable to financially seek protection from restraining orders against wealthy perpetrators, such as Olson, who have the means to outspend their indigent victims even though, as in Petitioner's case, she is an equally prevailing party, achieving the same result yet forced to pay a wealthy litigant's Big Law fees.

The Court of Appeal's Opinion reflected the lack of uniform precedent regarding the scope and application of indigent litigants' ability to pay an award of attorney's fees and in direct conflict with *Hsu*. Thus, the courts need guidance on this whether it is an abuse of discretion to award excessive fees in spite of one party's indigency, such as in this case where Petitioner is indigent.

Furthermore, this issue also dovetails with Petitioner's allegations of ineffective assistance of counsel because Petitioner's counsel misinformed her that attorney fees cannot be awarded against an indigent party, as restraining orders are issued in family court, which is a "court of equity," such that the trial court must take into consider ability to pay.

D. This Court Should Grant Review to Determine When a Party Makes a Substantial Showing of Fraud Upon the Court Can the Courts Refuse to Consider the Issue?

The trial court was correct in using an equitable doctrine to determine ability to pay, however, the trial court was misled by Olson's fraudulent misrepresentations that Petitioner had owned real property since 2009, and then transferred it into a trust as an alter ego. Thus, the trial court's misinformed ruling was utterly antithetical to the core principle of *Garcia* -- reasonableness. (PR 25.)

Later, Petitioner brought the evidence to show the trial court (appeal B314319) that Olson had committed a fraud upon the court by newly submitting with his reply brief hundreds of pages of real estate documents, and among the ambush of documents was an altered Fidelity title report coupled with misleading declarations from Olson's counsel relying upon that altered Fidelity title report, the court ignored Petitioner's evidence of fraud. (*Id.)*

Further, Petitioner argued to the court below that it did not matter who had altered the Fidelity title report because Olson had previously owned the condominium property in question and

he transferred title to a man named Max Wilcox, who placed it into the ATW Trust—not Petitioner. (*Id.*) Further, buried among a stack of documents, Olson had submitted with his attorney's fee reply brief was the very proof that Max Wilcox was the owner of the property in 2009 and thus Mr. Wilcox was the only person who could have transferred the property into the ATW Trust. (*Id.*) Therefore, as the previous owner who had transferred the property to Mr. Wilcox, Olson had to have known the Fidelity title report was fraudulent and his counsel's declarations based upon that Fidelity title report were misleading. (*Id.*)

Petitioner's case presents the unique situation of extrinsic fraud upon the court. At trial, Petitioner raised various arguments that documents submitted by Olson were falsified. Such arguments are best characterized as extrinsic fraud.

As the Court of Appeal's Opinion presents a direct conflict with *Garcia,* the Court of Appeal was able to "opt-out" of and avoid ruling on Petitioner's allegations of Olson's fraud upon the court presented at both the trial court and Court of Appeal (appeal B314319) stating in their Opinion only that the particular appeal re fraud on the court was vacated. (Opn.18) As noted above, if the Court of Appeal's reasoning is allowed to stand, it will leave vulnerable people of modest means and indigent people such as Petitioner unable to financially seek protection from restraining orders against wealthy perpetrators, such as Olson, who have the means to outspend their indigent victims and procure attorney's fees judgements in violation of Penal Code Sections 132, 134. *See* Penal Code §132 which makes

it a felony offense knowingly to offer false documents into evidence in a legal proceeding, trial, inquiry or investigation; Penal Code §134 makes it a crime to prepare false evidence with the intent to use it fraudulently in a legal proceeding.

E. This Court Should Grant Review to Determine Whether the Court of Appeal Refused to Consider the Issues of Extrinsic Fraud Raised by Petitioner, Despite the Fact That Petitioner Clearly Had Made a Substantial Showing Regarding Extrinsic Fraud at the Trial Court Level, and at the Appellate Court Level.

Petitioner also raises the question in this case of extrinsic fraud upon the Court of Appeal because the official transcript of the trial court proceedings was fraudulently altered, thereby prohibiting the Court of Appeal from having a true and accurate record to determine the merits of her appeal. (PR 18-20.) (*See Kulchar v. Kulchar* (1969) 1 Cal.3d 467, 471.) ("Actual or extrinsic fraud occurs when a party "was kept in ignorance or in some other manner, ... was fraudulently prevented from fully participating in the proceeding.").)

Petitioner argued that: (1) Olson's testimony on the witness stand regarding his close "golf-buddy" relationship with Lenny Dykstra (Dykstra) was deleted; (2) Petitioner's counsel Benjamin Kanani's statements were deleted; (3) Olson's counsel Eric Kennedy's "objections" were deleted; and (4) Judge Michael Convey's statement sustaining Kennedy's objections were deleted. These deletions were reflected by the altered transcript submitted to the court by court reporter Marlene Burris as the "official and certified" reporter's transcript. Court reporter

Burris apparently removed about 24 words of testimony and other statements, and replaced them with approximately 44 words that were never uttered. (*Id.*)

Accordingly, Petitioner contends that the purposeful deletion of this evidence completely altered the material truth exposed at the hearing that proved Olson knew Dykstra, who stalked and harassed Petitioner as Olson's agent in violation of Petitioner's Stay Away order, case No. SS025790 pursuant to Code of Civil Procedure §664.6. Moreover, without this evidence, the Court of Appeal could not have properly assessed the sufficiency of the evidence adduced at trial. (*Id.*)

Last, the Court of Appeal's opinion incorrectly states that the matter of the altered transcripts is not part of the record below and that Petitioner did not argue it below. The matter of the altered transcripts is in the supplemental court record. Petitioner did argue below that she was concerned about alterations in the reporter's transcripts regarding Olson's relationship with Dykstra, but the trial court refused Petitioner's access to the reporter's transcript prior to those hearings. (*Id.*) Nevertheless, in the dark as to what the exact alterations were, Petitioner introduced evidence that Dykstra was Olson's agent, via attorney Benjamin Kanani's declaration, and that Dykstra had stalked, harassed, intimidated and threatened Petitioner, and she also introduced evidence that Dykstra had stolen legal documents from her home. (*Id.*)

At the time of the hearing on new trial and motion to reconsider, the court reporter (Burris) purposely withheld the

transcript from Petitioner. Therefore, Petitioner requested a continuance until after she had received the reporter's transcript, but Judge Convey refused to grant the request. (*Id.*)

Page 7 of the Court of Appeal's Opinion states: "[Petitioner] did not ask the trial court to grant a new trial because of extrinsic fraud." However, Petitioner did request a new trial based on extrinsic fraud regarding Burris' criminally altered transcripts, even though the court reporter withheld the reporter's transcript.

Petitioner's presented supporting evidence that the transcripts had been altered including attorney Kanani's declaration, written within a few weeks of the event, verifies the following: that he questioned Olson on the witness stand; heard him say he was friends with Dykstra and that he played golf with him in Mexico where Olson owns a luxury vacation home; Kanani argued against Eric Kennedy's objections and heard and notated Judge Michael Convey's sustaining of Kennedy's objection. But before Olson agents could shut down the purpose of the court to find the truth—the cat was out of the bag. (*Id.*)

The declaration of Kanani, an officer of the court, stands in stark damning contrast to court reporter Burris's transcript, which was presented both at the trial and the Court of Appeal. (*Id.*)

CONCLUSION

This case present unique questions of law that warrant the granting of review by this Court. The question of a party's ability to allege ineffective assistance of counsel in a quasi-criminal

restraining order case with allegations of violent attempted rape and stalking is paramount given the liberty interests of the person sought to be restrained as well as the risk of physical harm and continued harassment that victims face from those who would stalk, harass and sexually abuse them.

In addition, the remaining issues related to attorney fee determinations, fraud committed upon the court, and preservation of issues at the trial court level have implications beyond restraining order cases, and therefore warrant a grant of review by this Court to settle these important questions.

March 6, 2023

Aaron Myers

Aaron Myers
Attorney for Petitioners

B295388, consolidated with B298532, B298224 and B305935

CALIFORNIA COURT OF APPEAL
SECOND APPELLATE DISTRICT, DIVISION 2

VIDALA AARONOFF et al.,
Plaintiffs and Respondents, and Appellants and Respondents,

v.

CURTIS OLSON,
Defendant and Petitioner, and Appellant and Respondent.

Appeal from the Superior Court of Los Angeles,
Michael Convey, Judge
Superior Court Case No. 17SMRO00308, 17SMRO00368

REPLY BRIEF OF VIDALA AARONOFF

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VIDALA AARONOFF

Table of contents

Table of authorities

Cases

Statutes

Treatises

I. Introduction

To briefly recapitulate:

Aaronoff sought a civil harassment restraining order against Olson pursuant to Code of Civil Procedure section 527.6. (B295388, 1 CT 17.) Olson also sought a restraining order against Aaronoff. (B295388, 1 CT 74.)

At the hearing there was evidence that Olson was taking pictures through Aaronoff's window. (November 14, 2018 RT 140:3-141:11.) There was evidence that Olson was looking through Aaronoff's window while she was using the bathroom. (November 14, 2018 RT 153:12-16.)

There was evidence of an incident in which Olson ran at Aaronoff in the parking area, speaking quickly and appearing angry and agitated; Aaronoff appeared to be afraid of him. (November 14, 2018 RT 160:23-162:4.) Olson made the witness feel that Aaronoff should call the police and carry a taser or other nonlethal weapon. (November 14, 2018 RT 165:4-166:1.)

There was evidence of tampering with Aaronoff's bathroom window. (November 15, 2018 RT 49:20-54:6.) There was also damage to a back door that suggested an attempted break-in. (November 15, 2018 RT 54:18-57:25.)

There was evidence of people sitting in their cars every day listening, watching and filming Aaronoff's condominium. (November 15, 2018 RT 79:11-80:21.)

There was evidence that Aaronoff spent time in hiding because she was in fear of her life. (November 15, 2018 RT 81:17-82:6.)

There was evidence that Aaronoff decided to change the locks on her home, as the police advised her, because she felt unsafe. (November 15, 2018 RT 185:15-21; November 16, 2018 RT 58:13-22.)

There was evidence of men taking photographs of Aaronoff, and following her. (November 16, 2018 RT 46:13-47:23.)

There was evidence that documents relating to Aaronoff's lawsuit with Olson were stolen from the condo. (November 16, 2018 RT 68:21-69:4.)

The trial court denied both restraining orders. (B295388, 9 CT 1536; November 19, 2018 RT 46:7-15, 51:2-8.) The court considered that while Aaronoff believed she was being watched and followed, she didn't connect it to Olson by clear and convincing evidence. (November 19, 2018 RT 46:7-15.) Aaronoff appealed from the denial of her restraining order, appeal **B295388**.

The court found that Olson was the prevailing party in Aaronoff's petition, and awarded attorney fees to Olson. By the same reasoning, the court found that Aaronoff was the prevailing party in Olson's petition, and awarded attorney fees to Aaronoff. (B305935, 4 CT 753.) Aaronoff appealed from the fee award against her, appeal **B298244**. Olson also appealed from the fee award against him, appeal **B298532**.

In resisting the fee award, Aaronoff had argued that she is indigent and has neither income nor assets. (B305935, 1 CT 151.)

Olson therefore sought to prove that (1) ATW Trust is Aaronoff's alter ego, and (2) ATW trust owns the condominium in Chateau Colline in West Los Angeles, which Aaronoff rents. Olson moved ex parte to add the trust and its trustees as additional judgment debtors. (B305935, 3 CT 451.) The trial court granted that motion. (B305935, 7 CT 1248.) Aaronoff and trustee John Walkowiak appealed from this order, and related post-judgment orders, appeal **B305935**.

Aaronoff's appeals

II. (B295388) The trial court committed reversible error by preventing Aaronoff from subpoenaing attorney Dien Le as a witness, then permitting his surprise testimony.

Aaronoff subpoenaed attorney Dien Le or Lamdien Le to appear as a witness at the restraining order hearing. (B295388, 2 CT 266.) Aaronoff wanted to examine Le because Le had threatened Aaronoff on behalf of Olson. (B295388, 3 CT 393.)

Le moved to quash the subpoena. (B295388, 2 CT 347.) He invoked the attorney-client privilege, asserting that he was Olson's lawyer in a civil action between Aaronoff and Olson. (B295388, 2 CT 348.)

The trial court quashed the subpoena, finding that Aaronoff didn't show that Le had relevant, admissible evidence against Olson. (April 2, 2018 RT 14:18-15:8.) This was reversible error. (AOB 51.)

First, the trial court found that Olson didn't authorize Le's threatening statement to Aaronoff. (April 2, 2018 RT 14:5-19, 15:5-6.) There was no basis for jumping to this conclusion. Le admitted that he was Olson's attorney at that time. (B295388, 2 CT 348; April 2, 2018 RT 12:1-24.) True, at the hearing Le tried to obfuscate the point. (April 2, 2018 RT:11:23-13:28.) But the basis of Le's

motion to quash was protecting Olson's attorney-client privilege.

And as the trial court observed, Le and Aaronoff were in fact discussing settling that case between Aaronoff and Olson. (April 2, 2018 RT 10:21-22 ["[H]e's alleged to have made a comment about the value of settling a case . . ."].) Le nowhere asserts that he was speaking without Olson's knowledge or authorization. There is simply no evidence supporting the court's finding that Olson wasn't behind the threat Le made to Aaronoff.

The trial court stated: "The thing is you have to show, in order for it to be admissible, you would have to show that it was an authorized admission." (April 2, 2018 RT 14:5-7.) That was legal error. On the contrary, there is a presumption that an attorney who appears in an action on behalf of a party is authorized to represent that person. The burden of proof is on the person attacking the authority of the attorney to act. (*Kallman v. Henderson* (1965) 234 CA2d 91, 98.) The trial court erred in making that finding.

Second, the trial court found that Le's statement wasn't "necessarily" a threat. (April 2, 2018 RT 15:6-12.) A statement that isn't "necessarily" a threat is "possibly" a threat. In any event, the meaning of the statement was a

crucial question of fact that should have been explored at trial by examination and cross-examination.

In the end, *Olson himself called Le as a rebuttal witness.* (November 16, 2018 RT 125:13.) Apparently, preserving the attorney-client privilege wasn't so urgent after all. Having voluntarily called Le as a witness, Olson waived the privilege. (Evid. Code § 912, subd. (a).)

But Aaronoff was unable to seize the opportunity. The trial court's earlier order had taken Le off the table, as it were. Aaronoff was caught by surprise. (November 16, 2018 RT 128:10-11.)

Because Aaronoff's Le subpoena had been quashed, Aaronoff did not insist on excluding Le from the courtroom pursuant to the court's Evidence Code section 777 order. (November 16, 2018 RT 127:12-15.) Le, unlike all other non-party witnesses, was able to sit in the courtroom, take in all the evidence, and prepare himself. The prejudice is plain.

More important, Aaronoff was not prepared to cross-examine Le when he became a surprise rebuttal witness at the very tail-end of the trial. (November 16, 2018 RT 128:10-11.) It had the effect of preventing Aaronoff from properly putting on key evidence, crippling her case.

This was a miscarriage of justice, because the Le incident was crucial evidence. As the trial court stated: "[T]his was the must succinct, clear evidence of a threat to the safety of Ms. Aaronoff." (November 19, 2018 RT 43:12-14.)

The restraining order judgment should be reversed and remanded for a new trial.

III. (B305935) The trial court committed reversible error by amending the judgment to add the ATW Trust and its trustees as additional judgment debtors.

Chronologically, the next topic in this brief should be the award of attorney fees. However, that argument will depend on whether the trial court erroneously added the ATW Trust and its trustees as judgment debtors.

A. The order adding the trust and trustees as judgment debtors is void because the trial court violated the automatic stay of Code of Civil Procedure section 917.1, subdivision (d).

After denying Aaronoff's request for a restraining order, the trial court ordered Aaronoff to pay attorney fees to Olson. Aaronoff appealed from that order. (B298224, 5 CT 1057.)

An appeal from an order of attorney fees automatically stays the trial court proceedings, pursuant to Code of Civil Procedure section 917.1, subdivision (d). But the trial court has ignored the automatic stay. This has operated as a kind of original sin, giving rise to further generations of void orders. These in turn have necessitated further appeals, including this one.

The basic principle is that an appeal works an automatic stay in the trial court:

> [With certain exceptions,] the perfecting of an appeal stays proceedings in the trial court upon the judgment or order appealed from or upon the matters embraced therein or affected thereby, including enforcement of the judgment or order . . . . (Code Civ. Proc. § 916, subd. (a).)

Among the exceptions is a judgment for money, or for costs. (Code Civ. Proc. § 917.1, subd. (a).) But subdivision (d) of section 917.1 contains an exception to that exception:

> *However, no undertaking shall be required pursuant to this section solely for costs awarded under Chapter 6 (commencing with Section 1021) of Title 14.*
> (Code Civ. Proc. § 917.1, subd. (d), emphasis added.)

The Legislature added the italicized sentence to section 917.1 in 1993. (Stats. 1993, ch. 456 § 14.)

Chapter 6, "Of Costs," to which section 917.1, subdivision (d) refers, includes section 1032, subdivision (b). That statute states:

> [A] prevailing party is entitled as a matter of right to recover costs in any action or proceeding.

Section 1033.5 goes on to define "costs":

> (a) The following items are allowable as costs under Section 1032:
> ***
> (10) *Attorney's fees*, *when authorized by any of the following*:
> (A) Contract.
> (B) *Statute.*
> (C) Law.
> (Emphasis added.)

The attorney fees award from which Aaronoff appealed was ordered pursuant to Code of Civil Procedure section 527.6, subdivision (s):

> The prevailing party in an action brought pursuant to this section may be awarded court costs and attorney's fees, if any.

Code of Civil Procedure section 527.6, not to belabor the obvious, is a statute.

Thus, attorney fees awarded pursuant to section 527.6 are "costs" as defined by section 1033.5, subdivision (a)(10)(B), and as allowed by section 1032.

And thus, attorney fees awarded pursuant to Code of Civil Procedure section 527.6 are "costs awarded under Chapter 6" as stated in Code of Civil Procedure section 917.1, subdivision (d).

Therefore, trial court proceedings were automatically stayed when Aaronoff appealed from the Code of Civil Procedure section 527.6 attorney fees award, pursuant to Code of Civil Procedure sections 916, subdivision (a) and 917.1, subdivision (d).

The recent case of *Quiles v. Parent* (2017) 10 Cal.App.5th 130, ratifies this interpretation of section 917.1, subdivision (d):

> For nearly 125 years, the "well established" rule in this state has been that a judgment consisting solely of costs is not a money judgment requiring an undertaking. (*Bank of San Pedro v. Superior Court* (1992) 3 Cal.4th 797, 801, 12 Cal.Rptr.2d 696, 838 P.2d 218 (*Bank of San Pedro*).) Our Supreme Court, construing statutory antecedents of sections 916 and 917.1, was concerned that if a judgment for costs was deemed to be a money judgment, "virtually every judgment would be within the scope of [the money judgment exception], and an undertaking would be required to stay every judgment pending appeal. The exception ... to the automatic stay provision ... would cease to be an exception; it would subsume the general rule. Such a result could not have been consistent with the Legislature's intent." (*Bank of San Pedro*, at p. 801, 12 Cal.Rptr.2d 696, 838 P.2d 218.)

> Consistent or not with prior legislators' intent, this exception was finally codified in 1993 (one year after the *Bank of San Pedro* case.)
> (*Id.* at p. 137, citation and parenthesis omitted, ellipses in original.)

The *Quiles* court did not attempt to overrule the Supreme Court, of course. Rather, it recognized that the *Bank of San Pedro* case had already been legislatively overruled by the 1993 amendment of Code of Civil Procedure section 917.1, subdivision (d). (*Quiles v. Parent, supra,* 10 Cal.App.5th at p. 144.)

Thus, whether section 917.1, subdivision (d) applies is no longer an issue of whether the costs involved are "routine" or "nonroutine," as in the *Bank of San Pedro* analysis. The issue is whether the costs are awarded under Code of Civil Procedure section 1021 et seq. (9 Witkin, Cal. Procedure (4th ed. 2020) Appeal, § 254.)

The California Supreme Court denied review of *Quiles*. (*Quiles v. Parent, supra,* 10 Cal.App.5th at p. 130.)

No reported case subsequent to *Quiles* has quarreled with its conclusion.

