APPENDIX

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APPENDIX A

FILED

OCT 25 2023

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CYRUS MARK SANAI, Petitioner-Appellant, v. ALEX VILLANUEVA, Respondent-Appellee.	No. 22-55763 D.C. No. 2:19-cv-02231-RGK-MRW Central District of California, Los Angeles ORDER

Before: COLLINS and LEE, Circuit Judges.

Appellant has filed a combined motion for reconsideration and motion for reconsideration en banc (Docket Entry No. 19). Appellant has also filed two motions for miscellaneous relief (Docket Entry Nos. 18 and 20). The court has considered all of appellant's filings.

The motion for reconsideration is denied and the motion for reconsideration en banc is denied on behalf of the court. *See* 9th Cir. R. 27-10; 9th Cir. Gen. Ord. 6.11. The motions for miscellaneous relief are also denied.

No further filings will be entertained in this closed case.

APPENDIX B

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CYRUS MARK SANAI,

Petitioner-Appellant,

v.

ALEX VILLANUEVA,

Respondent-Appellee.

No. 22-55763

D.C. No. 2:19-cv-02231-RGK-MRW
Central District of California,
Los Angeles

ORDER

Before: CLIFTON and FORREST, Circuit Judges.

Appellant's motion to extend time to file a motion for reconsideration and for permission to file an oversized motion (Docket Entry No. 14) is granted in part. Any motion for reconsideration is due by September 8, 2023, and must not exceed 3,900 words or 15 typewritten pages. *See* Fed. R. App. P. 40; 9th Cir. R. 27-10. Appellant may incorporate by reference his earlier filings in this court.

Appellant is reminded that motions for reconsideration "are not favored by the Court and should be utilized only where counsel believes that the Court has overlooked or misunderstood a point of law or fact, or where there is a change in legal or factual circumstances after the order which would entitle the movant to relief." *See* Circuit Advisory Committee Note to 9th Cir. R. 27-10.

No further motions to extend time or exceed the word limit will be entertained.

APPENDIX C

UNITED STATES COURT OF APPEALS
For the Ninth Circuit

No. 22-55763

CYRUS SANAI, an individual

Petitioner and Appellant

vs.

ALEX VILLANUEVA, in his official capacity, and XAVIER BECERRA, in his official capacity, and Does 1-10

Respondents and Appellees

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA
HONORABLE GARY KLAUSNER
DISTRICT COURT CASE NO. 19-CV-02231-RGK-MRW

STIPULATION BY PARTIES

Cyrus M. Sanai, SB#150387
SANAIS
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Beverly Hills, California, 90210
Telephone: (310) 717-9840
cyrus@sanaislaw.com

STIPULATION BY PARTIES

1. Respondent and Appellee ALEX VILLANUEVA, who is now substituted by his successor ROBERT LUNA ("Luna") as Sheriff of Los Angeles County, takes no position on the issuance of a Certificate of Appealability to Appellant Sanai.

2. Luna will not file any opposition brief if a Certificate of Appealability is issued to Sanai as Luna has no position as to any relief which Sanai requests in this appeal.

3. Sanai hereby waives any claims for damages, attorney's fees, and costs against Luna or the County of Los Angeles.

STIPULATED AND AGREED BY:

By: /s/ Cyrus Sanai
CYRUS SANAI
Appellant

By: /s/ Laura E. Inlow
Counsel for Respondent

APPENDIX D

JS-6

IN THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA

CYRUS SANAI,

Petitioner,

v.

ALEX VILLANUEVA,

Respondent.

Case No. CV 19-2231 RGK (MRW)

JUDGMENT

Pursuant to the Order Accepting Findings and Recommendations of the United States Magistrate Judge,

IT IS ADJUDGED that the petition is denied and this action is dismissed with prejudice.

DATE: 8/5/2022

Gary Klausner

HON. R. GARY KLAUSNER
UNITED STATES DISTRICT JUDGE

APPENDIX E

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

CYRUS SANAI,

Petitioner,

v.

ALEX VILLANUEVA,

Respondent.