Quiles is endorsed by the leading treatise on civil appeals:

> **Judgment or order *solely* for CCP § 1021 et seq. costs of suit:** No undertaking is required to stay a judgment or

> a "costs only" judgment is *automatically* stayed on appeal. [CCP §
> 917.1(d); *Quiles v. Parent* (2017) 10 CA5th 130, 137-138 . . . .
> (Eisenberg et al., Cal. Practice Guide: Civil Appeals and Writs (The Rutter Group 2022) ¶ 7:132, emphasis in original.)

Quiles must be regarded as settled law. Applying the case to the attorney fees award under Code of Civil Procedure section 527.6, subdivision (s) is no stretch.

The principal effect of the automatic stay on appeal is to remove the trial court's subject matter jurisdiction concerning proceedings within the scope of the appeal. (*Paul Blanco's Good Car Co. Auto Group v. Superior Court* (2020) 56 Cal.App.5th 86, 97.) Further trial court proceedings in contravention of the section 916 stay are in excess of the court's jurisdiction in its "fundamental sense" and thus *void*. (*LAOSD Asbestos Cases* (2018) 28 Cal.App.5th 862, 872.)

As a result, the order adding the trust and trustees as judgment debtors is void: the trial court made it after Aaronoff appealed from the attorney fees order, i.e., in violation of the automatic stay. The subsequent related orders are also void. They must be reversed.

B. The trial court abused its discretion by adding judgment debtors by way of an ex parte application.

The trial court made its alter ego order, not by noticed motion, but under the quicker and looser conditions of an ex parte application. This also renders the order void.

The reason is simple: Code of Civil Procedure section 187, which permits adding an alter ego judgment debtor, "contemplates a noticed motion." (*Wells Fargo Bank, N.A. v. Weinberg* (2014) 227 Cal.App.4th 1, 9; *accord*, *Highland Springs Conference & Training Center v. City of Banning* (2016) 244 Cal.App.4th 267, 280; *Blizzard Energy, Inc. v. Schaefers* (2021) 71 Cal.App.5th 832, 855.) That is, even if the court already has personal jurisdiction over the proposed new judgment debtor, due process demands that the proposed judgment debtor be given proper notice and the opportunity to defend its position.

"A trial court lacks jurisdiction to amend a judgment ex parte in a manner not prescribed by statute." (*Manson, Iver & York v. Black* (2009) 176 Cal.App.4th 36, 43.) Unless the amendment merely corrects a clerical error appearing on the face of the record, amendment of a judgment requires *notice to all parties whose rights would be substantially affected*, a hearing, and presentation of evidence sufficient to

make the necessary factual determinations. Where the judgment is amended without proper notice to a party whose rights are substantially affected by the amendment, the judgment may be set aside. (*Id.* at p. 44.)

Thus, the orders must be reversed.

C. Olson's evidence shows that Aaronoff did not own the condominium, nor was she a trustee of the ATW Trust. No ATW trustee has an attachable interest in the property.

Even if Olson could overcome the automatic stay on appeal, there is another fundamental problem: Aaronoff not only did not own the condominium which is the basis of Aaronoff's supposed wealth; but she not a trustee of the ATW Trust.

This is the evidence regarding ownership of the property that Olson provided in his ex parte application (B305935, 4 CT 693, 7 CT 1288):

1. Limited Liability Company Articles of Incorporation for Isadora Duncan Academy, LLC, dated June 24, 2009. (B305935, 8 CT 1508.)

2. Grant deed from Max Wilcox to Isadora Duncan Academy, LLC for the condominium, recorded July 22, 2009. (B305935, 8 CT 1510-1511.)

3. Limited Liability Company Certificate of Amendment, changing the name of the Isadora Duncan Academy, LLC to Devon Chateau, LLC, dated July 14, 2011. (B305935, 8 CT 1515.)

4. Statement of Information, naming Max Wilcox as Chief Executive Officer of Devon Chateau, Wilcox and Aaronoff as managers, dated September 15, 2011. (B305935, 4 CT 733.)

5. Quitclaim deed from Devon Chateau, LLC to Vidala Aaronoff, Trustee of the ATW Trust for the condominium, effective January 1, 2012 but recorded February 15, 2017. (B305935, 8 CT 1519-1520.)

6. Quitclaim deed from Devon Chateau, LLC to Vidala Aaronoff, Trustee of the ATW Trust for the condominium, effective January 1, 2012 but recorded June 6, 2017. (B305935, 8 CT 1524.)

7. Limited Liability Company Certificate of Dissolution of Devon Chateau, LLC, dated December 20, 2012. (B305935, 8 CT 1517.)

8. Limited Liability Company Certificate of Cancellation for Devon Chateau, dated December 28, 2012. (B305935, 4 CT 735.)

To sum up: Olson's evidence is that the original owner, Max Wilcox, gave the property to the Isadora

Duncan Academy, which then changed its name to Devon Chateau. Devon Chateau quitclaimed the property to Aaronoff *as trustee of ATW Trust* before winding up its existence.

Throughout, Olson misstates this crucial fact, e.g.:

> On July 22, 2009, *Ms. Aaronoff took title to her condo* unit under the name of the Isadora Duncan Academy, LLC. The unit was gifted *to her* by its former owner, Max Wilcox.
> (B305935, 7 CT 1283, emphasis added.)

Olson here simply assumes what he has the burden of proving. And Olson's own evidence refutes this: Wilcox gave the property to the Isadora Duncan Academy, *not* to Aaronoff.

The evidence does not show that Aaronoff ever had any ownership interest in the property. There was a period in which she was a trustee of an entity (ATW Trust) that owned the property. But that doesn't show that Aaronoff owned the property, either.

Aaronoff ceased being a trustee for the ATW trust on April 14, 2019. (B305935, 6 CT 1161:18-19.) Aaronoff and the trust are now essentially strangers to each other. The ATW trust cannot be held responsible for Aaronoff's debts, any more than the Ford Foundation or the United Federation of Planets could.

But even if Aaronoff *were* still an ATW Trust trustee, the trust *still* could not be held responsible for her debts. Under general principles of trust law, trust *beneficiaries* hold the equitable estate or beneficial interest in property held in trust; they are regarded as the real owners of that property. The trustee merely holds the *legal title* to the property. (*Steinhart v. County of Los Angeles* (2010) 47 Cal.4th 1298, 1319.)

Consequently, trustee status by itself bestows no genuine, attachable ownership interest in the property. Naming a trustee as a "judgment debtor" in order to get at the property held in trust accomplishes nothing. "The law is well settled that the lien of a judgment does not attach to a naked title but only to the judgment debtor's interest in the real estate; and if he has no interest, though possessing the naked title, then no lien attaches." (*Davis v. Perry* (1932) 120 Cal.App. 670, 676.)

And of course this is true not only of Aaronoff, but of *every* actual trustee of the ATW Trust. The order naming ATW Trust and its trustees as additional judgment debtors should be reversed as contrary to law.

D. The trial court ruled that the trust does not exist. If the trust does not exist, the condominium reverts to its prior owner, not to Aaronoff.

The trial court, after finding that the ATW Trust is Aaronoff's alter ego, found that the ATW Trust does not exist. Aside from the internal contradiction, that conclusion has consequences that Olson may not have anticipated.

"When the trust is terminated, the corpus does not become the individual property of the trustee; it reverts to the settlor." (*Mallon v. City of Long Beach* (1955) 44 Cal.2d 199, 208.)

Aaronoff is not a trustee of the ATW Trust. (September 4, 2019 RT 4:28-5:1; 14:16-21; 17:8-14.) Olson has acknowledged that Aaronoff is not a trustee. (September 4, 2019 RT 16:6-7.)

But even if Aaronoff were a trustee, the condominium would not belong to her if, as the trial court proclaimed, the ATW Trust doesn't exist. Since an attempted transfer to a non-existent entity is a nullity, the property would again become the property of Devon Chateau, LLC, its previous owner. The fact that Devon Chateau was dissolved in 2012 is no obstacle:

> A limited liability company that has filed a certificate of cancellation nevertheless continues to exist for the purpose of winding up its affairs . . . and collecting and dividing its assets.
> (Corp. Code § 17707.06, subd. (a).)

As a result, the condominium does not become available to satisfy Olson's judgment for attorney fees.

E. Olson already owns the property. His purchase of the condominium demonstrates his knowledge that Aaronoff was never the owner.

Olson currently owns 99.98% of the property. (*See* Motion for Judicial Notice, filed concurrently.) He bought it from Scott Robinson, who in turn received it from Devon Chateau LLC.

This demonstrates the validity of the argument above: if the ATW Trust doesn't exist, the trust property reverts to Devon Chateau, the former owner—not Aaronoff.

Aaronoff never owned the property, and Olson knows it.

IV. (B298244) Because there is no evidence that Aaronoff owns the condominium, the trial court abused its discretion by ordering Aaronoff to pay Olson's attorney fees.

Aaronoff has had fee waivers throughout this litigation. She is unable to pay the ordered attorney fees. (B305935, 1 CT 151.) Olson persuaded the trial court that Aaronoff has the ability to pay the attorney fees because

she supposedly owns a valuable asset—the condominium she rents. As demonstrated above, that is not correct. (And Olson knows it—*see* Motion for Judicial Notice.) Basing a ruling on a complete misreading of the facts is an abuse of discretion.

In awarding statutory attorney fees, the proper exercise of discretion includes consideration of the financial circumstances of the losing party and the impact of the award on that party. (*Garcia v. Santana* (2009) 174 Cal.App.4th 464, 476-477; *see also Roman v. BRE Properties, Inc.* (2015) 237 Cal.App.4th 1040, 1062-1063.)

"A judge has the discretion to determine that a reasonable award is $0 when the losing party is unable to pay any fee award without financial ruin." (Cal. Judges Benchbook Civ. Proc. Trial (2022) § 16.102.)

The trial court did not exercise its discretion to consider a zero fee award. The failure to exercise discretion is itself an abuse of discretion. (*Ryan v. Crown Castle NG Networks, Inc.* (2016) 6 Cal.App.5th 775, 788-787.)

The trial court abused its discretion under Code of Civil Procedure section 527.6, subdivision (s) by requiring Aaronoff to pay *any* of Olson's legal bills.

Olson's appeal

V. (B298532) The trial court did not abuse its discretion by awarding Aaronoff more in attorney fees than she requested.

The Court of Appeal reviews a decision to award attorney fees, and the amount of fees awarded, for abuse of discretion. (*Sonoma Land Trust v. Thompson* (2021) 63 Cal.App.5th 978, 278).

As long as the trial court applied governing rules of law in exercising its discretion, the court's decision cannot be said to amount to a reversible abuse of discretion. A mere disagreement—the fact that the appellate court might have ruled differently if in the trial court's shoes—does not make out an abuse of discretion. (*Avant! Corp. v. Superior Court* (2000) 79 Cal.App.4th 876, 881-882.)

Crucially, an attorney fees award greater than the fee requested is not by itself an abuse of discretion. (*In re Marriage of Dick* (1993) 15 Cal.App.4th 144, 167-168.) The trial court recognized this, stating:

> In any event, in my analysis of this case, I think it is more fair and equitable that the court consider all of Ms. Aaronoff's attorney's fees and costs expended in this matter.
> (April 16, 2019 RT 13:1-4.)

Olson does not refute this exercise of discretion. Olson has not demonstrated an abuse of discretion. The order assessing attorney fees against Olson should be affirmed.

VI. Conclusion

The proceedings below are littered with reversible errors. The judgment denying Aaronoff's request for a restraining order should be reversed and remanded for a new hearing.

The order assessing attorney fees against Aaronoff should be reversed.

The order adding additional judgment debtors should be reversed.

The order assessing attorney fees against Olson should be affirmed.

June 1, 2022

Paul Kujawsky
Attorney for Appellant
VIDALA AARONOFF

Certificate of Compliance

Appellant's attorney of record certifies that, pursuant to California Rules of Court, Rule 8.204(c)(1), this Appellant's Reply Brief contains approximately 4,070 words. This is fewer than the total number of words permitted by the Rules of Court. Counsel relies on the word count of the computer program used to prepare this brief.

June 1, 2022

_____

Paul Kujawsky
Attorney for Appellant
VIDALA AARONOFF

Aaronoff v. Olson
B295388, consolidated with
B298244, B298532 and B309136

PROOF OF SERVICE

I am over 18 years of age. My business address is 5252 Corteen Place No. 35, Studio City CA 91607. My electronic service address is pkujawsky@caappeals.com.

On June 1, 2022 , I filed and served the **Reply Brief of Vidala Aaronoff** on Eric Kennedy and Robert Little, attorneys for Respondent, via TrueFiling, at:

ekennedy@buchalter.com
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On June 1, 2022, I served the **Reply Brief of Vidala Aaronoff** by placing a true copy thereof in a sealed envelope and depositing it with the United States Postal Service, with the postage fully prepaid, addressed as follows:

Clerk's Office
Los Angeles Superior Court
111 North Hill Street
Los Angeles CA 90012

I have served the California Supreme Court by filing this brief electronically to the Court of Appeal, pursuant to the California Rules of Court, rules 8.44(b)(1) and 8.212(c)(2).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at Studio City, California.

June 1, 2022

_____
PAUL KUJAWSKY

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT, DIVISION TWO

Vidala Aaronoff, Plaintiff and Appellant and, Specially Appearing Nonparty Trustee for the ATW Trust, John Walkowiak, Claimant and Appellant U2 v. Curtis Olson, Defendant, Respondent and Cross-appellant.	2nd Civ. Nos. B295388 Los Angeles County Superior Court Nos. 17SMRO00308; 17SMRO00368

Appeal From The Superior Court of Los Angeles County
Hon. Michael Convey, Judge, and Hon. Emily T. Spear, Judge

APPELLANT AARONOFF'S OPENING BRIEF

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TO BE FILED IN THE COURT OF APPEAL

APP-008

COURT OF APPEAL Second APPELLATE DISTRICT, DIVISION Two	COURT OF APPEAL CASE NUMBER: B295388
ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NUMBER: NAME: Vidala Aaronoff FIRM NAME: STREET ADDRESS: 9461 Charleville Blvd. #259 CITY: Beverly Hills STATE: CA ZIP CODE: 90212 TELEPHONE NO.: (310)498-7975 FAX NO.: E-MAIL ADDRESS: janedoe4justice@aol.com ATTORNEY FOR (*name*): in sui juris	SUPERIOR COURT CASE NUMBER: 17SMRO00308
APPELLANT/ PETITIONER: Aaronoff RESPONDENT/ REAL PARTY IN INTEREST: Olson	

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

(Check one): [✖] INITIAL CERTIFICATE [ ] SUPPLEMENTAL CERTIFICATE

Notice: Please read rules 8.208 and 8.488 before completing this form. You may use this form for the initial certificate in an appeal when you file your brief or a prebriefing motion, application, or opposition to such a motion or application in the Court of Appeal, and when you file a petition for an extraordinary writ. You may also use this form as a supplemental certificate when you learn of changed or additional information that must be disclosed.

1. This form is being submitted on behalf of the following party (*name*): Aaronoff

2. a. [✖] There are no interested entities or persons that must be listed in this certificate under rule 8.208.
   b. [ ] Interested entities or persons required to be listed under rule 8.208 are as follows:

Full name of interested entity or person	Nature of interest *(Explain):*
(1)	
(2)	
(3)	
(4)	
(5)	

[ ] Continued on attachment 2.

The undersigned certifies that the above-listed persons or entities (corporations, partnerships, firms, or any other association, but not including government entities or their agencies) have either (1) an ownership interest of 10 percent or more in the party if it is an entity; or (2) a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves, as defined in rule 8.208(e)(2).

Date: June 1, 2021

Vidala Aaronoff
(TYPE OR PRINT NAME)

Vidala Aaronoff
(SIGNATURE OF APPELLANT OR ATTORNEY)

Form Approved for Optional Use
Judicial Council of California
APP-008 [Rev. January 1, 2017]

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases **Page(s)**

Statutes

INTRODUCTION

There is no crueler tyranny than that which is perpetuated under the shield of law and in the name of justice." – Baron de Montesquieu

A. Factual and Procedural History

Plaintiff-Appellant-Petitioner Vidala Aaronoff, ("Aaronoff") is a mix-race woman of color. Her father came from a hardworking farm family of modest means in South Dakota (28 Jan CT 1563) and her mother was an indigenous orphan. Her mother, against all odds, won a scholastic scholarship to college and law school. As an attorney, the bulk of her practice has been to provide low-cost legal services to poor minorities and immigrants, which she continues today at the age of 84.

Aaronoff's parents had/have a strong work ethic and instilled that in her, (28 Jan CT 1563) which enabled her to have the dedication it takes to train to be a successful ballerina in the competitive world of dance. Unlike some other areas of entertainment, ballet akin to professional sports is the type of activity in which one cannot "sleep their way to the top." Aaronoff became known for her "talent and artistic sensitivity" as a dance teacher and principal-soloist as an Isadora Duncan Dancer. This is evidenced by her positive reviews, including a *New York Times*, review by dance critic, Jack Anderson. Aaronoff is also a Native American religious dancer and is "considered a world treasure and one of the world's foremost knowledgeable people in the art

of sacred dance," by Fulbright scholar, PhD in art history, dance historian and author, Elena Yushkova. **(**RJN A)

In 1998, Max Wilcox, a classical music producer, became the music director and producer of the Isadora Duncan Academy, a non-profit, founded by the New York Academy of Art in 1991 and also became one of its benefactors. The Academy was the custodian of Isadora Duncan's choreography, which is performed to classical music. (RJN A 49-50)

Aaronoff worked for Max Wilcox at the Academy as a teacher and performer (RJN A 6, 49-50). The average dance teacher in the United States in 2021 makes a yearly income of $41, 871 as reported by salary.com and $52,914 as reported by indeed.com for the Los Angeles market.

Wilcox had successfully been involved in converting his apartment into a co-op and taught Aaronoff how to do it. (RJN A 50). Wilcox was the original investor contributing funds to open escrow for an eight-unit rental-apartment-to-condominium conversion project in Los Angeles, California in 2001. (30 Apr. CT 1044, 1051; RJN A 6, 50) The apartment, known as, Chateau Colline, was "a crumbling castle" where Aaronoff was a rent-control resident. (RJN A) Wilcox had a work agreement with Aaronoff to be the front principal point person on the conversion project. (RJN A 50) She later worked as Wilcox' agent and property manager, where she executed documents under power of attorney and management agreements. (RJN A 6)

In 2002, Defendant-Respondent and Cross Appellant Curtis Olson, aka Curt ("Olson") a multi-millionaire, CEO of Nexus Real

Estate companies (6 Jun CT 465-466) and who comes from a wealthy real estate family, became the majority investor. Olson ultimately acquired the Chateau Colline apartment under the entity, Wilshire Chateau LLC, (RJN A) with a signed agreement ("Agreement") that upon completion of specified work obligations for the condominium conversion; one condominium unit would be granted to Aaronoff's assignee, Max Wilcox, the ("Wilcox Unit"). (30 Apr. CT 1044, 1051 RJN A 7)

Olson's real estate company, Nexus, also hired Aaronoff to be the property manager for the eight-unit apartment building. Aaronoff resided in the Wilcox Unit (RJN A) and Olson became a part-time resident in one of the other units. Thus, Olson was Aaronoff's landlord, employer, and business associate in the conversion project.

Shortly thereafter, Olson, a married man with children, began making romantic advances towards Aaronoff, (30 Apr. CT 1070, 1044,1052; 28 Jan CT 1441) "Olson would sneak over in the middle of the day when Aaronoff's husband was a work and offer to take her on shopping sprees and upscale restaurants." (28 Jan CT 1442) Olson's diabolical misogynistic attitude that subscribes to notions of white supremacy assumed that because Aaronoff was a low-income minority, she would be his "mistress material." (28 Jan CT 1442-3)

Aaronoff rejected his advances every time. Olson angrily complained to Aaronoff, "I thought you were part of the deal!" 28 Jan CT 1441) Aaronoff never agreed or discussed any type of "quid pro quo" romantic /sexual arrangement with Olson in

exchange for his funding of the deal or giving her a job. Olson had an unrealistic expectation of affection from Aaronoff and he took great offense at her rejection. He became irrationally angry and acted "pathologically furious" at Aaronoff (28 Jan CT 1442-3) Blinded by lust, Olson retaliated by immediately firing Aaronoff, and he began nefarious actions to cancel the Agreement.