Case No. CV 19-2231 RGK (MRW)

ORDER ACCEPTING FINDINGS AND RECOMMENDATIONS OF UNITED STATES MAGISTRATE JUDGE

Pursuant to 28 U.S.C. § 636, the Court reviewed the petition, the records on file, and the Report and Recommendation of the United States Magistrate Judge. Further, the Court engaged in a de novo review of those portions of the Report to which Petitioner objected. The Court accepts the findings and recommendation of the Magistrate Judge.

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IT IS ORDERED that Judgment be entered denying the petition and dismissing this action with prejudice.

DATE: 8/5/2022

HON. R. GARY KLAUSNER
UNITED STATES DISTRICT JUDGE

APPENDIX F

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

CYRUS MARK SANAI, Petitioner, v. ALEX VILLANUEVA, Respondent.	Case No. CV 19-2231 RGK (MRW) REPORT AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

This Report and Recommendation is submitted to the Honorable R. Gary Klausner, United States District Judge, pursuant to 28 U.S.C. § 636 and General Order 05-07 of the United States District Court for the Central District of California.

SUMMARY OF RECOMMENDATION

Petitioner Cyrus Sanai seeks federal habeas corpus review of a state court contempt finding. Petitioner alleges numerous constitutional defects with the state court proceedings.

However, the Court (Magistrate Judge Wilner) concludes that Petitioner forfeited his right to relief in federal court. The state court rulings that barred review under the disentitlement doctrine mean that Petitioner's claims are procedurally barred under AEDPA. Moreover, even if the Court were to conclude that the state supreme court reached the merits of Petitioner's claims, the judgment survives deferential, independent review.

As a result, the Court recommends that the petition be denied and the action dismissed.

FACTS AND PROCEDURAL HISTORY

The Contempt Proceedings

Petitioner Cyrus Sanai is an attorney. Petitioner represented a client (United Grand) in a contentious landlord-tenant lawsuit in state superior court. In the course of the United Grand action, the superior court ordered Petitioner to pay $4,600 in sanctions to the court and the opposing party for making improper court filings. Petitioner failed to make those payments. United Grand Corp. v. Malibu Hillbillies, LLC, 36 Cal. App. 5th 142, 145-49 (2019).

The superior court then conducted a contempt trial involving Petitioner. The state court found Petitioner in contempt under a provision of the state's code of civil procedure. Id. at 151-52. The trial court ordered that Petitioner "be imprisoned in the Los Angeles County jail until he performs the acts specified" in the court's earlier orders – that is, payment of the sanctions. (Docket # 77-14 at 4.)

Petitioner never paid the fees. He also did not surrender to county jail as ordered. The record does not show that any state court issued a ruling or set conditions of release to excuse Petitioner from imprisonment. United Grand, 36 Cal. App. 5th at 150-52. According to a status report from

Respondent's attorney, the superior court issued a warrant for Petitioner's arrest and incarceration that "has not been withdrawn [ ] and remains viable" during this federal action. (Docket # 38 at 1.) As the Court understands the state of play, Petitioner has never been taken into physical custody as a result of the contempt proceedings.[1]

Direct Appeal and State Habeas Actions

Petitioner embarked on a lengthy and chaotic journey through the state court system on direct appeal and on collateral review. The Court makes no effort to catalog all of Petitioner's state court filings.[2]

Of significance to this federal action, the state appellate court dismissed Petitioner's appeal of the contempt finding in the United Grand landlord-tenant case. In a reasoned, published opinion, the appellate court concluded that Petitioner forfeited his ability to seek appellate review of the sanctions decision under the "disentitlement doctrine" due to his failure to report to jail or otherwise comply with the superior court's orders. United Grand, 36 Cal. App. 5th at 166. The state supreme court subsequently denied review on direct appeal without substantive comment. United Grand Corp. v. Malibu Hillbillies, LLC, No. S257017 (Cal. 2019).

Additionally, Petitioner pursued claims in the state appellate court on habeas / writ of mandate review just before the ruling on direct appeal. The appellate court denied relief based on the same disentitlement basis. (Docket

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[1] Petitioner contends that he "presented himself to be arrested in the Court of Appeal" and has regularly appeared in state courthouses after the issuance of a bench warrant in the contempt action. (Docket # 62 at 13.) From this, he contends that he is "not a fugitive from justice." (Id. at 4.)