Olson yelled at Aaronoff to "get out" of the Wilcox Unit and threatened a frivolous fraud lawsuit, in which his previous attorney (not Eric Kennedy) refused to represent him. (28 Jan CT 1442) Olson unreasonably pressured Wilcox to forfeit his financial investments and contributions and to ignore the signed Agreement. (30 Apr. CT 1044, 1052-3 1190; 28 Jan CT 1441)

When Olson's initial extortions failed, he became more sinister. He dismantled the water values in the Wilcox Unit's shower, so no water would come out of the shower. Then Olson refused to turn the water back on in the shower and just continued to demand Aaronoff "get out" of the Wilcox Unit. (28 Jan CT 1442) Olson also dismantled the front door handle so the door could not close or lock, allowing Olson to walk in on Aaronoff at any time. (28 Jan CT 1442)

Wilcox instructed Aaronoff to contact the Los Angeles City Housing Authority, who after inspection filed about 32 violations against Olson and ordered him to repair the Wilcox Unit, stating: "Replace handle, stem, seats whatever required to make shower valves (hot cold) operate properly," and "Front door must be made to open and close properly." (RJN A 17-18, 40-47)

"Olson masterminded a conspiracy with his wealthy white " friends and agents …to punish Aaronoff" and "Run her out of town." (28 Jan CT 1433) Olson and his co-conspirators also began a smear campaign, defaming Aaronoff as a "prostitute," who would accept expensive gifts from "sugar daddies" in exchange for sex (28 Jan CT 1443-5; 1575-1579) and various untrue "false light" statements, including that she was a violator of the property rules. (28 Jan CT 1550, 1560-1, 1572; 28 Jan CT 1443-5) This is a typically-known strategy of abusers to falsely accuse, discredit and blame the victim while shifting accountability away from themselves and their crimes.

In 2005, the condo conversion was complete and Olson begrudgingly severed his ownership and granted Max Wilcox title, to the Wilcox Unit, a one bedroom, one bathroom 966 sq. ft. condominium, on April 7, 2005 per the Agreement with an official recording No. 050801693. (30 Apr. CT 1052).

Aaronoff managed the Wilcox Unit, at times renting it to others or herself and made it available for Wilcox when he came to Los Angeles. (30 Apr. CT 1072, 1190 RJN A 50)

After Olson and his cronies' pattern of years-long harassment, discrimination and defamation against Aaronoff (28 Jan CT 1575-1579) she moved out of the Wilcox Unit in 2009. (30 Apr CT 1052; *See* general allegations in Aaronoff's civil complaint, 28 Jan CT 1343-1492)

Olson, who bragged to Aaronoff that he was above the law as a leading member of a certain influential old boy's "club." (28 Jan CT 1433) Olson's wife also warned Aaronoff that she would

never get justice because Olson could and would bribe police and judges. (28 Jan CT 1359)

The "club," which goes by various names was the in-depth subject of the General Assembly of Rhode-Island's Legislative Investigation. They reported that it "requires secrecy and certain mysterious obligations and penalties, to bind together rogues, desperadoes, thieves, robbers and pirates, who could have nothing else to pledge each other [but] mutual fidelity in crime." The report also noted, their oaths supersede the United States and other state Constitutions, such that they consider themselves sovereign and may lie under penalty of perjury to protect fellow club members.

Supporting this behind the scenes network of co-conspirators i.e. the "Olson Club," Aaronoff learned, that Olson and his company Nexus were sued by the City of Palm Springs for corruption by bribing the Mayor of Palm Springs, in about 2017. (28 Jan CT 1863-1873). The news reported that Olson's representatives lied, when they falsified that key employee, Richard Meaney never worked for Nexus. (28 Jan CT 1870) (28 Jan CT 1873)

In 2009, Wilcox put his condominium in a Limited Liability Company ("LLC"), named the Isadora Duncan Academy LLC, which "was initially chosen to affiliate it with the nonprofit organization of the same name of which Wilcox continued to be the music director and producer" and later renamed it the Devon Chateau LLC for long-term rentals. (6 Jun CT 982, RJN A 49-50) Wilcox held 99.98 percent of the LLC member shares and put a

fractional 0.02 percent shares into Aaronoff's name as an accommodation for management purposes. (30 Apr. CT 1051, 1190)

Initially, Aaronoff had hoped to purchase the Wilcox Unit. However, Aaronoff was never able to make enough money nor qualify for a loan nor was she given the money to purchase the Wilcox Unit. (RJN A). None of Aaronoff's family or friends has ever had either the financial means to loan her the money or the kind of relationship with her, such that they would give her the money to purchase the Wilcox Unit.

Wilcox never gifted or sold the LLC, which held the Wilcox Unit to Aaronoff in 2009, nor anytime thereafter. (RJN A 50) There is no evidence whatsoever that Wilcox gifted or sold the Wilcox Unit to Aaronoff in any entity. (RJN A 50) Wilcox and Aaronoff never dated or had the type of relationship "sexual or romantic" where he would gift her real estate. (RJN A 50)

However, Olson would like to tarnish Aaronoff's reputation and have this Court misbelieve that Wilcox simply ***gave*** Aaronoff the Wilcox Unit as her "sugar daddy," which is an outrageous lie and more of his abusive, defamatory prostitution smear campaign. (6 Jun CT 702, 759, 911)

In 2009, Aaronoff secured a long-term renter for the Wilcox Unit. Also she remarried and moved to France in 2009. (30 Apr. CT 1052)

Further in 2009, Aaronoff owed extensive attorney fees regarding a case in which she won a unanimous civil jury verdict in her favor, in pro per. The verdict was handed down in a

lawsuit styled *Markoff v Aaronoff,* SC080757 in 2007 and was the lead story reported on June 13, 2007 by the Los Angeles Daily Journal titled, Keeper of the Castle Has No Fool for a Client, Tenant Trying to Buy Her Building Takes on Developers and Wins Her Case in Pro Per, and states, "Steven C. Markoff, sued [Aaronoff] for breach of contract, claiming she sold the property to a third-party buyer [Olson]…Facing $1.7 million in potential damages, Vidala [Aaronoff] had no choice but to represent herself at trial after she no longer could afford to pay an attorney to handle her case.

To repay a friend [Wilcox] who loaned Vidala [Aaronoff] money for escrow, Vidala [Aaronoff] sold him the contractual right to her unit. If she ever has the money to pay him back she can buy it from him."

In 2011, Wilcox changed the name of the LLC to Devon Chateau LLC; Aaronoff resigned as a member shareholder and was replaced by Justus Senftner, who became the member shareholder of the 0.02 percent. (6 Jun CT 988; 30 Apr CT 1052 RJN A 50-1)

On January 1, 2012, Devon Chateau LLC shareholders, Wilcox, and Senftner transferred the condominium to a private irrevocable trust entitled the ATW Trust ("Trust") and also by deed. (30 Apr. CT 1052, 1071) The LLC was closed and dissolved in December 2012 showing Wilcox and Senftner as the only member shareholders (6 Jun CT 989-990). The beneficiary was the church, Ancient Temple of Wings, which supports and promotes sacred and indigenous music and dance. (30 Apr CT

1051, 1071) Aaronoff and two other trustees were placed on the Board of Trustees to manage the assets for the beneficiaries. (30 Apr CT 1072) Trust documents were signed and notarized. The original deed created in 2012 was misplaced or lost and was not recorded at that time. Later, upon legal advice a replacement deed was prepared with the effective transfer date of January 1, 2012 and recorded on February 15, 2017, but was rejected for scrivener errors. An amended deed was recorded on June 6, 2017. (6 Jun CT 992, 995) but this deed also had errors.

In 2013, after a car accident and health problems, Aaronoff became indigent. (30 Apr CT 1051, 1070) Aaronoff returned to the United States and when the Wilcox Unit became available, she rented it with the right to sublet and she maintained her fiduciary obligations as trustee to the Trust.

May 2015, Olson, who had since become president of the homeowners' association (HOA) board, invited Aaronoff to meet with him offering an "olive branch" and to "bury the hatchet." (30 Apr. CT 1052; 28 Jan CT 280; 28 Jan CT 1445) During that meeting, Olson tricked her: What was supposed to be a social gathering, turned into a "private date" with Olson having expectations of affection. (28 Jan CT 1446) Olson "forced himself" onto Aaronoff and "grabbed [her] hair, face and breasts." (30 Apr. CT 1052-3.) Aaronoff fought back and escaped. The following day, Olson accosted Aaronoff in the building courtyard and harangued her about her refusal to have sex with him. (28 Jan Ct 1447) Over the ensuing months, Olson continued to harass Aaronoff by, among other things, peeping into her rental home,

threatened to "stop Aaronoff from breathing" and using his long-time contractor friend (also referred to as the handyman) David Feder to photograph and/or videotape her and a minor girl, Plaintiff May Doe (28 Jan CT 1343) through bathroom and bedroom windows. (28 Jan CT 1343-1492 *See* generally the factual allegations *Doe v Olson,* case No. SC126806 and related case SC128027)

On October 13, 2015, Aaronoff petitioned for a restraining order pursuant to Code of Civil Procedure section 527.6 bearing case No. SS025790 against Olson. (28 Jan CT 451-478) Olson did not request a restraining order. On December 10, 2015, Aaronoff was directed to mediation with the court's volunteer mediator. (RJN F) Aaronoff did not have a hearing. Aaronoff received a three-year restraining order agreement, in which Olson agreed not to contact or communicate with her, except in writing and/or as required by law and should he encounter her in a public place or in the common areas near their residences, Olson shall seek to honor this agreement by going his respective directions away from Aaronoff ("2015 restraining order agreement") (28 Jan CT 23, 290). Aaronoff agreed to mutually avoid Olson.

The Court Order states, "[t]he case was dismissed without prejudice. The Court retains jurisdiction to enforce the terms of the settlement agreement pursuant to Code of Civil Procedure sec. 664.6." (RJN F). Pursuant to 664.6 (a) (b) (1) Olson, himself signed the 2015 restraining order agreement. (28 Jan CT 23, 290)

The police reports of the sexual assault, the battery, the peeping, etc., that chronicled Aaronoff's abuse at Olson's hands

were bundled and sent to Deputy DA Emily Spear's Los Angeles Sex Crimes Division for review to prosecute the criminal case. A police officer visited Aaronoff to tell her how disappointed they were that the DA had decided not to prosecute, even though there was strong evidence. (30 Apr CT 1596-1603)

On December 9, 2016, Aaronoff filed a civil lawsuit for damages, *Doe v Olson*, case No. SC126806 based on Olson's sexual harassment and discrimination against her including the sexual assault, infliction of emotional distress and prostitution defamation, among others claims. (28 Jan CT 1432-1492;1575-1579) Aaronoff filed under the pseudonym Jane Doe, pursuant to Civil Code § 1708.85. This code is not available for restraining orders under Code of Civil Procedure section 527.6). That aside, Aaronoff began serving the civil complaint on or about mid February 2017.

Olson's first violation of the 2015 restraining order agreement occurred when Olson's attorney, Dien Le began pressuring Aaronoff to dismiss her civil lawsuit against Olson, sending her an email with dismissal documents to sign. (28 Jan Ct 1597-1599) On March 8, 2017, Le called Aaronoff on her cell phone and warned her that Olson would escalate matters to physically harm her if she did not dismiss her civil suit, *Doe v Olson*, case No. SC136806. (28 Jan CT 383, 388)

Aaronoff expressed her fears, that Olson would kill her by having someone run her over while walking her dog and that if she dismissed her case she would be "wide open for Curt to kill [her]" (28 Jan CT 383) Le delivered Olson's threat on Aaronoff's

life, stating, *"Well, if [Aaronoff] was worried about Curt hurting [her] it is more likely that he will do something to [her]—**ah**—**hurt [her]**—if [she does] not dismiss the case."* Aaronoff filed a police report (28 Jan CT 1604); put Le on notice that his comments were in violation of the 2015 restraining order agreement and the HUD investigation, that his statements traumatized her, such that she could not sleep, and she asked for an apology and for Le to recuse himself. (28 Jan CT 389, 393; 1602-3) Le acted as Olson's mouthpiece and admitted the call occurred, yet trivialized it as his "sense of humor." (28 Jan CT 389, 404-405) Aaronoff discussed the Le matter with legal advisors. (28 Jan CT 1600-1, 1605-7, 1690-1) Aaronoff did not dismiss her civil lawsuit.

Olson then hired rogue attorney Eric Kennedy, who has exposed himself as being criminally corrupt. After he filed a series of desperate illegal maneuvers on behalf of Olson, Kennedy committed multiple frauds upon the court in cover-up-schemes in violation of Penal Code 134, dragging this litigation "down a rabbit hole of wild accusations that bore little semblance to reality," (RJN A) as noted above and evidenced herein.

Also after Aaronoff refused to dismiss her civil lawsuit, the Olson Club devised several attack strategies. On May 18, 2017, Olson (represented by Kennedy) filed a breach of contract cross-complaint against Aaronoff's civil lawsuit, purporting that she was not allowed to file a civil suit for damages because her 2015 Restraining Order limited her litigation priviledge to do so. (28 Jan CT 1384)

Then on June 5, 2017, Olson filed an *ex parte* application to shorten time and simply throw out Aaronoff's civil lawsuit. In the court hallway while waiting, Kennedy strangely looked at Aaronoff cross-eyed and boasted that he was definitely throwing-out Aaronoff's lawsuit. He continued on basically indicating that he and/or through Olson's "club" power had somehow conspired with Judge Karlan. It was very strange. Kennedy gloated and carried on that this was a "*done deal*, and that as soon as the hearing started it would be over for Aaronoff's lawsuit."

Interestingly, just before Aaronoff and Kennedy crossed the bar, entering the court's ship, Judge Karlan announced, "This is a Court of Law." To Kennedy's utter unexpected surprise, Judge Karlan denied Olson's *ex parte* and gave Aaronoff a chance to file an anti-SLAPP.

Olson's second violation of the 2015 Restraining Order, began from about May 19, 2020, when he or his agents conspired with the former professional baseball player and felon, Lenny Dykstra ("Dykstra") to act as a spy or "plant." The plan was for Dykstra to infiltrate Aaronoff's life as an Airbnb renter, under a fake name and personality to hide his true identity, and to frame Aaronoff as a prostitute so Olson could use that as a defense in Aaronoff's civil suit. Dykstra also would go on to steal documents as well. (28 Jan CT 1553-1569; 1581) Again, at that time, Aaronoff had moved out of the Wilcox Unit and sublet a bedroom to Dykstra on or about May 20, 2017. (28 Jan CT 1563)

Aaronoff stored her lawsuit files in an office area at the Wilcox Unit and often came back during the day to work on her

civil lawsuit. Dykstra pretending to be a "Bible-study-Christian" initially ingratiated himself to Aaronoff. (28 Jan CT 1562) Dykstra became overly interested in Aaronoff's lawsuit offering to help by reviewing her documents, asking how are you going to prove this? (28 Jan CT 1563) Strangely in the face of increasingly strong evidence against Olson, Dykstra became irrationally negative and began harassing Aaronoff that her lawsuit was "a stupid case," "a waste of time," that it would be thrown out on summary judgment and that Aaronoff should "drop it!" (28 Jan CT 1563)

Next, Dykstra started complaining that the Wilcox Unit "was a dump that needed repairs" and advised Aaronoff to get a $300,000 home loan from a wealthy friend of Dykstra's whom he refused to identify by name. (28 Jan CT 1564) Dykstra's (28 Jan CT 1564) Then Dykstra stopped being nice and began harassing Aaronoff to (a) smoke pot [marijuana], (b) engage in an insurance fraud scheme, (c) offered $10,000 a month for Aaronoff to be his "girlfriend" and he continued to constantly demand she "drop the stupid lawsuit!" (28 Jan CT 1564, 1587)

On May 25, 2017 at 9:12 p.m. Aaronoff sent an email Prayer Request to Pastor Amado to help her because Dykstra's behavior became "horrible." (28 Jan CT 1587) Given all the harassing and suspicious statements and actions by Dykstra, Aaronoff began to suspect that Dykstra was a "plant" for Olson. Dykstra pretended he did not know Olson. On or about May 27, 2017, Aaronoff became physically sickened and afraid of Dykstra and asked him to leave immediately and not contact her—seven

days after meeting. Dykstra sent Aaronoff a threatening text on May 29, 2017 stating, "Its all good I'm not done with you yet" (28 Jan CT 1565, 1587, 1591) and continued to ask Aaronoff if she would be his "paid girlfriend" and attend a promotional business "dinner" that Aaronoff later discovered was supposed to be a "mock orgy," where Dykstra wanted Aaronoff with other women to be recorded pretending that they had sex with Dykstra.

Evidencing these events, Aaronoff reached out to a legal advisor in email exchanges on May 29, 2017 stating, how "in hind sight [Dykstra] seemed too interested in 'helping' me regarding my lawsuit against Curt. He told me, after review that I did not really have a case..." (28 Jan CT 1583)

On May 31, 2017 at 1:28 p.m. Aaronoff still extremely fearful of Dykstra and wanting to de-escalate the situation, sent Dykstra the following final text message:

"Ok Lenny Here you make arrangements directly w/them [the actresses hired to pretend the mock orgy] I will not be going to the dinner I misunderstood what this dinner originally was and after thinking about it I cannot do it. Also, my pastor said I cannot be involved with this either as it's against my morals… I was very insulted that you proposed a financial arrangement as I am NOT that kind of woman…" (28 Jan CT 1585, 1687) The plot to use Dykstra to frame Aaronoff as a prostitute to derail her civil lawsuit defamation claims failed. However, the trauma remains.

Shortly after Dykstra left the Wilcox Unit, Aaronoff discovered important legal evidence had disappeared from her

personal files concerning the civil lawsuit against Olson. Dykstra was the only other person in the property. (28 Jan CT 1565) (11-16-18 RT-2 pp. 68-69)

Unbeknownst to Aaronoff, shortly after Dykstra left he contacted Aaronoff's girlfriend, titled Confidential Witness No. 1. ("Witness 1"), who stated the following in her declaration, (paraphrasing) Dykstra contacted her to go to a promotional business dinner in which he attempted to talk about Aaronoff. Later they met and Dykstra attempted to ply her with drugs and alcohol. She refused. Then Dykstra began an insistent campaign to convince Witness No. 1 that Aaronoff civil lawsuit was frivolous, baseless and stupid. No matter how much Witness No. 1 tried to change the subject, Dykstra kept coming back to attack Aaronoff's civil lawsuit. Dykstra became increasingly angry and frustrated regarding her refusal to agree that Aaronoff's civil lawsuit was frivolous. Then in a last ditch effort Dykstra revealed a very private matter concerning Aaronoff that Witness No. 1 was surprised to hear and wondered how Dykstra would know this information, knowing that Aaronoff would not discuss it with a someone she had met for a little more than a week.

However, Aaronoff knew how Dykstra would know private information about her—from Olson of course. Flashback to 2005, Olson's former wife lamented to Aaronoff that Olson had "wasted $30,000 on a private investigator to dig up dirt" to blackmail Aaronoff "but found nothing but a clean record" (28 Jan CT 1553) and certain sensitive private matters that effected Aaronoff in her childhood. (28 Jan CT 1553, 1562)

Witness No. 1. became concerned at the illogical desperation Dykstra had regarding the dismissal of Aaronoff's civil lawsuit. It did not make sense. Witness No. 1 felt tricked that the meeting was only a ruse to discuss Aaronoff's civil lawsuit, so Witness No 1 could use her influence to get Aaronoff to drop her lawsuit against Olson. Witness No. 1. notes that Dykstra was extremely motivated, "--as if one had a financial stake in convincing me to influence Aaronoff to drop her civil action." (28 Jan CT 1609-1612) Witness Loren Marken also helps connect the dots on "plant" Dykstra. (28 Jan CT 1683-1687)

On or about mid June 2017, Aaronoff noticed a purported tourist walking around with a camera photographing her. Also she began to noticed new people showing up at a locate café, which she frequented across the street from the Chateau Colline building. These new people sat directly behind her with a notebook taking notes. Other neighbors also commented about seeing these events in June 2017.

Amado Moreno worked at that café across the street from the Chateau Colline. He also held a degree from a religious seminary and a California State clerical license. Aaronoff knew Moreno, from lunches at the café and food deliveries.

On or about June 25, 2017, Aaronoff received a concerning phone call from Moreno that she needed to go into hiding because he had witnessed Olson at the café with thugs and overheard parts of their conversation such that he became very worried for Aaronoff's personal safety that they were going to do something nefarious to her. Moreno knew Olson by face and his name via his

credit card. Moreno continued to advise Aaronoff not to come back because he continued to witness either Olson with thugs or Douglas Econn (a club friend of Olson's) with thugs on almost a weekly basis since June 2017 until September 2017. These men, dressed like working private detectives in all black clothing, and made comments "she's not here" or told Moreno they were hired to look for a young woman who lived at the Chateau Colline building, who they had heard frequented the café.

Aaronoff fit the description, and in fear of her life went into hiding.

Then in about August 2017, Dykstra suddenly began showing up at the café doing the same thing the others had done. A common factor among the Olson/thug group and the Econn/thug group and Dykstra is that at least one person in the group knew how to identify Aaronoff and these groups never showed up on the same day. Dykstra also specifically asked Moreno, "When do the locals show up?"

After Moreno's declarations were filed with the court, he became the target of the Olson Club, who threatened his life with a gun. In fear for his life, Moreno suddenly quit his job and fled the State of California, afraid to testify. (28 Jan CT 885-894, 1624-1642, 1692-3) (Tagged Exhibits 10, 12,13,14, 26)

On or about June 30, 2017, Titus Fotso suddenly and unexpectedly moved into the Wilcox Unit and resided there for about six months. (11-15-18 RT-2 p.71) Fotso, who told no one he was living at the Wilcox Unit. Fotso immediately witnessed stalkers stationed for hours in their cars around the Chateau

Colline with cameras that appeared to be filming in the direction towards the Wilcox Unit. (11-15-18 RT-2 pp.78-83) Fotso also witnessed suspicious activity on July 28, 2017 when he saw people on the back alley walkway of the Wilcox Unit near "the window," "the back door" and "looking into stuff." Fotso made a police report (11-15-18 RT-2 pp. 82-89, 104; Tagged Ex. 10, 27)

Aaronoff requested the video footage of the surveillance cameras on July 28, 2017 from the HOA of Chateau Colline. The HOA and Property Manager, Elsa Monroy, initially pretended that Aaronoff could see the surveillance camera footage at their office but a problem arose such that the video could not be viewed. They even called in their company "IT guy" to fix the Internet connection so the video could be viewed –but he could not fix it. Later Monroy admitted on the witness stand on November 15, 2018 that they knew the Internet was "really slow with downloads" at the office such that they reasonably knew the video footage would not be viewable. (11-15-18 RT-3 p.130) Inviting Aaronoff to view the footage was just for show. (11-15-18 RT-3 p.129)

The ingenuous "gaslighting" to allow Aaronoff to view the footage in question was soon dispelled because when other remedies to view the video footage were requested the Olson Club suddenly refused to allow Aaronoff or her attorney any access to see the video footage in question, even though they had been served a valid subpoena and offered to pay any costs. Why the need to hide video footage that is supposed to protect residents?

Further, evidence showed that Olson had access to the video footage hardware that was stored in his locked basement storage unit and via an Internet passcode in which he could watch Aaronoff remotely on the Chateau Colline surveillance videos at any time, even though he was not allowed to have this access, the Olson Club shilled for him. As evident in the Monroy audio recording (Tagged Ex 1. audio-recording), which is contrary to her testimony on the witness stand on (11-15-18 RT-3 p.140)

The Olson Club appeared to have an agenda to hide and protect, those who had access to the surveillance cameras and who could potentially tamper with the video footage, because they are all represented by the same insurance law firm, Slaughter Regan and Cole and attorney Dien Le.

Consequently, Aaronoff had to file a motion to compel release of the original video footage on July 28, 2017. Aaronoff's motion was granted. However, the Olson Club's video footage was not the original video footage and it was obviously tampered. The spoilage of video footage clearly shows the video stops for almost four minutes then jump cuts to the suspicious people rushing away as they see witness Fotso arriving. (Tagged Ex 2 tampered video) After the suspicious people suddenly leave, Fotso took a photograph of them all walking out of Olson's condominium. (Tagged Ex 27)

David Silver is the expert cameraman and installer of the Chateau Colline video surveillance system Silver is the owner and president of Integrate, a company that specializes in security cameras. (11-15-18 RT-1 p.11) Silver was hired by Feder and

they have known each other for about six years prior through Feder's brother. (11-15-18 RT-1 p. 19) Silver is also represented by Olson's attorneys Kennedy (11-15-18 RT-1 p. 42) and Dien Le (11-15-18 RT-1 p. 43) Silver authenticated the video footage evidence (11-15-18 RT-2 pp. 27-28) (Tagged Ex 2) Silver testified that the surveillance system is set up to "record on motion only" and if a frame froze it would indicate something was wrong (11-15-18 RT-1 pp. 29-33)

Q is Attorney Kanani and Witness **A** is David Silver

Q. And the cameras are meant to pick up movement?

A. Yes. They record motion….

Q. If the motion were to cease or if there were no motion at all that the camera would capture, what would happen to the camera? Would it turn off?

A. The Camera does not turn off. The DVR -- -- **It records on motion only. On motion only**

Mr. Kennedy: Objection. Calls for expert testimony

The Court: Overruled

Q. All Right. The basic question, Mr. Silver, any reason why the video footage stopped for approximately four minutes or so at the timestamp that you mentioned earlier, which I believe you said 1:15:55?

A. I have no idea.

Mr. Kennedy: Calls for expert testimony.

The Court: Overruled

Q. Have you seen that [video footage freezes when people are moving in the frame] in other video retrieved for the homeowner's association?

A. Honestly, I do not spend time reviewing the footage

Q. So you have not seen it happen personally?

A. No.

Q. Has any of your employees told you about this happening with any other video footage that you have installed or serviced?

A. It hasn't been called out. No.

Q. Do you believe that this video was been edited before you retrieved it from the DVR?

A. It was not, No, it was not edited.

Q. How do you know that?

A. Because –Because I don't' think there's any way to do it.

Q. So you don't believe that it's possible to edit footage from a DVR before you retrieve it?

A. I have no idea--- that is beyond my expertise.

Several times The Court had to stop blatantly obvious coaching or "club" gestures that were being signaled. For example, while Silver was on the witness stand giving testimony, the Court had to stop, interrupted the proceedings, stating,

The Court: Let's watch the nonverbal reactions to testimony as I said in the beginning. I noted it. It caused me to look up. Drew it to my attention. Don't do it again. (11-15-18 RT-1 pp. 41-42)

Man in the audience: Yes, Sir. (11-15-18 RT-1 42) The man in the audience appeared to be Olson's attorney Dien Le.

On July 28, 2017, David Feder was with the purported unknown people and viewable on the tampered video. Feder testified that these people were from an "unknown architectural firm" Feder and Monroy testified they did not know their names or what firm they came from although a purported email was sent to residents prior to the visit. (11-15-18 RT-3 pp. 156-162) Aaronoff never received this email but only after the fact as a cover-up email on August 2, 2017, without any firm name. (28 Jan CT 1786) Curiously, these complete unknown strangers can be viewed exiting Olson's condominium from photos taken by Fotso. (Tagged Ex 27)

Although, Feder also testified, "these individuals ... were looking at issues relative to building the building." (11-15-18 RT-3 p. 161) No construction of any sort has ever began on the vacant lot, next door. It is still a vacant lot as of, July 23, 2021.

In direct contradiction to Feder's testimony that he never took pictures of Aaronoff or anyone inside Aaronoff's home (11-15-18 RT-3 p. 163) are the declarations of Feder's child pornography victim, May Doe, who stated that Feder filmed her on numerous occasions inside the Wilcox Unit, including while she was taking off her clothes in the bathroom. (28 Jan CT1764-5) Also, May Doe stated that Olson threatened her to be silent. (28 Jan CT1764-5; 1343, 1372-1375) As a consequence of Olson's witness tampering, May Doe was afraid to come forward at the 2015 Restraining Order hearing, which pressured Aaronoff into accepting the 2015 Restraining Order agreement as opposed to facing a trial with no witnesses.

From later June 2017 to September 2017 Aaronoff lived in hiding which was extremely difficult. On or about early September 2017, Aaronoff was advised to put the court on notice that Olson was in violation of the 2015 Restraining Order agreement, and to reinforce its terms, pursuant to Code of Civil Procedure section 664.6, (RJN F) by filing a second restraining order, which she did on September 6, 2017, *Aaronoff v Olson* case No. 17SMRO00308 ("2017 Restraining Order") (28 Jan CT 17-31)

After Aaronoff had Olson served, he retaliated with a SLAPP restraining order for the one-time event of service of process, filed on September 26, 2017. (28 Jan CT 111-117). The court's Orders below state that Olson's case 17SMRO00368 is CONSOLIDATED with case 17SMRO00308, this request is a cross-petition pursuant to CCP 527.6 (h). (28 Jan CT 113)

On September 14, 2017, Aaronoff, in her civil lawsuit *Doe v Olson*, she won her anti-SLAPP motion to strike Olson's cross-complaint, pursuant to California's anti-SLAPP statute (Code Civ. Proc., § 425.16 on the basis that Olson's cross-complaint was "retaliatory litigation" designed to chill Aaronoff's "rights of freedom of speech and right to petition the courts and the executive branch for redress of grievances."

After Aaronoff's anti-SLAPP motion win throwing out Olson's cross-complaint in its entirety, Olson appealed and the Court of Appeal partially reversed, setting up Aaronoff's complaint to be dismissed on a future summary judgment motion—just as Dykstra had coincidently previously predicted. (28 Jan CT 1563) On the precipice of the #MeToo movement, the

community became outraged and rallied against the injustice. Numerous amici letters were filed on Aaronoff's behalf, including a Superior Court restraining order judge, John K. Mitchel, who stated, "the Court of Appeal's ruling violated California State law CCP 527.6(w)" and urged the Supreme Court to give Aaronoff "her day in court." (RJN)

Aaronoff won review by the California Supreme Court, *Doe v Olson* case No. S258498. The law firms of Sidley Austin LLP and Bryan Cave Leighton Paisner LLP jointly represent Aaronoff before the California Supreme Court on a *pro bono* basis and do so after each firm determined that Aaronoff satisfied the American Bar Association's standards related to low-income/ indigence, for *pro bono* services. (RJN A)

Also, Olson sought ways to retaliate against Aaronoff through the HOA by attacking the Trust's economic property rights. Trust advisors recommended joining the civil lawsuit as a co-plaintiff with Aaronoff and discussed funding options to support the Trust's interests in the litigation, including a lien to help secure litigation funding and lien documents were prepared.

Both Aaronoff's and Olson's 2017 Restraining Order cases were combined and heard as one "overlapping" case on November 14 -19, 2018, in Family Court, a court of equity. The Trust was not a party to the restraining order action nor could they have been because CCP 527.6 does not allow restraining orders by or against corporations, trusts or churches. Restraining orders are only allowed against individuals in their personal capacity.

In preparation for the restraining order hearing, Aaronoff

subpoenaed, the HOA attorney, Dien Le, as a witness. It was very difficult to serve Le because he continually dodged service. Le filed a motion to quash on the theory that because he represents Olson, all his actions are shielded from any abuses –no matter what he illegal actions he does for Olson, even outside of the bounds of his professional duties and ethical oath of office. Aaronoff strongly opposed. Le danced around and evaded the questions of Judge Hank Goldberg. Le's tactic of confusing the issues, resulting in the lower court granting motion to quash. (4-2-18 RT pp. 11-14)

Thus, Aaronoff's attorney, Kanani, reasonably did not prepare any documents for the hearing regarding Le, which was heard much later before a different Judge, Michael Convey, who did not have the benefit of understanding in-depth the previous court's rulings with regard to witness Le. Further, at the beginning of the hearing, the lower court, asked, "Are there any persons in the audience who are witnesses or **potential witnesses in this case?** I ask counsel to look and parties to look back and tell me because I wouldn't know. No?" (11-14-18 RT 2)

The Court then put in place "an order at the outset that under Evidence Code 777, all nonparty witnesses remain in the hallway until they are called and until they are excused. "All in agreement, the court orders pursuant to CCP 777 all nonparty witnesses are excluded."(11-14-18 RT 2) However, Dien Le sat in the audience-gallery during the entire four-day hearing and signaled the witnesses. As happens, as the testimony comes out, Aaronoff spoke about the trauma and fears she experienced by

the Le threats-incident, in a shaken voice.

The lower court erroneously thought that because these allegations were not in any of the trial papers, because they had been removed, it was a mere "throw in." The lower court noted that "[Le's threats] were the most succinct, clear evidence of a threat to the safety of Aaronoff." (11-19-18 RT p. 43)

On November 16, 2018, Aaronoff's attorney Kanani called, Olson to the stand and asked him if he knew Lenny Dykstra. There was quite a commotion in the courtroom because Judge Convey and some other men in courtroom including the bailiff-deputy were big baseball fans and for a moment the courtroom turned into a sports bar with great excitement remembering the plays of "Nails" Lenny Dykstra. There was a lot of cross talk such that the court reporter could not get all the conversation down, but she got some of it. (11-16-18 RT-1 pp. 37-38) After the courtroom settled down all eyes were on Olson. Did Olson know Dykstra?

Accurate True Testimony, November 16, 2018

Page 37

Q is Attorney Kanani and A is Witness Olson

18. **Q.** I'm going to – have you ever met an

19. individual named Lenny Dykstra?

20. **A.** The baseball player?

Deleted line **The Court:** The baseball player?

21. **Q.** I don't know if he is a baseball player. I

22. believe he might be. Just by that name.

23. **The Court:** He may be dating some people in the

24. courtroom.

25. **Mr. Kennedy**: Phillies Fan

26. **The Court:** No Chicago Cubs Fan. Are you talking about

27. Lenny Dykstra the

28. former baseball player?

Page 38

1. **Mr. Kanani**: I believe so

2. **The Court:** Or someone else with the same name

3. **Mr. Kanani:** Or someone else with the same name

4. **The Court:** Do you know someone---

5. **The Witness:** Yeah, He's a golf-buddy—I played golf with

6. Lenny Dykstra in Mexico

7. **Mr. Kanani:** When -- ---

8. **Mr. Kennedy:** Objection Relevance

9. **Mr. Kanani**: Your Honor -- --

10. **Mr. Kennedy:** Objection Relevance

11. **The Court:** Sustained

Aaronoff noticed that Kennedy became extremely animated raising his arms in the classic distress gesture, a well know club signal as he called out "Objection." Aaronoff was so shocked that

Olson admitted knowing Dykstra, immediately at the first courtroom break she began excitedly calling and texting her friends and family, within an hour of Olson's admission. The big question was finally answered. Dykstra was indeed Olson's "plant." But the draconian mechanisms of injustice were already at play. Aaronoff just didn't understand it yet. The fact that Judge Convey refused to allow Kanani to question Olson about Dykstra, sustaining Kennedy's objections was already an appealable issue. At the first break, the court took a suspicious extended break… The Olson Club conspired with court reporter, Marlene Burris, submitted this counterfeit transcript altering lines 5 through 16. (11-16-18 RT-1 p.38)

Altered Counterfeit Transcript, November 16, 2018

5. **The Witness:** In Mexico I met Lenny Dykstra

6. **The Court:** The baseball player? (originally page 37 line 21)

7. **The Witness:** Yeah, He was a golfer.

8. **By Mr. Kanani:**

9. **Q.** Are you friends with Mr. Dykstra currently ?

10. **A.** No

11. **Q.** Do you maintain any sort of relationship

12. with him

13. **A.** No.

14. **Q**. Did you ever maintain any sort of

15. relationship with Mr. Dykstra?

16. **A**. No.

The replacement testimony does not ring true. They probably schemed they should keep the word "golfer" and "Mexico" in the transcript. But Dykstra is not a "golfer" although he does golf and so does Olson.

Even before the corrupted court reporter's transcript was submitted, accusation of a corrupted transcript began to fly. After numerous delays, the fix was in, the court reporter's transcript was altered in violation of Penal Code 134 and the conspiring actors in the courtroom are in violation of Title 18 Section 4, Misprision of Felony. The evidence of the alter court reporter's transcript is found in the following:

1. Aaronoff's Motion for New Trial and Reconsideration and Replies (28 Jane CT 1546-1789, 1846-1889)
2. Aaronoff's excited utterances (28 Jan CT 1618, 1622, 1620)
3. Declaration of Loren Marken (28 Jan CT 1683-1692)
4. Declaration of Benjamin Kanani, Esq. (28 Jan CT 1854-1855) Suspiciously, the critical evidence on page two of Kanani's declaration has been deleted from the Clerk's Transcript. The old boy's club is in full force.

I declare under penalty of perjury under the laws of the State of California that the attached declaration of Benjamin Kanani is a true and correct copy, and that this declaration is executed on July 23, 2021 at Los Angeles, California.

Dated July 23, 2021

By: /S/ Vidala Aaronoff

Vidala Aaronoff

Vidala Aaronoff
9461 Charleville Blvd #259
Beverly Hills, CA 90212
Tel: (310) 498 - 7975

Petitioner in Pro Per

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES – NORTHWEST DIVISION

Vidala Aaronoff, Petitioner, v. Curtis Olson, Respondent.	Case No. 17SMRO00308 Assigned to the Hon. Michael J. Convey **DECLARATION OF BENJAMIN KANANI IN SUPPORT OF PETITIONER'S MOTIONS FOR RECONSIDERATION AND FOR NEW TRIAL** Date: January 16, 2019 Time: 10:00 a.m. Dept.: U

I, Benjamin F. Kanani, Esq., declare as follows:

1. I am over the age of 18 and I have personal knowledge of the facts contained herein and if called upon, I would and could competently testify as follows.
2. I previously represented the Petitioner in this case and did so throughout the 4-day evidentiary hearing that took place from November 14-16 – 19 of 2018.
3. On the third day of that hearing, November 16, 2018, Respondent, Curtis Olson ("Olson" or "Respondent") took the stand as part of Petitioner's case-in-chief. As part of my direct exam, I asked Olson if he knew a man named Lenny Dykstra ("Dykstra").
4. Without waiving the attorney-client or work-product privilege, I have been authorized to disclose that I am absolutely certain my direct examination included questions to

Olson if he knew a man named Dykstra because Petitioner and I had discussed the topic previously on multiple occasions and it was included in my outline of questions to ask Olson.

5. According to my recollection and notes taken at the time, Olson replied evasively to my question by asking me, "You mean the baseball player?"

6. I was unsure the man I had asked Olson about (i.e. Dykstra) was a baseball player or not, at which point the Court noted Dykstra was a baseball player. The Court helped clarify the question instructing Olson to answer if he knew Dykstra.

7. I am absolutely certain Olson then went on to say that he had played golf with Dykstra in Mexico. I also made a written note of Olson's affirmative answer.

8. Though I do not remember the exact words Olson used in saying so, I remember the answer clearly because it was the first definitive confirmation we received that the two men knew each other personally.

9. I also found it peculiar (and not credible) that Olson would have to ask if Dykstra were a baseball player, if he had played golf with him fairly recently and given that Dykstra is a famous professional baseball player. As such, and given Olson's confirmation that he and Dykstra knew each other, I began to follow up with additional questions.

10. After approximately 2 or 3 more questions, however, Respondent's counsel objected to my line of questioning, which was sustained. I believe Respondent's counsel objected on the basis of relevance.

11. If Olson had not confirmed that he knew Dykstra, I would not have followed up with additional questioning to Petitioner, when she took the witness stand to testify, about her involvement with Dykstra, as I would have had no viable theory to directly link Olson to Dykstra as part of Petitioner's case-in-chief.

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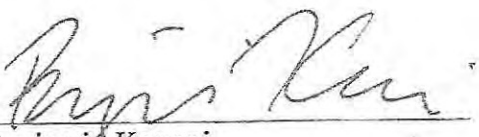
I declare under penalty of perjury and the laws of the State of California that the foregoing is true and correct. Executed at Los Angeles, California on January 9, 2019.

Respectfully submitted,



Benjamin Kanani

The trial court denied both Olson's "process service" restraining order application and Aaronoff's restraining order application on November 19, 2018. (28 Jan CT 1536) The Court noted that Aaronoff did not prove her case by the civil harassment restraining order's clear and convincing burden of proof.