[2] The Court accepts Petitioner's statement regarding the appellate proceedings (summarized below) in which he contends that he presented and exhausted his claims in state court. (Docket # 77 at 2.)

89-1.) The state supreme court again denied review without comment. United Grand Corp. v. Malibu Hillbillies, LLC, No. S254689 (Cal. 2019).

Federal Habeas Action

This federal action followed. Petitioner filed a petition seeking relief under 28 U.S.C. § 2254 [AEDPA].[3] (Docket # 1.) After extensive litigation and voluminous submissions (which are not summarized in this decision), Petitioner sought and received leave to file an amended petition. (Docket # 87.) The First Amended Petition (alleging seven grounds for relief) is the operative pleading in the action.

Along the way, this Court denied Respondent's motion to dismiss the action. Among the bases asserted in the defense dismissal request was the contention that Petitioner has not actually been incarcerated and is not currently serving a prison sentence. (Docket # 19 at 11-12.) Nevertheless, the Court concluded that the ongoing existence of the final state court contempt order was sufficient to satisfy the "in custody" requirement for habeas jurisdiction under AEDPA. (Docket # 65 at 2-3.) The Court also noted, but deferred consideration of, Respondent's contention that Petitioner forfeited his claims under the disentitlement doctrine. (Id. at 1, 3.)

DISCUSSION

Standard of Review Under AEDPA

Under AEDPA, federal courts may grant habeas relief to a state prisoner "with respect to any claim that was adjudicated on the merits in State court proceedings" only if that adjudication:

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[3] Petitioner is a litigious soul. He previously filed a civil rights action in this Court to enjoin enforcement of the same contempt finding. The dismissal of that action was affirmed on appeal. Sanai v. McDonnell, No. CV 18-5663 RGK (E) (C.D. Cal.) (Docket # 108.) Petitioner also attempted to sue, among others, the lawyer representing the opposing parties in the real estate action for his role in the contempt proceeding. The dismissal of that lawsuit was also affirmed. Sanai v. Staub, No. CV 18-2136 RGK (E) (C.D. Cal.) (Docket # 35.)

> (1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

28 U.S.C. § 2254(d).

Presumptions Under AEDPA

In a federal habeas action, this Court generally reviews the reasonableness of the state court's last reasoned decision on a prisoner's claims. Martinez v. Cate, 903 F.3d 982, 991 (9th Cir. 2018); Harrington v. Richter, 562 U.S. 86, 99 (2011). When a state supreme court decision is unaccompanied with a reason for denying a claim, the federal court will "look through" the silent state decision to the last related state court decision and presume that the silent "decision adopted the same reasoning" as the related case. Wilson v. Sellers, ____ U.S. ____, 138 S. Ct. 1188, 1192 (2018); Ylst v. Nunnemaker, 501 U.S. 797, 803-04 (1991).

* * *

If a state court decision denying habeas relief was "unaccompanied by an explanation" of the court's reasoning, this Court presumes that the state supreme court reached and rejected the merits of Petitioner's constitutional claims.[4] Richter, 562 U.S. at 98-99; Johnson v. Williams, 568 U.S. 289, 301 (2013) (federal court ordinarily "must presume that [a prisoner's] federal claim was adjudicated on the merits"). AEDPA then requires the Court to perform an "independent review of the record" to determine "whether the state court's decision was objectively unreasonable." Richter, 562 U.S. at 98. When the state court does not explain the basis for its rejection of a prisoner's

[4] But see discussion of procedural default below.

claim, a federal habeas court "must determine what arguments or theories [ ] could have supported the state court's decision" in evaluating its reasonableness. Id. at 102 (emphasis added). "Crucially, this is not a de novo review of the constitutional question." Murray v. Schriro, 882 F.3d 778, 802 (9th Cir. 2018) (prisoner's burden on independent review "still must be met by showing there was no reasonable basis for the state court to deny relief") (quotations omitted).