Disturbingly, Aaronoff discovered in closing arguments that her attorney, Kanani was in the wrong burden of proof. He had prepared Aaronoff's restraining order case based on "preponderance of evidence," which is Domestic Violence's much lower standard of evidence compared to "clear and convincing" Civil Harassment's higher standard. (11-19-18 RT p.9) Kanani later told Aaronoff that he had meant to make a motion to move her case to a Domestic Violence case based on the fact that for years Olson attempted to court Aaronoff for a sexual relationship. Olson's interest in Aaronoff continued and grew in intensity to the point that he invited her to his condominium for which he had arranged it to be a private date and in which he had an expectation of affection.

Aaronoff made a motion for new trial pursuant to *Code of Civil Procedure* 657 and 656 et seq and reconsideration pursuant to *Code of Civil Procedure* 1008 and Family Code 210 on the following grounds: newly discovered evidence and circumstances, error in law, abuse of discretion and ineffective assistance of counsel. (28 Jan CT 1546-1719)

Olson moved for attorney's fees and Aaronoff sought her own fees in defense. (6 Jun CT 17) The court combined Aaronoff's and Olson's cases into one "overlapping" case and ruled there were two prevailing parties and awarded both parties attorney's fees. The trial court rejected Aaronoff's contentions that both parties could **not** be prevailing parties.

Aaronoff noted that indigent fee waiver litigants, such as her could not be burdened with attorneys' fees. The court below agreed that they could not award attorney's fees against an indigent litigant. Aaronoff informed the court she lacked the means to pay for Olson's high-priced counsel. Aaronoff has had two fee waiver examination hearings, at the Los Angeles Superior Court and was granted fee waivers.

However, on April 9, 2019, Olson and his real estate company in-house counsel Ryan Vogt-Lowell and counsel of record Eric Kennedy submitted over 50 pages of documents of fraudulent "new evidence" in their attorney's fees reply brief. (6 Jun CT 701-752) (Unbeknownst to Aaronoff at the time and only just recently discovered and verified in April 2021, Olson's reply brief contained (1) fraudulent and misleading declarations based upon a fraudulent Fidelity National Title Report, (2) fraudulently created inflated property value documents showing the Trust property was valued as high as $1,459,000 when the property was actually valued far below $900,000, (6 Jun CT 759, 781), (3) fraudulent industry housing market charts showing an upswing in home values when, in fact, the property home values in the area were dropping, (6 Jun CT 782) and (4) omitted property deed

documents evidencing the sale of the Wilcox Unit from Olson to Wilcox on April 7, 2005, rewritten as a fake "Access, ingress, egress…document using the same recording date and official recording number: 05-0801693 as the grant deed from Olson to Wilcox.(6 Jun CT p. 710 #14.) Further, those purposely omitted deed documents prove that Aaronoff worked for Wilcox and was therefore not an owner of the Wilcox Unit.

The Fraudulent documents and omissions were all calculated to motivate the Court to find (counterfactually) that title of Wilcox Unit in 2009 had transferred personally to Aaronoff (when it did not) and, second and based on the first finding, that when title transferred to the Trust it was an alter ego of Aaronoff. Next, Kennedy's falsified property values over a million dollars- $1.200,000, made it appear that Aaronoff was a millionaire and hiding an asset. (6 Jun CT 759, 760, 781-810),

This is a Fraud Upon the Court, which misled the trial court to award attorney's fees against Aaronoff because Olson's fraudulent documents made it appear that Aaronoff was wealthy and able to pay because she was a purported millionaire and worse that *she* had misled the court on her financial statement. (6 Jun CT 811-817)

Real estate expert Eric Forster concluded, upon review of documents, deeds as well as information provided by the California Secretary of State that these have "not shown Doe [Aaronoff] to have any ownership interest in any of the entities that held title to the [Wilcox Unit], with the exception of the previously-disclosed fractional interest [0.02%] Aaronoff held in

one entity and which was terminated prior to 2012." (6 Jun CT 743-5) (RJN A 18-21)

Further, Olson's award procured by fraud distorted the truth, alarming the courts to believe that Aaronoff was an untrustworthy, unethical liar, who was hiding and dissipating assets since 2009. Aside from friendly loans from family and friends and medical bills from a car accident, Aaronoff has never had a creditor and never had a court order judgment against her. (6 Jun CT 818-821)

Furthermore, Olson's concocted Fraud Upon the Court misled the trial court and Court of Appeal to believe Aaronoff posed a serious risk of "asset dissipation" such that Aaronoff was not entitled to the automatic stay pending attorney's fees and costs judgments only, per *Quiles v. Parent* (2017) 10 Cal.App.5th 130, 144-145. Thus, Aaronoff's motion enforcing the automatic stay CCP 917.1(d) was denied by both the court below and her Writ of Supersedeas by the Court of Appeal. Consequently, Aaronoff was forced to litigate on three fronts, (1) numerous post-trial motions, (2) her appeal and (3) Olson's new lawsuit against her, purporting that she had fraudulently transferred the Trust's condominium asset, when in fact it was all based on Olson and his attorneys' frauds and lies. Furthermore, funding litigation via a lien on the Trust's own asset is a protected activity. (See *Sheley v. Harrop*, (2017) 9 Cal.App.5th 1147)

On April 14, 2019 Aaronoff stepped down from the Trust Board of Trustees and turned over Trust documents to William Welty.

On April 17, 2019 the lower court found that Aaronoff had the means to pay because of Olson's Fraud Upon the Court and awarded both parties their attorney's fees. Thus the lower court subtracted Aaronoff's attorney's fees from Olson's high-priced counsel and ordered Aaronoff to pay Olson the net sum of $80184.78 on April 17, 2019. (30 Apr CT 1092) Aaronoff could not afford expensive counsel; she had a single practitioner who had modest fees on contingency, whereas Olson's fees dwarfed Aaronoff's fees. The lower court contended that Olson is entitled to the counsel he choses. Although both parties won attorney's fees, because Olson's fees were significantly higher Aaronoff was unjustly made to pay a rich man's fees even though they achieved the same result. How much of Olson's attorney's fees were used to create his fraudulent documents—that Aaronoff is supposed to pay? According to Olson's billing statement from Buchalter approximately $15,737 was spent on the attorney's fees motion in which the fraudulent evidence was created in violation of penal code 134. Further, Olson snuck in billings for other cases including, *Doe v Olson* SC126806, *Olson v Aaronoff,* 19STCV46503, a Vexatious Litigant and Res Judicata research, well over $6000 in extra billings (6 Jun CT 65-95), for example note, June 6, CT p.93 $2557.50 re: "Basement Storage" that was regarding Aaronoff's civil case against Olson, which had nothing to do with this restraining order.

On June 6, 2019, Aaronoff timely filed a notice of appeal from the attorney's fees order. (6 Jun CT 1057)

In July 11, 2019, William Welty suddenly passed away and

the Trust documents in his possession have not been located. (30 Apr CT 1141, 1142, 1145).

Olson sought immediate enforcement of the attorney's fees and costs judgment through discovery demands and records requests to Aaronoff, her family, and associates in post-trial motions before Judge Emily Spear, the same Emily Spear who had worked as a Deputy District Attorney for the County of Los Angeles California between the years 2007 and 2018 and was assigned to the special victims unit focusing on sex crimes and child molestation, that handled the Aaronoff and May Doe sexual assault, child pornography crime case. (30 April CT 1596-1605)

Because Judge Spear had been involved with "priors" Aaronoff requested she recuse herself. She refused and assisted Olson in bypassing procedural due process ordering Aaronoff and/or the specially appearing Trust attorney to turn over all Trust documents under seal via an improper order. Judge Spear also improperly ordered Aaronoff to file the specially appearing Trust's objections as a ruse to get them to lose their specially appearing legal rights. However, Aaronoff (1) did not have the authority to represent the Trust in court as she is not a licensed attorney and (2) she didn't have the money to pay any first appearance fees, nor was she authorized to do so.

On September 4, 2019, the lower court ordered Aaronoff to a debtor's exam where she verified under oath that she had stepped down as trustee from the Trust on April 14, 2019 and had no access or rights to the Trust's documents. (12-11-19 RT p.13)

On November 6, 2019, Olson's submitted an *ex parte* application (399 pages) to add ATW Trust as a judgment debtor, however he never noticed or served anything on the Nonparty Trust. The lower court made an order in chambers granting Olson's *ex parte*. (30 Apr CT 1251) Since the lower court granted alter ego there should have been no more need to demand Trust documents, because purportedly the alter ego was proven. However, the lower court continued to demand the specially appearing nonparty Trust turn over documents improperly under seal, by passing procedural due process and added a total of $10,000 in sanctions against the Trust for failure to turn over Trust documents. The Trust was sanctions $5000 at a hearing on January 15, 2020 to which Aaronoff did not attend because she was excused from attending because she was not a trustee of the Trust. (1-15-20 RT) The Trust continued to assert that they were never served or properly brought as a party to the action, the lower court never obtained jurisdiction over them to lawfully obtain Trust documents or information personally or subject matter because the action was on appeal.

On February 28, 2020, the lower court ruled in an order that because no Trust documents were turned over, the Trust did not exist. Olson did not object, appeal or file a motion to reconsider or vacate the lower court's ruling or order. The Trust also did not object or appeal the lower court's ruling. Aaronoff did not object or appeal that lower court's ruling.

On February 28, 2020, the lower court had an order to show cause for the specially appearing Trust. Trust attorney Robert

Gentino challenged jurisdiction. The lower court, Judge Spear unusually emotional and angry illegally and unlawfully dumped the Trust's $10,000 in sanctions on Aaronoff for a sanctions hearing for the Trust. (30 Apr. CT 1934-38)

Judge Spear appears to have been wrongfully influenced by Olson's Fraud Upon the Court. In deed, Judge Spear speculated that ***if*** Trust documents were ever produced, she assumed they would prove a fraudulent transfer because Olson had already convinced her, *via his fraudulent documents* that Aaronoff had been hiding the Wilcox Unit since 2009, even though Aaronoff had no creditors to hide from (aside from friendly family and friends' loans and medical bills from car accidents, which some were eventually settled or later dismissed via insurance claims). (2-28-20 RT)

ARGUMENT

I. Fraud Vitiates Everything.

A. Lenny Dykstra, **is the Linchpin** to this altered transcript Fraud Upon the Court of judicial officers and attorneys, who conspired to protect wealthy sexual abuser **Curtis Olson,** from facing accountability to one of his victims, Aaronoff, an *in forma pauperis* litigant and disabled woman of color, who dared speak truth to power by exercising her first amendment right to redress her grievances in a court of law.

The scheme to defraud was for the purpose of depriving Aaronoff's equal protection under the law by denying her rights

to fair and impartial court hearings this is proven by the fact the Olson Club conspired to illegally and fraudulently prevent Aaronoff from questioning Olson about Dykstra, then to hide that appealable lack of due process, the judicial officers conspired to counterfeit a court transcript that destroyed evidence by removing words that proved and supported Aaronoff's restraining order case against Olson. Then adding and altered words that changed the meaning of sentences that not only exonerated Olson but hid the truth of their Lenny Dykstra plot and protected the judicial officers illegal and unlawful bias rulings against innocent Aaronoff, which could have granted her the protection of a restraining order against Olson and her attorney's fees and costs.

Then the lower court omitted the second page of Kanani's declaration, which evidences what was truly and actually said during the trial— again illegally destroying evidence.

Aaronoff's excited utterances of text messages and emails immediately following Olson's true admissions on the witness stand, prove that she heard Olson admit he was more then causal acquaintances with Dykstra in Mexico, but actually friends that played golf together, thus these are the exception to the hearsay rule and must be admitted. *Davis v. Washington* (2006) 547 U.S. 813, 822.*; People v. Nelson* (2010) 190 Cal.App.4th 1453, 1466.

The evidence proves a Fraud Upon the Court, necessitating granting a restraining order in Aaronoff's favor or in the alternative a new trial. "Fraud Vitiates Everything," *United State v Throckmorton (1878)* 98 U.S. 61 25 L. Ed. 93; "There can be no question as to the inherent power of the court to set aside

the final decree if obtained by fraud." *Miller v Miller* 26 Cal.2d 119. [S. F. No. 16963. In Bank. Mar. 6, 1945.]

Further, the rigged hearings allowed Olson to file an attorney's fees motion, which in a subsequent Fraud Upon the Court, Olson was falsely granted thousands of dollars of attorneys' fees, costs and sanctions against Aaronoff.

B. Olson's Attorneys Fees Fraud Upon the Court

Olson's Fraud Upon the Court to unlawfully obtain attorney's fees, cost and sanctions must be vacated for justice sake. Olson's attorney's fees reply submitted on April 11, 2019 contains misleading declarations based on a fraudulent Fidelity National Title Report and documents as evidenced in the Aaronoff's *ex party* filed April 16, 2021 and motion for reconsideration filed April 26, 2021 (**RJN. A**). That Fidelity title report **misleadingly omitted** the transfer of title in 2002 from the St. John Family to Wilshire Chateau LLC (Olson's company) and the transfer of title of one condominium from Olson to Max Wilcox on **April 7, 2005**, instead it shows Olson's LLC above the recording date of **April 7, 2005** with an official records No. 05-0801693, which is actually the grant deed transfer date and number from Olson to Wilcox. Further omitted were the "publically available" property deed documents showing Olson's transfer to Wilcox and Wilcox' notarized special power of attorney **proving** Aaronoff was not the condominium owner but actually the agent /employee of Wilcox, signing property documents on Wilcox' behalf.

This constitutes a **Fraud on the Court** because the misleading submissions were calculated to motivate the Court to find (counterfactually) first that title had passed to Aaronoff (when it did not) and, second and based on the first finding, that the trust was an alter ego of Aaronoff.

It makes no difference that Olson's attorneys solicited the document from Fidelity and submitted it to the Court because Olson himself (and perhaps his attorneys too) would know the report and Vogt-Lowell's and Kennedy's declarations submitted on his behalf to be misleading because the Max Wilcox omission, omits transactions to which Olson was himself a party.

The Court should vacate the attorney fees, cost and sanctions orders against Aaronoff because the Court was misled to believe Aaronoff, a valid fee waiver litigant had the means to pay, when in fact she did not. See *Garcia v Santana* (2018) 174 Cal. App 4th 464, "Tenants brought action against landlords, and indigent tenant filed motion to intervene. The Superior Court, Los Angeles County, No. BS095187 Mary Ann Murphy J , granted landlords' unopposed motion for summary judgment but awarded no attorney's fees in light of tenant's financial condition. Landlords appealed. Zelon J., "held that [the] court could consider tenant's financial condition when considering award of attorney's fees, and the trial court was required to consider all factors—"Litigation costs are not intended to be used as a tool to deny access to the courts, nor to deter persons from asserting." their rights at the cost of their ability to provide for the necessities of life.

Both the Dykstra altered court reporter's transcripts and the fraudulent Fidelity report call for a New Trial. Fraud Vitiates Everything, …a judgment obtained directly by **fraud**, and not merely a judgment founded on a **fraudulent** instrument… We think these decisions establish the doctrine on which we decide the present case; namely, that the acts for which a court of equity will on account of fraud set aside or annul a judgment or decree, between the same parties, rendered by a court of competent jurisdiction, have relation to frauds, extrinsic or collateral, to the matter tried by the first court, and not to a fraud in the matter on which the decree was rendered. *United State v Throckmorton* (1878) 98 U.S. 61

Fraud vitiates everything, which it touches, and when fraud has been committed by a party in whose favor a judgment was rendered, it may be vacated at any time upon proper showing made by injured party. "(1, 2) 34 **C.J.**, p. 260, n. 1, p. 267, n. 37." " 14 **Cal. Jur.** 1032, 1064; 15 **R.C.L.** 693." There can be no question as to the inherent power of the court to set aside the final decree if obtained by fraud. *Miller v Miller* 26 Cal.2d 119. [S. F. No. 16963. In Bank. Mar. 6, 1945.] FRCP Rule 60(b)(3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to grant relief or to set aside a judgment for fraud upon the court.

The November 6, 2019 *ex parte* order granting alter ego determination against Aaronoff arises from Olson's Fraud Upon the Court and must be vacated.

II. The Trail Court Abused Its Discretion Necessitating A New Trial

A. The Trial Court Retained Jurisdiction.

The court below abused its discretion when it refused to allow any evidence or mention of the 2015 Restraining Order Agreement or matters in violation of the December 10, 2015 court order that the "Court retains jurisdiction to enforce the terms of the settlement agreement pursuant to Code of Civil Procedure sec. 664.6." (RJN F). (28 Jan CT 23, 290) Olson's actions were in violation, of the spirit of the 2015 Restraining Order Agreement. The Court could not properly assess the situation without understanding the history and pattern of abuse. Aaronoff was thus not able to obtain a fair 2017 Restraining Order hearing, which necessitates a new trial in which evidence from the 2015 Restraining Order incidents are allowed in.

B. The Trial Court Violated Evidence Code 777

Aaronoff became victim to multiple judges' orders that hamstrung her through no fault of her own. Judge Goldberg had earlier granted Le's motion to quash in which Le mislead the court regarding its importance. Le wanted it both ways, which

prejudiced the court against Aaronoff. Since Le was granted a motion to quash he should not have been allowed to testify. Aaronoff supplemented evidence regarding Le in her motions for new trial and reconsideration.

C. Amado Moreno's Declarations Are Evidence of Olson Using Third Party Stalkers, Exception to Hearsay Rule.

Amado Moreno's declarations evidence Olson with thugs who were stalking Aaronoff in violation of the spirit of the terms of the 2015 Restraining Order Agreement, pursuant to *Code of Civil Procedure* sec. 664.6, which necessitates a restraining order be granted in Aaronoff's favor against Olson. The Court erred when it did not take into consideration that the reason Moreno did not show up to testify was because he threatened multiple times and in great fear of his life, even having had a gun pointed at him, thus his declarations should be accepted and considered an exception to the hearsay rule. *Michigan v. Bryant* (2011) 562 U.S. 344, 367, pp. 370-371; *Davis v. Washington* (2006) 547 U.S. 813, 822.*; People v. Nelson* (2010) 190 Cal.App.4th 1453, 1466.

III. The Court Must Vacate the Order Entered on November 6, 2019. The Court Lacked Subject Matter Jurisdiction

Petitioner Aaronoff filed and perfected an appeal on attorney's fees i.e. "costs" on June 6, 2019, in this action bearing case No. B298224, which was consolidated to case No. B295388. "Generally speaking, the taking of an appeal deprives the trial court of jurisdiction of the cause." *Gold v. Superior Court* (1970) 3

Cal.3d 275, 280. "As a general rule, 'the perfecting of an appeal stays the proceedings in the trial court upon the judgment or order appealed from or upon the matters embraced therein or affected thereby . . ..'" *Elsea v. Saberi* (1992) 4 Cal.App.4th 625, 629, quoting C.C.P. § 916(a). "A trial court has no authority to **modify, correct**, vacate or set aside its judgments pending an appeal therefrom to a reviewing court." *Field v. Hughes* (1930) 134 Cal.App. 325, 327. (Emphasis added) Once a judgment is appealed, the trial court loses jurisdiction of all matters "affected by the judgment, together with the validity thereof." *Id.* "The purpose of the rule depriving the trial court of jurisdiction during the pending appeal is to protect the appellate court's jurisdiction by preserving the status quo until the appeal is decided." *Elsea*, at 629.

Here, the Court amended the judgment entered on April 17, 2019 by an Order after an ex-parte application brought by the Olson. This *ex parte* application, Order and Amend Judgment were both in November of 2019, during the pendency of the appeal, dated June 6, 2019. At the time of the *ex parte* application, the granting Order and Amend Judgment, the Court had no jurisdiction to modify or correct the judgment in any way. As a result, the Order and Amend Judgment, as amended on November 6, 2019, is void on its face and must be vacated.

Moreover, even if the trial court's amendment to the April 17, 2019, were solely for collection of the judgment, the Judgment must still be vacated as collection is stayed. An exception to the general rule provided in C.C.P § 917.6(a), is that when the

judgment is for "money or the payment of money. . ." the trial court must order an undertaking. C.C.P. § 917.1(a)(1). An exception to the requirement of an undertaking, however, is when the judgment is "solely for costs awarded under Chapter 6 (commencing with Section 1021) of Title 14." C.C.P. § 917.1(d). C.C.P. section 917.1(d) applies where the costs at issue is "awarded pursuant to [C.C.P] sections 1021 to 1038" even if the costs "are nonroutine, discretionary, and/or nonreciprocal." *Quiles v. Parent* (2017) 10 Cal.App.5th 130, 144-145. Here, the judgment is solely for attorney's fees awarded pursuant to C.C.P. § 527.6. This is a judgment for costs pursuant to C.C.P. § 1033.5(10)(B), which is in Chapter 6 of Title 14. As a result, collection of the judgment is automatically stayed pending the outcome of the appeal.