* * *

Overall, AEDPA presents "a formidable barrier to federal habeas relief for prisoners whose claims have been adjudicated in state court." Burt v. Titlow, 571 U.S. 12, 19 (2013). "A state court's application of federal law that is merely incorrect will not warrant relief." McGill v. Shinn, ___ F.4th ___, 2021 WL 4899001 at *7 (9th Cir. Oct. 21, 2021) (citing Williams v. Taylor, 529 U.S. 362, 410-11 (2000)). On habeas review, AEDPA places on a prisoner the burden to show that the state court's decision "was so lacking in justification that there was an error well understood and comprehended in existing law beyond any possibility for fairminded disagreement" among "fairminded jurists." Richter, 562 U.S. at 101, 103; White v. Wheeler, 577 U.S. 73, 77 (2015). Federal habeas corpus review therefore serves as "a guard against extreme malfunctions in the state criminal justice systems, not a substitute for ordinary error correction" in the state court system.[5] Richter, 562 U.S. at 102.

[5] This is not a typical habeas action under AEDPA. Petitioner was not prosecuted by a criminal prosecuting agency, and the California Attorney General is not defending the judgment on federal review. As a result, the Court does not have the entire record of proceedings that it ordinarily receives from the state action. However, the Court received what it considers to be the relevant materials from the landlord-tenant litigation: the transcript of Petitioner's contempt trial and sentencing, the reasoned decisions of the state appellate court, and Petitioner's briefs presenting his issues to the state appellate and supreme courts. The Court

Procedural Default

General principles of procedural default

Under AEDPA, a federal court cannot consider a claim if the state courts denied relief due to "a procedural barrier to adjudication of the claim on the merits" arising under state law. Walker v. Martin, 562 U.S. 307, 315 (2011); Cooper v. Neven, 641 F.3d 322, 327 (9th Cir. 2011). When a higher state court denies review or relief without a reasoned decision, "the federal court should 'look through' the unexplained decision to the last related state-court decision that does provide a relevant rationale. It should then presume that the unexplained decision adopted the same reasoning." Wilson, 138 S. Ct. at 1192.

More specifically, when the last reasoned opinion on the claim explicitly imposes a procedural default, federal courts "presume that a later decision rejecting the claim did not silently disregard that bar and consider the merits of a case." Ylst, 501 U.S. at 803. Only "strong evidence can refute" the presumed conclusion that a silent state court decision denying relief was based on a prisoner's procedural default.[6] Id. at 804.

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acknowledges that it independently reviewed those materials. Nasby v. McDaniel, 853 F.3d 1049, 1053 (9th Cir. 2017); Habeas Rule 5.

[6] In Robinson v. Lewis, 9 Cal. 5th 883, 896 (2020), the state supreme court reminded the Ninth Circuit (in response to a certified question) that a habeas petition in the supreme court "is an original petition, and we [the California Supreme Court] do not directly review the lower courts' rulings" as on direct appeal. The California Attorney General has recently taken this statement as a refutation of the Ylst / Wilson look-through doctrine in this state's practice. Harris v. Eaton, No. CV 20-2550 VBF (MRW) (C.D. Cal.) (Docket # 50 at 17-19).

Perhaps so. But nothing in Robinson or any other pronouncement of the state supreme court prevents that body from independently (and silently) agreeing with a lower court's decision as to the basis for denial of relief. So, rather than presuming that a silent decision necessarily means adoption of the lower court's rationale, Robinson suggests that a federal court might properly conclude that the supreme court came to the same result on its own based on the same reasoning as

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Federal courts "lack jurisdiction [ ] to review state court applications of state procedural rules" that results in the defaults of a claim in habeas proceedings. Poland v. Stewart, 169 F.3d 573, 584 (9th Cir. 1999). A federal habeas court "is not the proper body to adjudicate whether a state court correctly interpreted its own procedural rules, even if they are the basis for a procedural default." Martinez v. Ryan, 926 F.3d 1215, 1224 (9th Cir. 2019) (quotation omitted, emphasis added).