The process of amending a judgment to add a debtor is grounded in a statute California Code of Civil Procedure Section 187 that contains procedural steps to amending a judgment by **noticed motion**, not *ex parte* as done in this instant action at Olson's November 6, 2019 *ex parte* order enjoining the Nonparty Claimants to Petitioner Aaronoff. See *Danko v Reilly*, 232 CAL. App. 4th 732, 735-36 (2014).

Further, a judgment creditor seeking to amend a judgment to add additional judgment debtors *must still effectuate proper service and establish that the court has the requisite jurisdiction over the judgment debtor to be. Wells Fargo Bank, NA., 227 Cal. App. 4th a 6: Mad Dogg Athletics, Inc. v. NYC Holdings*, 565 F. Supp. 2d 1127, 1130 (C.D. Cal. 2008). In this action, the

Nonparty Claimants were not given due process to oppose their addition as parties to the judgment since they were not given notice of the *ex-parte* application to do so and the pursuant to CCP Section 187 an *ex parte* application was an improper procedural step to amending a judgment debtor as it *must be done by noticed motion*.

IV. CCP §187 Requires a Noticed Motion to Add Judgment Debtor

Olson's November 6, 2019 *ex parte* application sought to amend a judgment to add an additional judgment debtor under C.C.P. § 187. Although "***Code of Civil Procedure section 187 contemplates a noticed motion***", *Wells Fargo Bank, N.A. v. Weinberg* (2014) 227 Cal.App.4th 1, 9, Olson, with trial court assistance, simply bypassed this jurisdictional requirement by filing an *ex parte* application.

> "It has been held repeatedly that an order correcting a clerical error in the record of a judgment may be made by the court ***ex parte without notice*** and on the court's own motion. * * * [¶] On the other hand there are cases indicating that where a clerical error does not appear on the face of the record but must be proved by evidence aliunde, ***notice of a motion to correct such an error is necessary if substantial rights are involved***."

In re Hultin's Estate (1947) 29 Cal.2d 825, 829–830 (emphasis added).

> "***A trial court lacks jurisdiction to amend a judgment***

ex parte in a manner not prescribed by statute." *Manson, Iver & York v. Black* (2009) 176 Cal.App.4th 36, 43 (emphasis added). The November 6, 2019 Order adding any trustees and ATW Trust as a judgment debtor to prior judgments obviously involves substantial rights.

In *Mason, Ivers & York*, the court held that a ***judgment amended without notice was void*** where judgment debtor's name was simply changed from "Pamela Black" to "Paula Black", signifying two different individuals. "Where the judgment is amended without notice to a party whose rights are substantially affected by the amendment, the judgment may be set aside." *Id.*, 176 Cal.App.4th at p. 44. "Consequently, the judgment against Paula was void on the face of the record and could be set aside at any time." *Id.*, 176 Cal.App.4th at p. 47.

On November 6, 2019, after failing to give notice or service to any trustee of the ATW Trust, Olson, to avoid substantive opposition, proceeded by *ex parte* application. Despite Aaronoff's uncontroverted evidence that no trustee of the ATW Trust had received notice (Petitioner Opp., filed 11-6-19, Aaronoff Decl. pages 6-9), Judge Spear granted the defective *ex parte* application. Absent proper notice to a trustee of the ATW Trust whose substantive rights were affected, the November 6, 2019, Order and Amend Judgment adding any trustee and the ATW Trust as Judgment Debtor is void *ab initio*.

Olson freely admits he never served *any* trustee. Further, Olson knew that Aaronoff had stepped down from her trustee position on or about April 14, 2019, before the attorney's fees

judgment against her and thus she could not be substitute served on behalf of the Trust. Olson never argued that he was serving Aaronoff as the trustee because he knew she was not a trustee on November 6, 2019. Olson only contention is that he should not have to abide by laws and rules that regular folks must abide by i.e. Olson believes he is entitled to be above the law and can forego procedural due process. Olson contends that he shouldn't have to "chase trustees" or "play musical chairs" with changing trustees.

However, this is a red herring because Olson had the name, phone number, email and address of Milder Arroliga who worked for the Trust. Olson also was informed that the Trust was situs in South Dakota, but he did not want to serve the Trust proper notice because he did not want to give the Trust the opportunity to quash service for inconvenient forum and move the litigation to their situs in South Dakota, which is the lawful place to litigate a South Dakota Trust.

V. Aaronoff's Ineffective Assistance of Counsel

Aaronoff's attorney, Kanani's presentation of Petitioner's case was so fundamentally flawed that it effectively nullified Petitioner's right to a fair trial**.** Kanani failed to prepare and present her case to meet a "clear and convincing" standard of proof. Instead, Mr. Kanani mistakenly believed that Petitioner case was in the lower standard of proof a "preponderance of evidence." (11-19-18 RT) Given her counsel's misunderstanding

of the requisite burden of proof, Petitioner was completely prejudiced at every turn.

CONCLUSION

Olson's Frauds Upon the Court misled the trial court to not grant her an restraining order and to order attorney's fees, cost and sanctions against Aaronoff and finding she owned the Wilcox-Unit as an alter ego. The Court has inherent power to vacate and set aside judgments based on fraud of an injured party. Any amount of money judgment in attorney's fees, costs and sanctions against the Aaronoff is indeed an injury.

Olson's Fraud Upon the Court also mislead the trial court and the Court of Appeal to deny Aaronoff the right to an automatic stay per CCP 917.1(d) *Quiles* because Olson had alarmed the courts with his lies that Aaronoff was dissipating an asset (that she never owned) and therefore was the exception to the automatic stay and could continue to allow Olson to enforce judgment collection. Further, trial court had lost subject matter jurisdiction, "A trial court has no authority to **modify, correct**, vacate or set aside its judgments pending an appeal therefrom to a reviewing court." *Field v. Hughes* (1930) 134 Cal.App. 325, 327. (Emphasis added). Therefore, all attorneys' fees, cost and sanctions that have arisen out of Olson's Fraud Upon the Court must be vacated and reversed.

Historic Opportunity to Address Systemic Bias & Corruption

Aaronoff's experiences are the same as other victims of powerful men chronicled by *New York Times* investigative reporters Jodi Kantor and Megan Twohey, who said, "Institutions looked the other way…, people bend to power…, there is a boarder abuse of power, **the basic structures and systems are *still* in place** and it is not clear that we have yet found a way to solve this problem."

In 2020, it has become an accepted fact that American institutions, including the justice system, are plagued by systemic race, gender, class and other biases that allow the privileged few to operate above the law, while inflicting horrific abuses upon the unfortunate others who cross their paths (hereafter "Systemic Bias").

Once seemingly taboo, the issue of Judicial Corruption was thrust into the mainstream news with the June 30, 2020 publication of the Reuters News Special Report, "Thousands of U.S. judges who broke laws or oaths remained on the bench."[1]

The national conversation has now shifted from, "Does Systemic Bias exists?" to "What are we going to do about Systemic Bias?"

Dated July 23, 2021

By: /S/ Vidala Aaronoff
Vidala Aaronoff
In *sui juris*

[1] Thousands of U.S. judges who broke laws or oaths remained on the bench

Certificate of Compliance

Pursuant to California Rules of Court rule 8.204 (c) I hereby certify that this Appellant's Opening Brief contains 13375 words, in making this certificate, I have relied on the word count of the computer program used to prepare this motion.

Dated July 23, 2021

By: /S/ Vidala Aaronoff
Vidala Aaronoff

Proof of Service

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. On July 23, 2021, I electronically served the foregoing document described as:

Appellant Aaronoff's Opening Brief

on the interested parties in this action.

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this July 23, 2021, at Lawndale, California.

By: /S/ Gilbert Romero
Gilbert Romero

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FOR COURT USE ONLY

SUPERIOR COURT OF CALIFORNIA, COUNTY OF Los Angeles
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CITY AND ZIP CODE: Van Nuys, CA 91401
BRANCH NAME: Northwest

PETITIONER: Vidala Aaronoff
RESPONDENT: Curtis Olson
OTHER PARENT/PARTY:

RESPONSIVE DECLARATION TO REQUEST FOR ORDER

CASE NUMBER: 17SMRO00308

HEARING DATE: March 1, 2019
TIME: 10:00 am
DEPARTMENT OR ROOM: U

Read *Information Sheet: Responsive Declaration to Request for Order*) for more information about this form.

1. [x] RESTRAINING ORDER INFORMATION
   a. [x] No domestic violence restraining/protective orders are now in effect between the parties in this case.
   b. [ ] I agree that one or more domestic violence restraining/ protective orders are now in effect between the parties in this case.
2. [ ] CHILD CUSTODY
   [ ] VISITATION (PARENTING TIME)
   a. [ ] I consent to the order requested for child custody (legal and physical custody).
   b. [ ] I consent to the order requested for visitation (parenting time).
   c. [ ] I do not consent to the order requested for [ ] child custody [ ] visitation (parenting time)
      [ ] but I consent to the following order:
3. [ ] CHILD SUPPORT
   a. I have completed and filed a current *Income and Expense Declaration* ( ) or, if eligible, a current *Financial Statement (Simplified)* ( ) to support my responsive declaration.
   b. [ ] I consent to the order requested.
   c. [ ] I consent to guideline support.
   d. [ ] I do not consent to the order requested [ ] but I consent to the following order:
4. [ ] SPOUSAL OR DOMESTIC PARTNER SUPPORT
   a. I have completed and filed a current *Income and Expense Declaration* ( ) to support my responsive declaration.
   b. [ ] I consent to the order requested.
   c. [ ] I do not consent to the order requested [ ] but I consent to the following order:

PETITIONER: Aaronoff RESPONDENT: Olson OTHER PARENT/PARTY:	CASE NUMBER: 17SMRO00308

5. ☐ PROPERTY CONTROL
   a. ☐ I consent to the order requested.
   b. ☐ I do not consent to the order requested ☐ but I consent to the following order:

6. ☒ ATTORNEY'S FEES AND COSTS
   a. I have completed and filed a current *Income and Expense Declaration* ( ) to support my responsive declaration.
   b. I have completed and filed with this form a *Supporting Declaration for Attorney's Fees and Costs Attachment* ( ) or a declaration that addresses the factors covered in that form.
   c. ☐ I consent to the order requested.
   d. ☒ I do not consent to the order requested ☐ but I consent to the following order:

7. ☐ DOMESTIC VIOLENCE ORDER
   a. ☐ I consent to the order requested.
   b. ☐ I do not consent to the order requested ☐ but I consent to the following order:

8. ☐ OTHER ORDERS REQUESTED
   a. ☐ I consent to the order requested.
   b. ☒ I do not consent to the order requested ☐ but I consent to the following order:

9. ☐ TIME FOR SERVICE / TIME UNTIL HEARING
   a. ☐ I consent to the order requested.
   b. ☐ I do not consent to the order requested ☐ but I consent to the following order:

10. ☒ FACTS TO SUPPORT my responsive declaration are listed below. The facts that I write and attach to this form cannot be longer than 10 pages, unless the court gives me permission. ☒

Petitioner's FL-320 Responsive Declaration to Request for Order Opposing Respondent's Motion for Attorney's Fees & Costs; Memorandum of Points and Authorities; Declarations of Benjamin Kanani and Vidala Aaronoff; FL-150 Income and Expense Declaration

I declare under penalty of perjury under the laws of the State of California that the information provided in this form and all attachments is true and correct.

Date: 2/15/2019

Vidala Aaronoff
(TYPE OR PRINT NAME)

Vidala Aaronoff
(SIGNATURE OF DECLARANT)

For your protection and privacy, please press the Clear This Form button after you have printed the form.

Print this form | Save this form | Clear this form

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Petitioner Vidala Aaronoff ("Aaronoff" or "Petitioner") respectfully submits this memorandum of points and authorities, as well as the concurrently filed Declaration of Vidala Aaronoff ("Aaronoff Decl."), Declaration of Benjamin F. Kanani ("Kanani Decl."), and Income and Expense Declaration on Judicial Council Form FL-150 ("Form FL-150") in opposition to the motion for attorney's fees and costs (the "Motion") filed by respondent Curtis Olson ("Olson" or "Respondent"). Through the Motion, Olson seeks attorney's fees in the eye-popping, clearly exorbitant sum of $150,774.03. All that, for a type of matter that is usually handled within 90 days for a fraction of such fees (on both sides). For a matter in which Olson's attorneys did not take a single deposition (and were specifically told by Department 65 that depositions were inappropriate in such a proceeding). For a matter in which the Buchalter firm's client is, by his own sworn statement, a centimillionaire (if not a billionaire), but the opposing party has no ability to pay even a fraction of the bloated fee award sought.

II. PERTINENT PROCEDURAL HISTORY

Aaronoff initiated this civil harassment restraining order action ("CHRO" or this "Action") on September 6, 2017 at the Santa Monica Courthouse and received a hearing date of September 27, 2017. (Aaronoff Decl., ¶3.) At the time, Aaronoff was representing herself in the Action, but was actively looking for counsel. (*Id.*) The day before the scheduled hearing, Aaronoff was in contact with Eric Kennedy ("Kennedy"), lead counsel at Buchalter APC ("Buchalter") for Olson. (*Id.*) Kennedy advised Aaronoff that Olson was interested in continuing the hearing (which was Olson's right as a matter of law). *Id.* Aaronoff was prepared to proceed with her case on September 27th if necessary, but preferred to continue looking for appropriate counsel, and knew that Olson could not be denied his first request for a continuance. *Id.* At the hearing in Department F, the Court granted Olson's request to continue

the hearing to October 17, 2017, and Olson's counsel served Aaronoff with the papers for Olson's own CHRO against Aaronoff (bearing related case no. 17SMRO00368, the "Olson CHRO"), which likewise was set for hearing on October 17, 2017. (*Id.*)

Over the next few weeks, Aaronoff retained Yury Galperin ("Galperin") as her counsel in this Action, and Galperin requested a continuance of the hearing to November 8, 2017 (Aaronoff's first such request) so that he could get up to speed. (Aaronoff Decl., ¶4.)

Concurrently in late October 2017, Galperin propounded a business records subpoena to nonparty LB Property Management, Inc. ("LB"), the company that manages Chateau Colline (an eight-unit condominium building on Wilshire Boulevard where Aaronoff has had a home for many years); the purpose of the subpoena was to obtain videotape footage from the surveillance cameras for July 28, 2017, the date on which, while Aaronoff was out of town, a group of individuals were observed outside the back door of Aaronoff's home riffling through her personal belongings. (*Id.*, ¶5.) As discussed in detail in the Aaronoff Decl. (¶¶6-12) and in the Kanani Decl. (¶¶11-12), for months, LB refused to make the video footage available, forced Galperin to file a motion to compel production with the Court, and eventually on January 16, 2018, LB produced footage that was missing approximately 2 hours and 16 minutes and, equally disturbing, "froze" when viewed at the most pertinent moment with no explanation. Although Aaronoff and Galperin were prepared to proceed with Aaronoff's case on November 8, 2017 if necessary, the "stonewall" by LB and its counsel (Lamdien Le ("Le"), who also represents Olson against Aaronoff in other litigation) prompted Aaronoff and her counsel to continue the hearing date on the Action to December 4, 2017, and then to January 29, 2018; Olson and his counsel did not oppose these continuances. (Aaronoff Decl., ¶7.)

Shortly before the January 29, 2018 hearing date, Olson and his counsel proposed staying the Action and continuing the hearing date on both parties' CHROs to April 30, 2018, so that the parties

could meet with a JAMS mediator and attempt a global resolution of their disputes.[1] (Aaronoff Decl., ¶17.) Aaronoff accepted the proposal, and a stipulated stay was entered by Judge Hank Goldberg in Department F on January 23, 2018. (See Stay Stipulation, Exh. "A" to Kanani Decl.) Ultimately, settlement discussions were unsuccessful, and on February 14, 2018, Benjamin Kanani came into the Action as Aaronoff's new counsel. (Kanani Decl., ¶10.)

With LB still refusing to make original video footage for July 28, 2017 available to Aaronoff, and the April 30, 2018 hearing date approaching, Kanani filed a motion to compel production against LB. The motion to compel was granted by Judge Goldberg in April 2, 2018. (See Exh. "C" to Kanani Decl., excerpts from 4/2/2018 hearing transcript, 21:24-28.) A few days before the April 30, 2018 hearing, non-party witness Douglas Econn[2] ("Econn"), also represented by Le, filed a notice of unavailability, apparently recovering from an orthopedic procedure. (Kanani Decl., ¶13.) At the April 30, 2018 hearing, held in Department 2 before the Honorable Thomas Trent Lewis, counsel for the parties discussed setting a continued hearing date. Kanani advised that Aaronoff was unavailable in May/early June 2018, and Kennedy advised the Court that Olson would be on vacation in July 2018, and that Kennedy would be attending his children's graduation in August 2018. (Kanani Decl., ¶14.) Judge Lewis continued the hearing on the CHROs to November 14, 2018, in Department D of the Van Nuys East Courthouse. (*Id.*)

A few days later, on May 7, 2018, Olson's counsel served deposition notices for Aaronoff and Amado Moreno ("Moreno"), one of Aaronoff's witnesses. (Kanani Decl., ¶16.) On May 10, 2018,

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[1] Aaronoff is a plaintiff in two unlimited civil damages actions against Olson, LB, and various other defendants (the "Superior Court Litigation"), which are presently stayed pending Olson's appeal of the dismissal of his cross-complaint against Aaronoff via an anti-SLAPP motion.

[2] Econn, while a non-party to this Action, is a neighbor of Aaronoff at Chateau Colline, a long-time friend of Olson, and a named defendant in the Superior Court Litigation. (Kanani Decl., ¶13.)

Aaronoff filed an *ex parte* application for an order declaring discovery complete and quashing the deposition notices. (*Id.*, & Exh. "F" to Kanani Decl.) At a hearing on the *ex parte* application, the Court denied Aaronoff's application without prejudice and ordered the CHROs assigned to Department 65 (the Honorable Gregory J. Weingart presiding). (Kanani Decl., ¶20.)

Later, on June 21, 2018, Olson filed a motion "to reopen discovery and for sanctions," set for hearing before Judge Weingart on August 23, 2018. (Kanani Decl., ¶21; see also Exh. "G" to Kanani Decl., Aaronoff's opposition papers.) At the August 23rd hearing, Judge Weingart denied Olson's motion, ruling in pertinent part: "The Court finds there are no provisions under Code of Civil Procedure 527.6 for discovery, therefore, the request for deposition is inappropriate. To the extent discovery under the Code of Civil Procedure is available, Respondent's Motion to Reopen Discovery is denied." (Exh. "H" to Kanani Decl.)

In the interim, on or about July 12, 2018, Olson, taking advantage of the stay in the Superior Court Litigation, and acting through an outside law firm working for the Chateau Colline homeowners association ("HOA"), exercised "self help" on the disputed issue of Aaronoff's access to her basement storage unit, by having the law firm send a letter to Aaronoff advising that she had until July 27, 2018 to remove all belongings from the basement area or be locked out. (Kanani Decl., ¶22 & Exh. "I.") On August 1, 2018, Aaronoff filed an *ex parte* application for temporary emergency orders; the matter was heard by the Honorable Shelley Kaufman in Department 2, who denied the ex parte without prejudice, suggesting a noticed motion might be filed. (Kanani Decl., ¶¶23-24 & Exh. "J.")

On November 14 – 19, 2018, the Court held the final hearing/trial on Petitioner's CHRO against Olson (as well as the Olson CHRO against Aaronoff). (Aaronoff Decl., ¶2.) On November 19, 2018, after closing arguments, the Court announced its ruling, denying both Aaronoff's CHRO and the Olson CHRO. (Exh. "1" to Aaronoff Decl., excerpts from 11/19/2018 transcript, 46:16-24, 51:2-9.)

On January 25, 2018, counsel for Olson filed and served the Motion, demanding an award of $150,774.03 in attorney's fees (as well as $1,708.19 in costs[3]), supported by a Declaration of Eric Kennedy of even date ("Kennedy Decl."), attaching as Exhibit "E" 27 pages of block-billed time entries. In sharp contrast, Mr. Kanani's total fees incurred in the Action are $47,085, and his sworn declaration states his professional opinion that his total fees incurred would have been substantially lower, in the vicinity of $25,000, were it not for the positions and tactics by Olson, his attorneys, and non-parties allied with Olson, which dramatically delayed the final hearing, unnecessarily prolonged the Action, and unjustifiably increased motion practice. (Kanani Decl., ¶¶25-26 & Exh. "K.")

III. ARGUMENT

A. The Court Has Full Discretion To Deny Olson's Fee Request In Its Entirety.

Given that the Action is a civil harassment restraining order proceeding under Section 527.6 of the Code of Civil Procedure ("Section 527.6"), Olson's ability to seek costs depends upon subdivision (s) of Section 527.6, which states: "(s) The prevailing party in an action brought pursuant to this section *may* be awarded court costs and attorney's fees, if any." (Code Civ.Proc. §527.6, subd. (s); emphasis supplied.) Accordingly, in this situation, an award of any attorney's fees is purely discretionary for the Court. *Leyden v. Alexander* (1989) 212 Cal.App.3d 1, 5 (in action brought under Section 527.6, award of attorney's fees to prevailing party purely discretionary, not mandatory).

Moreover, in *Serrano v. Unruh* (1982) 32 Cal.3d 621, 635 ("*Serrano IV*"), the California Supreme Court emphasized, "A fee request that appears unreasonably inflated is a special circumstance permitting the trial court to reduce the award or deny one altogether." Accord *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1137-1138. As the *Serrano IV* court explained, "'If … the Court were required to

[3] Aaronoff already has filed and served a motion to strike or tax costs that is set for hearing in April.

award a reasonable fee when an outrageously unreasonable one has been asked for, claimants would be encouraged to make unreasonable demands, knowing that the only unfavorable consequence of such misconduct would be reduction of their fee to what they should have asked in the first place. To discourage such greed, a severer reaction is needful...." *Serrano IV*, *supra*, 32 Cal.3d at p. 635, quoting *Brown v. Stackler* (7th Cir. 1980) 612 F.2d 1057, 1059. See also *Christian Research Institute v. Alnor* (2008) 165 Cal.App.4th 1315, 1321, 1329 (applying *Serrano IV* to anti-SLAPP statute, trial court fully justified in reducing attorney's fees award by approximately 90%).

Further, the *Serrano IV* court enumerated, in a lengthy citation to over half a dozen Federal decisions, the numerous means a party may employ to inflate a fee request, justifying denial of fees altogether: "See, e.g., *Copeland v. Marshall*, *supra*, 641 F.2d 880, 902-903 [not allowable are hours on which plaintiff did not prevail or "hours that simply should not have been spent at all, such as where attorneys' efforts are unorganized or duplicative.....]; *Gagne v. Maher*, *supra*, 594 F.2d 336, 345 [excessive time spent]; *Lund v. Affleck* (1st Cir. 1978) 587 F.2d 75, 77 [if initial claim is 'exorbitant" and time unreasonable, court should "refuse the further compensation"][.]" *Serrano IV*, *supra*, 32 Cal.3d at p. 635, fn. 21.

Aaronoff contends that the $150,000+ fee award sought by Olson is unreasonably inflated on its face,[4] for many of the reasons mentioned in *Serrano IV* and the decisions cited there, discussed below. The fee award is also intentionally greedy in the manner deplored by the court in *Serrano IV*, and clearly intended to wreak vengeance on Aaronoff for having deigned to challenge Olson.

B. The Petitioner's Indigence And The Gross Disparity Of Olson's Financial Status Is A Separate "Special Circumstance."

[4] For example, as discussed at ¶19 of the Aaronoff Decl., though Olson demands fees of $150,774.03, the figures in Buchalter's billings add up to just $141,651.75; this indicates the meat-ax, unbridled approach that Buchalter has taken, when almost $10,000 cannot even be accounted for.

Consistent with this Court's duty to always do equity and substantial fairness, it would be an abuse of discretion and a gross miscarriage of justice to impose any significant attorney's fee award on Aaronoff (let alone the stratospheric $150,000+ figure Olson seeks). As discussed in the Aaronoff Decl. and in the accompanying signed Income and Expense Declaration on Judicial Council Form FL-150, Aaronoff has been proceeding in this Action under a Court Fee Waiver, issued on January 23, 2018 and again on February 13, 2019. (Aaronoff Decl., ¶26, & Exh. 20 to Form FL-150 (court fee waivers).) Aaronoff has suffered unusually high medical expenses due to three automobile accidents since 2013. (*Id.*, Form MC-025, p. 3.) Presently, Aaronoff's monthly income is nil, she has depleted her savings in meeting her medical and ordinary living expenses in recent years, and she is dependent upon the assistance of her family and friends. (Aaronoff Decl., ¶26.)

Given these facts, an attorney's fees award against Aaronoff would create no financial benefit for Olson. All it would do is punish Aaronoff for having sought civil harassment relief against Olson. There is no support in California law for the concept of using attorney's fee awards to punish unsuccessful litigants and to chill the exercise of legal rights. Such a result would be particularly unjustified, given that Olson has, practically speaking, relatively unlimited financial resources. (See Exh. "10" to Aaronoff Decl., Olson declaration dated August 30, 2017, filed in LASC Case No. SC 126806, ¶2.) In a declaration filed by Olson in the Superior Court Litigation, he states that he is the sole owner and CEO of Nexus Companies, a private real estate development firm that "[o]ver the past 35 years, [] has been successful in developing and constructing over $1.2 billion in real estate projects...."

C. Civil Harassment Restraining Order Matters, By Law And Custom, Are Truncated, Brief, And Do Not Involve Depositions Or Other Huge Expenses Of Larger Civil Cases.

As Judge Weingart ruled on August 23, 2018, when the Court denied Olson's "motion to reopen discovery," Section 527.6 of the Code of Civil Procedure has no provisions for discovery, and hence Olson's requests to depose Aaronoff and Moreno were inappropriate. (Kanani Decl., Exh. "H,"

8/23/2018 minute order.) Additionally, earlier in the Action, on April 2, 2018, Buchalter was warned of this fact when Judge Goldberg observed on the record that civil discovery is not contemplated in connection with restraining order hearings, including because of the usual 21-day "clock" on such proceedings. (Kanani Decl., ¶17 & Exh. "C," 4/2/2018 hearing transcript excerpts, 20:15-20.)

As the Second Appellate District stated in *Byers v. Cathcart* (1997) 57 Cal.App.4th 805, 811, distinguishing Section 527.6 civil harassment matters from other injunctive proceedings:

> "Normal injunctive procedures allow time for research and investigation, pleading and other motions if necessary, discovery and preparation, etc., followed by opportunity for full trial. [Citations omitted.] A temporary restraining order is initially available to stabilize a situation; a preliminary injunction can follow. *** *Section 527.6, by contrast, provides a quick and truncated procedure*. Offsetting the truncated nature of the procedure is the limited scope of the antiharassment orders which can legitimately follow."

(57 Cal.App.4th at p. 811; emphasis added.) See also *Thomas v. Quintero* (2005) 126 Cal.App.4th 635, 24 Cal.Rptr.3d 619, 628, fn. 11: "There is no provision under section 527.6 allowing for discovery, and in any case, under the civil harassment scheme there is insufficient time in which to conduct discovery."

Consistent with these authorities, as discussed at length in the Kanani Decl., Mr. Kanani is an experienced family law practitioner, and has observed that, even with each side's entitlement to (at a minimum) one continuance of the hearing date, most such matters are litigated and concluded within 60 to 90 days, and Mr. Kanani would normally expect the attorney's fees incurred by either side in a fully litigated civil harassment matter to be between $5,000 and $15,000. (Kanani Decl., ¶9.)

D. Olson, His Counsel, And Their Allies Specifically Set Out To Litigate This Small Matter So As To Unnecessarily Prolong It, Delay The Trial Date For Many Months, And Thereby Allow Buchalter To Grossly Overlitigate The Matter.

This memorandum cannot do more than quickly summarize the procedural history and specific objections to the Buchalter billing statements offered in the concurrently submitted Kanani and Aaronoff Decls. (See Kanani Decl., ¶¶6-9 re unfitness of Buchalter to efficient handle a civil

harassment matter; see Kanani Decl., ¶¶10-26 re tactics and positions taken by LB and Olson that inordinately delayed progress of the matter; see Aaronoff Decl., ¶¶18-25 for specific objections to various categories of Buchalter time charges.)

But, the overall pattern of what occurred here is clear. On a general level, Buchalter is a typical large commercial litigation firm, of over 200 attorneys, that is simply not designed to handle modestly sized matters limited jurisdiction courts, such as a civil harassment restraining order in any reasonable efficient manner, has no experience with such matters, and hence can only bill even a small case like a litigation equivalent of World War II. Indeed, Kennedy acknowledged to Kanani during the final hearing that he had never handled a civil harassment restraining order matter before, and found it "different." (Kanani Decl., ¶8.)

Moreover, through the procedural twists and turns described in the Kanani and Aaronoff Decls., Buchalter, Olson and LB consciously set out to make this restraining order matter (which should have gone to trial by the end of April 2018, if not sooner) go on and on, not reaching the final hearing stage until November of 2018. While Olson and Buchalter will undoubtedly disclaim on reply any knowledge of or responsibility for LB's stonewall tactics from October 2017-April 2018, the Court should disregard such evasions, given the web of common interest and alignment against Aaronoff (in this Action as in the Superior Court Litigation) among Olson, LB, Econn and their various counsel. (See Aaronoff Decl. at ¶¶13-16 and Exhibits 7, 8 & 9 regarding the testimony already given in this Action regarding those club connections and common interests.) As for the particularized tactics used by Buchalter and Olson -- the ruse of the Stay Stipulation, the manipulation of the case schedule to delay the final hearing to November, the improper attempt to conduct depositions, among other things --- these stratagems achieved their goal: to permit Buchalter the opportunity over a 14 month period to generate massive, completely inappropriate bills, and to force Aaronoff's counsel to incur unnecessary fees and costs as a victim of this strategy.

E. Aaronoff Prevailed Against Olson Regarding The Olson CHRO.

Given that, as is clear from the Court's November 19, 2018 ruling (see Exh. "1" to Aaronoff Decl.), Olson failed to meet his burden of proof on his own CHRO directed against Aaronoff, it is beyond disingenuous for Olson to contend in the Motion that he should recover "all of his fees." (Olson's moving brief, p. 7, Section B.) Even if Olson and Buchalter's litigation of this matter had been unexceptional, Aaronoff would still be entitled to strike any fees concerning Buchalter's preparation and presentation of the Olson CHRO. However, given the block-billing that characterizes Buchalter's time entries, there is no logical way to tell what fees or hours should be allocated to the Olson CHRO. But, given the completely exorbitant magnitude of the fees sought, the equitable issues that separately preclude any significant award against Aaronoff, and the cynical strategy that was pursued by Olson, his counsel and their allies here, the Court is not obliged to spend its valuable time attempting to parse the Buchalter billing statements to allocate to the Olson CHRO.

IV. CONCLUSION

For all of the foregoing reasons, Aaronoff respectfully requests that the Court deny the Motion in its entirety, and that Olson recover no attorney's fees whatsoever in this Action.

DATED: February 15, 2019

By: Vidala Aaronoff
Vidala Aaronoff, Pro Per

Vidala Aaronoff
9461 Charleville Blvd., #259
Beverly Hills, CA 90212
Tel: (310) 498-7975

Pro Per

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES – NORTHWEST DISTRICT

VIDALA AARONOFF, Petitioner, v. CURTIS OLSON, Respondent.	Case No. 17SMRO00308 (related to Case No. 17SMRO00368) Assigned to the Honorable Michael J. Convey PETITIONER'S REPLY IN SUPPORT OF MOTION FOR RECONSIDERATION; THIRD SUPPLEMENTAL DECLARATION OF VIDALA AARONOFF Date: January 16, 2019 Time: 10:00 a.m. Dept.: "U" [Room 400, 6230 Sylmar Ave., Van Nuys, CA]

Petitioner Vidala Aaronoff ("Petitioner" or "Aaronoff") respectfully submits this reply memorandum in support of her motion for reconsideration under section 1008(b) of the Code of Civil Procedure (the "Motion").

A. The Court Has Full Discretionary Power To Consider All Arguments and Evidence Submitted By Aaronoff Through The Motion.

1. Olson mischaracterizes the Court's ruling as a "dismissal" or "judgment."

The record reflects that the hearing on Petitioner's request for restraining order (and on Olson's request for restraining order) concluded on November 19, 2018, and the Court delivered its

ruling from the bench. (See accompanying Supplemental Declaration of Vidala Aaronoff ("Third Suppl. Aaronoff Decl.16") Exh. "8," signed Reporter's Transcript of Proceedings, 11/19/2018.) Specifically, the Court stated:

> "AND SO WHEN THE COURT ASSESSES MS. AARONOFF'S CASE, IT COMES TO THE FOLLOWING CONCLUSION: THAT SHE HAS NOT MET HER BURDEN OF PROOF BY CLEAR AND CONVINCING EVIDENCE; AND, THEREFORE, MS. AARONOFF'S REQUEST FOR RESTRAINING ORDERS AND A PERMANENT CIVIL HARASSMENT INJUNCTION IS DENIED."

(*Ibid.*, Reporter's Transcript, 11/19/2018, 46:16-21.) Several minutes later, the Court further stated:

> "AND SO ON MR. OLSON'S CASE, I ALSO FIND THAT HE DID NOT MEET THAT BURDEN OF PROOF. SO THE COURT SHALL DENY MR. OLSON'S REQUEST FOR CIVIL HARASSMENT RESTRAINING ORDERS AS WELL. SO BY CONCLUSION, BOTH PARTIES HAVE NOT MET THEIR BURDEN OF PROOF BY CLEAR AND CONVINCING EVIDENCE. AND BOTH ORDER REQUESTS ARE DENIED. THOSE ARE THE ORDERS OF THE COURT. THEY WILL GO INTO THE MINUTES OF THE COURT. AND THE MINUTE ORDER WILL BE MAILED TO EACH COUNSEL OF RECORD IN BOTH CASES AND BECAUSE YOU NEED TO HAVE ALSO THAT LANGUAGE REGARDING THE RELEASE OF THE MORENO BENCH WARRANT AS WELL. THE COURT REPORTER HAS MADE A RECORD OF MY FINDINGS STATED ON THE RECORD. THAT CONCLUDES THE CASE. AGAIN, I THANK YOU. SO WE ARE FINISHED. AND YOU'RE OFF TO CIVIL CASES."

(*Id.*, Reporter's Transcript, 11/19/2018, 51:02 -18.)

Clearly, the Court never employed the words "dismissal" or "judgment" at any point in delivering its ruling with respect to Aaronoff's claims (or Olson's claims, either, for that matter). As a result, Olson's Opposition to the Motion fails to find any support in the record for its strident initial argument that this Court no longer has jurisdiction to rule on the Motion because (so says Olson and his attorney) "judgment has been entered[.]" (See Olson's Opposition to Motion, 2:02-03.)

Furthermore, Olson's Opposition attaches (as Exhibit A to attorney Kennedy's January 3, 2019 declaration) a severely incomplete and misleading copy of the Reporter's Transcript for November 19, 2018. The Court will note that the incomplete copy of the transcript appended by Mr. Kennedy contains *only* pages 39 through 40, 43, and 52. In other words, *Olson and his counsel have strategically left out the pages from the Reporter's Transcript cited above* (*i.e.*, pages 46 and 51) *that actually reflect the Court's ruling*. This goes beyond mere aggressive advocacy and sinks to the level of attempting to confuse and deceive the Court.

2. The label affixed to the Motion does not affect the Court's ability to grant relief.

"The principle that a trial court may consider a motion regardless of the label placed on it by a party is consistent with the court's inherent authority to manage and control its docket." *Austin v. Los Angeles Unified School District* (2016) 244 Cal.App.4th 918, 930, citing *Sole Energy Co. v. Petrominerals Corp.* (2005) 128 Cal.App.4th 187, 193 [upholding authority of trial court to construe motion for reconsideration as motion for new trial]. See also *Shapiro v. Prudential Prop. & Casualty Co.* (1997) 52 Cal.App.4th 722, 727 [trial court acted within its discretion in treating motion to vacate as motion for new trial on damages; "when a party brings a timely post trial motion, the trial court has broad discretion to determine the relief being requested"].

Accordingly, the Court has every right and power to review and consider the argument and evidence submitted through the Motion and to act in the interests of substantial justice, without being hampered or restrained by the title that the *pro per* Petitioner placed on the moving papers.

3. Olson incorrectly characterizes the Motion as a "duplicate" of Aaronoff's concurrently-filed Motion for New Trial.

Even on casual inspection, Petitioner's Motion for New Trial addresses many more and different factual and legal issues from those raised in this Motion. This Motion (for Reconsideration) focuses essentially on evidence involving Lenny Dykstra, given that, as explained in the moving papers, until Olson admitted on the stand on November 16, 2018 that he personally knew Dykstra, Petitioner had lacked any direct evidence tying Dykstra's activities to Olson.

However, even if Olson were actually correct and the Motion "entirely duplicates" Petitioner's Motion for New Trial, that would only provide an additional reason for the Court to deny Olson's request for $7,435.00 in sanctions for his counsel's purported fees incurred in opposing this Motion. As a matter of logic and common sense, if the Motion were duplicative of the Motion for New Trial, it should have taken no additional time for Olson's counsel to prepare opposition papers directed at the Motion; they would merely have "cloned" their opposition papers directed at Petitioner's Motion for New Trial and edited the title. Instead, paragraph 3 of the Kennedy Declaration states that Mr. Kennedy and two additional attorneys (as well as a paralegal) spent a total of 13.7 hours preparing the opposition to Petitioner's Motion. (Kennedy Decl., p. 7, ln. 20 to p. 8, ln. 4.) Accordingly, Olson's sanctions request makes no sense, implicitly contradicts itself, and simply betrays Olson's wish to punish Petitioner with typical "BigLaw" tactics and overbilling.

4. Petitioner's moving papers for the Motion did not violate any rules of the Court.

Olson's opposition repeatedly contends that the Motion violates a 10-page limit under Paragraph 10 of Judicial Council Form FL-300, purportedly requiring Petitioner to submit no more

than 10 pages of "facts." But, this makeweight argument shows only that Olson's counsel are (admittedly) unfamiliar with practice before this (family law) Court. The 10-page limit applies only to the memorandum of points and authorities in support of the motion, not to any declarations or exhibits attached to those declarations. Otherwise, no litigant before this Court would ever be able to have procedural due process on bringing a post-trial motion. The Court's file reflects that Petitioner's moving brief in support of the Motion met the 10-page standard.

B. Petitioner's Motion Satisfies The Reconsideration Standard For Demonstrating The Existence of New Or Different Facts or Circumstances.

1. The Opposition suggests that Olson is planning to alter or mangle the Reporter's Transcript for November 16, 2018, when Olson admitted to knowing Dykstra.

Along with all the venom and mockery that Olson's opposition directs at what it derisively labels the Dykstra Conspiracy Theory, the opposition is genuinely troubling and astonishing, given that Olson and his counsel now claim to know, in advance, what the Reporter's Transcript for November 16, 2018 will state on a "the traffic light was green/the traffic light was red" type of factual issue -- whether Olson admitted on the stand that he knew Dykstra.

Olson's opposition smugly states (at p. 4, fn. 2): "Of course, Olson denied knowing Dykstra let alone hiring him to harass Aaronoff, but Aaronoff's motion ignores these inconvenient facts." It is bizarre that Olson's counsel would presume to (as it were) call a coin toss "heads" while the coin is still in the air, *i.e.*, before the court reporter has made the transcript of the Court's November 16, 2018 proceedings available to Petitioner or (presumably) to Olson or any other interested party.[1] But, Olson's contention is 180 degrees opposite from the recollections of both Aaronoff and her counsel of record, Benjamin Kanani. (Suppl. Aaronoff Decl., ¶3; Declaration of Benjamin Kanani, ¶¶7-11

[1] As discussed below, Olson's counsel recently suggested to Petitioner in emails that the cost of the Reporter's Transcript for the entire multi-day proceeding should be split five ways. (Aaronoff Decl., Exh. "4.") Obviously, this means that several persons other than just Olson and Petitioner intend to obtain their own copies of the transcript.

submitted concurrently.) Both Petitioner and Mr. Kanani[2] recall clearly that, in response to Mr. Kanani's questioning, Olson admitted on the stand that he knew Dykstra and had played golf with Dykstra in Mexico. As discussed in Petitioner's moving papers, this in-court revelation by Olson was the first evidence of a connection between Dykstra and Olson, and hence Petitioner necessarily could not have raised such evidence (or even known to present testimony or documentary evidence concerning Dykstra) before November 16, 2018.