In evaluating the application of a procedural default, the state procedural rule rejecting a claim must be "independent of the federal question and adequate to support the judgment." Coleman v. Thompson, 501 U.S. 722, 729 (1991); Dickinson v. Shinn, 2 F.4th 851, 857 (9th Cir. 2021) (same). A state rule that is "firmly established and regularly followed" is adequate to support a procedural default finding. Beard v. Kindler, 558 U.S. 53, 60 (2009) (citation omitted); Wood v. Hall, 130 F.3d 373, 376 (9th Cir. 1997) ("a state rule must be clear, consistently applied, and well-established at the time of the petitioner's purported default").

The Supreme Court has held that a "discretionary state procedural rule can serve as an adequate ground to bar federal habeas review." Beard, 558 U.S. at 60 (reviewing adequacy of discretionary Pennsylvania fugitive disentitlement doctrine); Clemman v. Bd. Of Parole and Post-Prison Supervision, 407 F. App'x 143, 145 (9th Cir. 2010) (applying Oregon's "firmly established" disentitlement rule to bar federal habeas review).

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the lower court. It's doubtful that either mode of analysis makes any significant difference here. The supreme court articulated no basis for its denials of relief, and the appellate court gave a clear statement for its conclusion (discussed below).

To avoid operation of a procedural bar, a prisoner must show: (1) good cause for his failure to exhaust the claim and prejudice from the alleged constitutional violation; or (2) a fundamental miscarriage of justice. Coleman, 501 U.S. at 750; Ayala v. Chappell, 829 F.3d 1081, 1095 (9th Cir. 2016) (same). "Cause" for a procedural default exists where "something external to the petitioner, something that cannot fairly be attributed to him impeded his efforts to comply with the State's procedural rule." Maples v. Thomas, 565 U.S. 266, 280 (2012). To show "prejudice," the prisoner must establish that the error at trial "worked to his actual and substantial disadvantage, infecting his entire trial with error of constitutional dimensions." Nguyen v. Curry, 736 F.3d 1287, 1292 (9th Cir. 2013) (quotation omitted). The "miscarriage of justice" prong of this test is synonymous with a claim of actual factual innocence to the offense of conviction. Sawyer v. Whitley, 505 U.S. 333, 339-40 (1992).

Appellate disentitlement as procedural default

California law recognizes a disentitlement basis for denying appellate review of trial court decisions. Whether termed as an "appellate disentitlement" or a "fugitive disentitlement" doctrine, a state court has the "inherent power" to dismiss an appeal "by a party that refuses to comply with a lower court order." Stoltenberg v. Ampton Invs., Inc., 215 Cal. App. 4th 1225, 1229 (2013) (collecting cases).

The doctrine recognizes that a litigant "cannot, with right or reason, ask the aid and assistance" of a reviewing court when she or he "stands in an attitude of contempt to legal orders and processes of the courts of this state." MacPherson v. MacPherson, 13 Cal. 2d 271, 277 (1939). Rather, a trial court's orders "are presumptively valid and must be obeyed and enforced." Blumberg v. Minthorne, 233 Cal. App. 4th 1384, 1392 (2015) (quotation omitted).

State law describes appellate disentitlement as "a discretionary tool that may be applied when the balance of the equitable concerns make it a proper sanction" for the disregard of a presumptively valid order. People v. Puluc-Sique, 182 Cal. App. 4th 894, 897 (2010). The disentitlement doctrine has been invoked in "a number of diverse cases," including "where a party in a civil action was a fugitive from justice and in contempt of the superior court." Stoltenberg, 215 Cal. App. 4th at 1230 n.6 (quoting Estate of Scott, 150 Cal. App. 2d 590, 591 (1957)). Moreover, "[a]ny uncertainty" about the application of a state's disentitlement doctrine does "not render the rule inadequate." Clemman, 407 F. App'x at 145 (state court is not required "to articulate every permutation of every rule before it can invoke procedural default").

State courts "do not lightly apply the disentitlement doctrine." It typically is invoked when there is a "willful" disregard for court orders or other similar misconduct. Findleton v. Coyote Valley Band of Pomo Indians, 69 Cal. App. 5th 736, 756 (2021) (citing Puluc-Sique).[7] Under those circumstances, state courts recognize that disentitlement "impos[es] a penalty for flouting the judicial process." Puluc-Sique, 182 Cal. App. 4th at 897.