Furthermore, the revelation by Olson on the stand that he knew Dykstra was so surprising and shocking that, immediately after Olson's testimony, Petitioner sent e-mails and texts to several persons advising them of this stunning new admission. (Third Suppl. Aaronoff Decl., ¶¶6, 8 Exhs. "1," "CW1 E.") These communications are admissible evidence to demonstrate what Olson testified to on the stand as exceptions to the rule against hearsay, as spontaneous or contemporaneous "excited utterances." See Cal. Evid. Code, §1240(a), (b): "Evidence of a statement is not made inadmissible by the hearsay rule if the statement: (a) Purports to narrate, describe, or explain an act, condition, or event perceived by the declarant; and (b) Was made spontaneously while the declarant was under the stress of excitement caused by such perception."

Additionally, recent e-mail communications between and among Petitioner, the court reporter who is preparing the transcript in this matter, and Olson's counsel demonstrate that, contrary to ordinary custom and practice, Olson's counsel is attempting informally to relieve the court reporter of her custodial control of the transcript and force Petitioner to purchase and obtain her copy of the transcript from Olson's counsel. (See Third Suppl. Aaronoff Decl., ¶¶12,13, 14 Exhs. "3," "4." "5") This is unlawful, as well as bizarre, given that Petitioner should be permitted to purchase a certified copy of the transcript directly from the court reporter. Moreover, particularly given the conclusory

[2] Additionally, of course, the Court was present when Mr. Kanani questioned Olson regarding Dykstra, and will remember what the Court remembers of Olson's testimony.

advance statements/predictions by Olson's counsel about what the transcript will or will not state, this sideshow raises the spectre that Olson is planning to alter or mangle the November 16, 2018 portion of the transcript before Petitioner can obtain a copy for her use in this litigation. If the Reporter's Transcript ultimately does near bear out that Olson admitted knowing Dykstra, as Petitioner and her attorney clearly recall, then a broader investigation of the complete circumstances will be necessary.

2. Olson's other objections to the Motion are nonsensical.

On page 4 of the Opposition, Olson's counsel stridently attacks Petitioner for failing to explain "why she did not subpoena Dykstra to testify at the hearing. She subpoenaed 14 other witnesses, why not Dykstra?" To the best of Petitioner's knowledge, Dykstra has not lived in California for an indefinite time period, and hence was beyond the subpoena power of the California courts when the hearing in this matter was conducted (late November 2018). Given their personal relationship, Olson no doubt already is aware of this fact. Indeed, national news reports indicate that, as of May 2018, Dykstra was in New York, where he was arrested for some new alleged misadventure. (Third Suppl. Aaronoff Decl., ¶7.)

Next, Olson wastes two pages of his six-page opposition arguing that Petitioner's submission to the Court concerning should be "viewed with significant distrust" in view of other evidence Petitioner has submitted concerning (a) an attempt by attorney Dien Le to threaten and intimidate Petitioner during a telephone conversation and (b) non-party witness Amado Moreno, who had signed certain sworn declarations but was unable to be subpoenaed for the final hearing. But, Olson shows no logical or factual link between Petitioner's submissions regarding Dykstra and Petitioner's submissions regarding Le or Moreno. Instead, it is merely another groundless attempt by Olson and his counsel to beg the Court to consider Petitioner to be an untrustworthy person.

C. The Opposition Does Not Demonstrate Any Legal or Factual Justification For Sanctioning Petitioner $7,435.00 (Or Any Other Amount) For Filing The Motion.

As discussed briefly above, Olson's counsel contends that it was forced to expend over $7,000 in professional fees to oppose this Motion. Yet, at the same time, Olson's counsel contends that this Motion "entirely duplicates" Petitioner's concurrently filed Motion for New Trial (which, if true, should have made it much quicker and easier for Olson's counsel to prepare the opposition papers to this Motion). In any event, Olson's counsel does not even attempt to present an analysis under Section 128.7(d) of the Code of Civil Procedure (which the opposition cites in a throwaway manner on the last page) as to why Petitioner's Motion should be considered in bad faith, let alone to demonstrate why Mr. Kennedy's law firm was justified in spending over $7,000 in professional time to oppose the Motion. Accordingly, Olson's request for monetary sanctions is revealed as mere unsubstantiated chest-pounding.

Respectfully submitted,

Dated, January 9, 2019

Vidala Aaronoff, pro per

01/18/19

EXHIBIT

1

Sent from my iPhone

> On Nov 16, 2018, at 2:06 PM, Vidala Ernest <vidala4@icloud.com> wrote:
>
> Amado
>
> Please come to court on Monday!
>
> Please Amado come to Court on the last day Monday !!
>
> Curt admitted that he is friends with Lenny Dykstra !!! They are golf buddies he admitted!
>
> Van Nuys courthouse east
> 7th Floor Dept D
> Judge Michael Convey
> 6320 Slymar Ave
>
> You will be safe
>
> Vidala
>
> Sent from my iPhone

01/18/19

01/18/19

EXHIBIT

2

On Jan 4, 2019, at 1:18 PM, Vidala Vidala <vidala4@me.com> wrote:

Dear Ms. Marlene Burris,

Re: Accurate Court Transcripts Case 17SMROOO 308/17SMRO00368 Vidala Aaronoff v Curtis Olson

First, please forgive my ignorance of not knowing how a 5 way transcript split happens, since I am not an attorney and am representing myself pro per.

Do you make 5 official transcript documents and mail them to each or do you send one document to one designated person then that designated person makes copies and disperses them?

I cannot have Olson's attorney, opposing counsel Eric Kennedy or any other person make my transcript copy and I have become quite concerned, because I just received opposition papers from Olson's attorney Eric Kennedy, where he lies stating: " Olson has been in regular contact with the court reporter that attended the hearing. He has ordered an expedited version of the transcript, but as yet has only obtained the transcript for the last day…Of course Olson **denied knowing [Lenny] Dykstra"**

Have you given Olson the last day of transcript?

My attorney, Ben Kanani, various other people and I in the courtroom heard Curtis Olson admit that he knew Lenny Dykstra, the baseball player, and that he was a **"golf buddy"** and or something along the line that Olson played golf with Lenny Dykstra in Mexico.

Now Olson is stating that he **never said** that, and that he has been in **regular contact with you and that your transcript will prove that Olson denied knowing Lenny Dykstra?**

I am shocked. What is going on? Of course I do not think that you would alter the transcript, and I am certainly not implying anything of the sort. I, and everyone in the courtroom, know that Curtis Olson admitted knowing Lenny Dykstra. Thus I am confident that your transcript will prove that. However, I am concerned that if I received my transcript copy from Olson' s attorney Kennedy, then he will alter it as he has already indicated he is planning to do in his opposition papers.

As I know you have been very busy --Is it possible that I can get an expedited transcript for just the day that Olson admitted knowing Lenny Dykstra, which was November 16, 2018?

After Olson admitted knowing Lenny Dykstra on November 16, 2018, I immediately communicated with a number of people letting them know that Olson admitted knowing Lenny Dykstra as a "golf buddy" that he had played golf with "in Mexico" !

I am very concerned that Olson is stating that your transcript will show that Olson denied knowing Lenny Dykstra.

Please update me at your earliest convenience, and you may call me anytime.

Also, I am concerned that these critical court transcripts could be stolen or tampered with at the source without your knowledge. So please, if possible, make a copy of the original and send them to another court reporter.
A trusted licensed court reporter is Garrett Leevers. Mr. Leevers is the owner of LitiCourt Corporation, and he is aware of the situation. Mr. Leevers company could hold/protect a second copy of the original stenographer's notes.

Thank you,

Vidala Aaronoff

310 498-7975

01/18/19

EXHIBIT

3

01/18/19

Vidala Aaronoff
9461 Charleville Blvd #259
Beverly Hills, CA 90212
Tel: (310) 498 - 7975

Petitioner in Pro Per

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES – NORTHWEST DIVISION

Vidala Aaronoff, Petitioner, v. Curtis Olson, Respondent.	Case No. 17SMRO00308 Assigned to the Hon. Michael J. Convey **DECLARATION OF BENJAMIN KANANI IN SUPPORT OF PETITIONER'S MOTIONS FOR RECONSIDERATION AND FOR NEW TRIAL** Date: January 16, 2019 Time: 10:00 a.m. Dept.: U

I, Benjamin F. Kanani, Esq., declare as follows:

1. I am over the age of 18 and I have personal knowledge of the facts contained herein and if called upon, I would and could competently testify as follows.
2. I previously represented the Petitioner in this case and did so throughout the 4-day evidentiary hearing that took place from November 14-16 – 19 of 2018.
3. On the third day of that hearing, November 16, 2018, Respondent, Curtis Olson ("Olson" or "Respondent") took the stand as part of Petitioner's case-in-chief. As part of my direct exam, I asked Olson if he knew a man named Lenny Dykstra ("Dykstra").
4. Without waiving the attorney-client or work-product privilege, I have been authorized to disclose that I am absolutely certain my direct examination included questions to

01/18/19

Olson if he knew a man named Dykstra because Petitioner and I had discussed the topic previously on multiple occasions and it was included in my outline of questions to ask Olson.

5. According to my recollection and notes taken at the time, Olson replied evasively to my question by asking me, "You mean the baseball player?"

6. I was unsure the man I had asked Olson about (i.e. Dykstra) was a baseball player or not, at which point the Court noted Dykstra was a baseball player. The Court helped clarify the question instructing Olson to answer if he knew Dykstra.

7. I am absolutely certain Olson then went on to say that he had played golf with Dykstra in Mexico. I also made a written note of Olson's affirmative answer.

8. Though I do not remember the exact words Olson used in saying so, I remember the answer clearly because it was the first definitive confirmation we received that the two men knew each other personally.

9. I also found it peculiar (and not credible) that Olson would have to ask if Dykstra were a baseball player, if he had played golf with him fairly recently and given that Dykstra is a famous professional baseball player. As such, and given Olson's confirmation that he and Dykstra knew each other, I began to follow up with additional questions.

10. After approximately 2 or 3 more questions, however, Respondent's counsel objected to my line of questioning, which was sustained. I believe Respondent's counsel objected on the basis of relevance.

11. If Olson had not confirmed that he knew Dykstra, I would not have followed up with additional questioning to Petitioner, when she took the witness stand to testify, about her involvement with Dykstra, as I would have had no viable theory to directly link Olson to Dykstra as part of Petitioner's case-in-chief.

///

///

01/18/19

I declare under penalty of perjury and the laws of the State of California that the foregoing is true and correct. Executed at Los Angeles, California on January 9, 2019.

Respectfully submitted,

Benjamin Kanani

EXHIBIT

4

01/18/19

Jane Doe vidala4@aol.com

To:

Cc Bcc

Subject: Fwd: Olson transcripts [IWOV-BN.FID2382350]

-----Original Message-----
From: Jane Doe <vidala4@aol.com>
To: ekennedy <ekennedy@buchalter.com>
Sent: Tue, Jan 8, 2019 12:33 pm
Subject: Re: Olson transcripts [IWOV-BN.FID2382350]

Mr. Kennedy I will not be on the 5 way split. Instead go ahead and purchase the transcript as a 4 way split among the other parties without me.

Vidala Aaronoff
310 498-7975

-----Original Message-----
From: Kennedy, Eric <ekennedy@buchalter.com>
To: Dien Le <Le@srllplaw.com>; Tracy R. Neal Esq. <TNeal@hoaattorneys.com>; cbarker@grsm.com <cbarker@grsm.com>; vidala4@aol.com <vidala4@aol.com>
Sent: Tue, Jan 8, 2019 9:01 am
Subject: Fwd: Olson transcripts [IWOV-BN.FID2382350]

Please see below. How would you like to send payment? We are fine to Venmo. Each will owe $550. We need to respond ASAP.

Separately, if you want a copy of the last day, which Curt already got and paid for, you will need to pay Curt $70. It was $350 for that half day.

Eric Kennedy
Shareholder
Buchalter
W 213.891.5051
M 310.905.4500

Buchalter

01/18/19

EXHIBIT

5

Begin forwarded message:

From: Vidala Vidala <vidala4@me.com>
Subject: Re: URGENT; Court Transcripts Case 17SMROOO 308/17SMRO00368 Vidala Aaronoff v Curtis Olson
Date: January 8, 2019 at 1:20:35 PM PST
To: Marlene Burris <mbcsr1989@gmail.com>

Good afternoon, Marlene:

Re: URGENT; Court Transcripts Case 17SMROOO 308/17SMRO00368

Thank you for your call.

As agreed, to your courtroom Department 22, 5th floor Stanley Mosk, I will bring checks for $545 and $54 for certified copies after the other 4 parties have paid you for the original. Also agreed is that once paid, you will provide to me the transcript of November 16, 2018 before the other days because this is the day that Olson admitted knowing and playing golf with Lenny Dykstra.

Although I can not use a "rough draft" at court, please send November 16, 2018 to me immediately so I can verify what is going on with regards to the fundamental accuracy of the key portions of the transcript concerning Dykstra and Olson.

As explained circumstances have suddenly changed, I am now in a rush! As stated below in my emails, on January 4, 2018 I received shocking opposition papers from Olson's attorney, Eric Kennedy, telegraphing that he is attempting to manipulate or alter the court transcript of Olson's testimony on November 16, 2018. Olson clearly testified on November 16, 2018 that he knew Lenny Dykstra and played golf with him in Mexico. A number of witnesses in the courtroom also heard this, as well as my then-attorney. Accordingly, if the final transcript does not reflect what was genuinely stated, there will have to be an investigation.

In my earlier email, I stated that Mr. Olson has been involved in a bribery, corruption and forgery scandal, reported in the newspapers and one of his top ranking employees, Rich Meaney, is facing 12 years in federal prison for these crimes, along with the Palm Springs mayor who was caught taking the bribe money.

Also, I have alleged that Olson and/or his agents working on his behalf altered the source software on the computer hosting system of the security cameras at the property where we both live, to destroy evidence. Further in the Olson-Nexus/ Palm Springs scandal, Olson's representatives lied and manipulated Internet files to hide that Rich Meaney was their principle employee. Later FBI computer forensic specialists uncovered the fraud, as reported in the newspaper articles sent. In other words, there is ample precedent for Olson/ and his representatives using improper means to manipulate situations and destroy evidence. Nevertheless Olson/Nexus was caught.

Further, Olson's attorney indicated that Olson's affirmative "golf with Lenny Dykstra" statements have been deleted from your original source computer data. Yesterday at a deposition, Mr. Kennedy, on the record, also made arrogant comments indicating that the original transcript has been altered. Therefore, I need the transcript of November 16, 2018 —

even a rough draft to know immediately what Olson and/or his attorney is plotting.

I also need to know if there is anyone else who has access to your computer who could tamper with the source data of your court transcript. We have already had a meeting with a computer engineer who has said that it was possible to change the source data of your transcripts.

Of course, I realize these are serious allegations. That is why I need to know immediately what is going on with the transcript, as this has become very troubling, but it would not surprise me because of the on going FBI investigation mentioned above (and linked in news articles concerning Olson's company and employees).

Further, a number of people also know Mr. Olson plays golf with Lenny Dykstra, so this apparent last ditch effort by Olson to have the transcript altered is futile and will only end in disaster for anyone colluding with him.

Thank you,
Vidala Aaronoff

310 498 -7975

01/18/19

EXHIBIT

6

From: **Vidala Vidala** vidala4@me.com
Subject: RE: News Articles: Olson/Nexus Corruption Scandal &...
Date: January 8, 2019 at 1:46 PM
To: Marlene Burris mbcsr1989@gmail.com

Dear Ms. Burris,

RE: News Articles: Nexus Corruption Scandal & FBI Confirms Public Corruption Task Force: Court Reporters

I am re- sending you separately the news articles linked in a previous email incase you could not open them.

Vidala Aaronoff

Please see the attached headline links which, in their totality, make plain that the corruption scandal centers upon Olson Founder and CEO of Nexus Development and that Nexus is being civilly sued by the City of Palm Springs:

Palm Springs City Hall says bribery allegations are true, urging property to be returned"
http://www.rgj.com/story/news/crime_courts/2017/04/26/palm-springs-nexus-lawsuit/306473001/

Palm Springs corruption: Criminal charges to be filed http://www.thespectrum.com/story/news/nation-now/2017/02/16/palm-springs-corruption-criminal-charges/97981682/

DA: Ex-Palm Springs mayor took $375K in bribes from developers http://www.desertsun.com/story/news/local/palm-springs/2017/02/16/palm-springs-corruption-mayor-bribes/96415148/

Nexus says bribery suspect Rich Meaney was 'never' an employee. He was.https://www.usatoday.com/story/news/crime_courts/2017/05/01/nexus-rich-meaney-bribery/308378001/
https://www.latimes.com/local/california/la-me-in-palm-springs-investigation-20170216-story.html

Richard Meaney, [Nexus Principal] charged in corruption case, pushed many Palm Springs projects
http://www.delawareonline.com/story/news/local/palm-springs/2017/02/16/richard-meaney-charged-corruption-case-pushed-many-palm-springs-projects/97855690/

10 things to know about the FBI raid in Palm Springs http://www.desertsun.com/story/news/local/palm-springs/2015/09/01/10-things-know-fbi-palm-springs/71544462/

FAMILY COURT WATCH Articles Linked below:

Although the public hopes court reporters and/or judges are beyond corruption, unfortunately, some are not After reading the articles below, and reviewing 55 cases of California court reporters and/or judges committing corrupt misconduct, and after experiencing various threats myself (and learning of threats made against certain of my witnesses and acquaintances) from Olson and people working on Olson's behalf, I am concerned that anyone who is seriously involved in any way in my case is "at risk." If you have in any way felt threatened, pressured or compromised, I urge you to go to the police and report what is happening to the authorities.

"How can you say, 'We're wise, and the Law of the LORD is with us,' when, in fact, the deceitful pen of the scribe has made it into something that deceives." Jeremiah 8:8

Consequences of Altered Family Court Transcripts

After years of parents being called "crazy " and "disgruntled" for claiming transcripts in custody and divorce cases have been altered, an underground sting has revealed that crazy parents deprived of their children and property may very well be on to something.

For the past five years litigants in Sacramento, Santa Clara, Contra Costa and Orange County have been secretly recording hearings and comparing them with the actual transcripts in their case. Word by word these recordings are being compared to the transcripts that serve as the permanent historical record of a court proceeding.

The worst abuse appears to occur in private attorney offices where depositions, or hearings involving a 638 or 639 private judge, referee, Special Master is involved.

01/18/19

Some counties employ court reporters as a matter of routine, others including Sacramento and Santa Cruz do not. This can have a great impact on an appeal. No court record, no appeal, that is likely to work,

Initial research shows that court reporters regularly employed in family court cases appear willing to alter and change transcripts which may have serious implications for court orders and appeals. These court reporters, often women, appear to be willing to change transcripts at the private request of a judge, or at the request of a seasoned lawyer who brings in steady business, for which court reporters are able to earn additional income.

Santa Clara County Court insiders, fed up with fancy court houses and high pay to court reporters, are reporting that a few court reporters regularly assigned to family court cases have been engaging in tax fraud, and assisting judges and lawyers in altering transcripts for a steady flow of income, as court clerks face furlough and pay freezes.

Court management is worried as records request related to the court reporters have also been reportedly delayed , buried or altered to prevent mainstream media from exposing mass corruption that impacts legal outcomes and court budgets.

https://www.janeandjohnqpublic.com/blog/are-court-reporters-altering-your-transcripts

6/28/2017 FBI Confirms Public Corruption Task Force: Court Reporters, DA Offices and Judges from Family and Criminal Courts Caught in Cross Fire

"All roads also continue to point to involvement of court reporters who are altering

and improperly delaying court transcripts..."

https://www.janeandjohnqpublic.com/blog/fbi-confirms-public-corruption-task-force-court-reporters-family-law-attorneys-public-information-officers-district-attorney-and-judges-caught-in-cross-fire

01/18/19