The disentitlement doctrine "is particularly likely to be invoked where the appeal arises out of the very order (or orders) the party has disobeyed." Ironridge Global IV, Ltd v. ScripsAmerica, Inc., 238 Cal. App. 4th 259, 255 (2015) (quoting Eisenberg et al., Cal. Practice Guide: Civil Appeals and Writs (The Rutter Group 2014) ¶ 2:340, p. 2–203) (emphasis added)). For that reason, the merits of an appeal from, or challenge to, a trial court order are "irrelevant to the application of the doctrine." Id. Refusal to comply with a trial court order in the hope of winning on appeal is, according to the state

[7] The recent Findleton decision also cited to the published opinion in United Grand, suggesting that the determination of Petitioner's disentitlement was not out of the legal mainstream.

courts, "the worst kind of bootstrapping" and may lead to disentitlement.[8] Stone v. Bach, 80 Cal. App. 3d 442, 448 (1978).

Sanction Payment Claim (Ground One)

Petitioner contends that his contempt proceeding was unconstitutionally defective because of "the absence of any finding of fact that Petitioner could pay the sanctions" ordered on behalf of the other party or the state court. (Docket # 92 at 15; # 87 at 5.)

Facts

In February 2017, the judge handling the United Grand landlord-tenant case determined that Petitioner filed a frivolous motion in that civil action. (Docket # 77-12.) The court ordered Petitioner to pay $3,600 in fees to the opposing party[9] and $1,000 in monetary sanctions to the court. (Id. at 4.)

Petitioner failed to make those payments. The court issued an order for Petitioner to show cause why he was not in contempt of the sanctions order. (Docket # 77-13.)

Petitioner represented himself at the contempt proceeding in March 2018 in the civil case. (Docket # 88-1.) After a short trial, the court concluded

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[8] Although not directly relevant to the analysis of Petitioner's claims, it is notable that federal courts also independently have discretion to invoke the disentitlement doctrine on various grounds. The doctrine is "long-established" and is "applied not only in criminal appeals, but in civil cases as well, including inter alia, habeas and other collateral challenges to a criminal conviction." Frank v. Yates, 887 F. Supp. 2d 958, 972 (E.D. Cal. 2012) (collecting cases); United States v. Parretti, 143 F.3d 508, 510-512 (9th Cir. 1998) (collecting cases; dismissing fugitive's appeal). There is "no difference between habeas petitions and direct appeals for purposes of applying the fugitive disentitlement doctrine" in federal court. Sanchez-Alfonso v. Bd. of Parole, 2014 WL 1383484 at *1 (D. Or. 2014).

[9] The superior court order termed the payment to the adversary as "monetary sanctions." (Docket # 77-12 at 4.) However, the court expressly cited a provision of state civil law that describes such payments as "reasonable expenses, including attorney's fees." Cal. C.C.P. § 128.5(a, c). Moreover, in later proceedings, the court clearly identified that sum as payment for fees expended related to the frivolous proceeding. (Docket # 82-2 at 14.)

that Petitioner: (a) had notice of the sanctions order; and (b) willfully failed to comply with it. (Id. at 60.)

Several weeks later, the trial court sentenced Petitioner. Petitioner was ordered to "be imprisoned until he has performed the acts specified in the sanctions order" – that is, "pay $3,600 in fees to [the opposition's attorney] and $1,000 to the court as a penalty," plus additional fees incurred in the contempt proceedings. (Docket # 82-2 at 14-15.) The trial court stayed the execution of the sentence (and Petitioner's surrender into custody) to give him time to pay the award or to obtain appellate relief. (Id. at 15.)

Neither occurred. Petitioner didn't pay the original sanctions award, and the state appellate court denied his requested relief (discussed below). Petitioner did not surrender to the county jail by the date ordered. In May 2018, the superior court issued a bench warrant for Petitioner's arrest. Petitioner has not been arrested on the outstanding warrant to date.

The appellate court decisions

Petitioner challenged the contempt order in writ proceedings and on direct appeal. In both fora, the state appellate court ruled that Petitioner was subject to appellate disentitlement of his claims.

In the writ proceedings, the appellate court noted that Petitioner "neither paid the sanctions nor surrendered himself to the county jail." (Docket # 89-1 at 4-5.) The court concluded that Petitioner "continues to willfully disobey the superior court's orders." (Id. at 5.) After briefly summarizing state law regarding the appellate disentitlement doctrine, the court determined that Petitioner "is not entitled to writ relief." (Id.)

The court reached the same conclusion on direct appeal. The court gave a similar statement of state law principles about disentitlement. United Grand, 36 Cal. App. 5th at 166. The court then concluded that

"disentitlement is warranted as to Sanai's appeal from the sanctions orders. We dismiss his appeal of the sanctions orders," referring to "both the underlying February 2017 sanctions orders and the contempt proceedings."[10] Id.

The state supreme court denied review of both the appellate court's writ ruling and the decision on direct appeal. The state supreme court did not articulate a rationale for its decisions to deny relief to Petitioner.

Analysis

Petitioner's challenge to the contempt finding is procedurally defaulted from federal review under AEDPA. Walker, 562 U.S. at 315. The state appellate court (and, by its silent orders, the state supreme court) did not reach the merits of Petitioner's constitutional claim. Wilson, 138 S. Ct. at 1192. Instead, it denied relief on the procedural ground of appellate disentitlement. Ylst, 501 U.S. at 804.

That was an adequate and independent basis under state law for rejecting Petitioner's claim. The appellate disentitlement doctrine is well-established in California. MacPherson, 13 Cal. 2d at 277; Findleton, 69 Cal. App. 5th at 756; Blumberg, 233 Cal. App. 4th at 1392; Stoltenberg, 215 Cal. App. 4th at 1229; Clemman, 407 F. App'x at 145. As a matter of state law, it applies to civil litigants who fail to comply with orders before seeking appellate consideration.

Further, despite the articulated procedural bar, Petitioner made no effort to satisfy the cause-and-prejudice standard to cure his default and allow for substantive federal habeas review of this claim. Coleman, 501 U.S.

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[10] The appellate court did consider the merits of some of the claims of Petitioner's client. However, United Grand – the client – lost on appeal, primarily because the appellate court determined that the business failed to provide "some cogent argument supported by legal analysis and citation to the record" about its claims. Id. at 146.

at 750; Ayala, 829 F.3d at 1095. Nor is it likely that he could have with any success. Notably, there is no plausible basis for concluding that "something external to the petitioner" was the cause for his procedural default. Maples, 565 U.S. at 280. Petitioner – an experienced and dogged litigation attorney – deliberately chose not to comply with the superior court's orders. On that basis, the state court concluded that he forfeited his right to seek further collateral review. That state law determination ends this federal court's consideration of his claim. Beard, 558 U.S. at 60; Poland, 169 F.3d at 584; Martinez, 926 F.3d at 1224.

The Court recognizes that it denied – without prejudice – Respondent's request earlier in the action to dismiss the action because Petitioner was a "fugitive." (Docket # 65 at 3.) However, Petitioner clearly had fair notice and opportunity to present his position on the disentitlement issue – an issue that was expressly the focus of the adverse state court decisions. Day v. McDonough, 547 U.S. 198, 210 (2006). The Court stated at the time of the dismissal motion that the state court rulings regarding the disentitlement issue could provide a "legitimate bas[i]s for denial of relief on the merits of the petition." (Docket # 65 at 1.) The Court further indicated that it could consider disentitlement "as a potential form of procedural default" when it took up the substance of Petitioner's claims. (Id. at 3.) The Court does so now. In doing so, the Court has the benefit of a fuller record of proceedings (including the transcripts of the contempt hearings) and the parties' briefing in the state and federal actions.

Those materials strongly support deferring to the state court disentitlement determination. Directly put, state law required Petitioner to comply with a "presumptively valid order" that found him in contempt of the superior court. Blumberg, 233 Cal. App. 4th at 1392; Puluc-Sique, 182 Cal.

App. 4th at 897. When he failed to do so, the state appellate court ruled that Petitioner forfeited his right to further judicial consideration. As a result, the state appellate and supreme courts did not address his federal constitutional claim. That ruling is binding on a federal court sitting in habeas. AEDPA prevents this Court from taking up the constitutional claims now.

* * *

In the alternative, even if Petitioner could somehow contend that the state supreme court reached the merits of his claim, he still would not be entitled to federal habeas relief under AEDPA. The gist of Petitioner's constitutional argument is that the state court contempt proceeding was a criminal (not civil) action because of the sentence imposed. Petitioner contends that the state court failed to provide him with the constitutional protections to which he was entitled; namely, the state court failed to determine whether he had the ability to pay the sanctions award in order to avoid incarceration.[11] Hicks v. Feiock, 485 U.S. 624, 641 (1988).

If this Court were to engage in independent, deferential AEDPA review of the state supreme court's silent decision under Richter, the Court would not conclude that the state court unreasonably applied clearly established federal law. As an initial matter, the Hicks Court made clear that – like here – the Constitution does not prohibit a court from imposing a custodial sentence that a defendant "would purge [ ] by paying off his arrearage." Id. at 641. Indeed, if the relief imposed in the state court was a jail sentence "with a purge

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[11] As a matter of state law, a contemnor's inability to pay a fine or otherwise comply with a court order is an affirmative defense in a civil contempt proceeding in a child support action. Hicks, 485 U.S. at 628 (citing Cal. C.C.P. § 1209.5). According to the transcript of Petitioner's contempt trial, he neither argued nor presented evidence suggesting an inability to pay any component of the fee awards. (Docket # 88-1.)

clause, then it is civil in nature" and further due process considerations (beyond minimal notice and hearing requirements) do not apply. Id. at 640.

In the present action, the state supreme court could certainly have concluded that Petitioner would avoid jail time by paying the sanctions that he owed. The face of the trial court's judgment said as much – Petitioner was obliged to repay the opposition for time spent on his frivolous motion. (Docket # 77-14 at 4.)

Moreover, the supreme court could reasonably have concluded that the mere fact that a portion of the award was payable to the superior court as a "penalty" did not render Petitioner's case a criminal one. The "label affixed to a contempt" is not dispositive of the character of the payment. Int'l Union, United Mine Workers of America v. Bagwell, 512 U.S. 821, 838 (1994). Rather, it is the substance of the order that governs. A "flat, unconditional fine" paid to a court is a criminal punishment if the contemnor "has no opportunity to reduce or avoid" it by compliance. Id. at 829 (quotation omitted). However, a fee that compensates or reimburses a court for time spent dealing with frivolous actions caused by the contemnor is civil in nature. Lasar v. Ford Motor Co., 399 F.3d 1101, 1110-11 (9th Cir. 2005); Gibson v. Credit Suisse Group Securities, 733 F. App'x 342, 343 (9th Cir. 2018) (same).

In Petitioner's circumstance, the state court could plausibly have concluded that the $1,000 "penalty" amount payable to the trial court was a compensatory sum, not a criminal fine. The sum owed to the court was a fraction of the award that compensated the opposing side for fees incurred in responding to Petitioner's unfounded motions. (Docket # 77-12.) The supreme court could reasonably have determined that a smaller, nominal sum could fairly have been appropriate to compensate the trial court for time spent as well.

Additionally, during the extensive course of the civil litigation, the supreme court could have concluded that the trial judge inferred that Petitioner had the ability to pay the fee. Petitioner and his well-heeled client obviously paid a considerable amount in filing fees and other costs at the trial and appellate court level over the years. Such an inference is expressly permitted in civil contempt proceedings under state law. Martin v. Superior Court, 17 Cal. App. 3d 412, 415 (1971); Mery v. Superior Court, 9 Cal. 2d 379, 380 (1937). Based on the voluminous record of the proceedings (the appellate court noted that the case was appealed five times (United Grand, 36 Cal. App. 5th at 145)), the supreme court could well have concluded that the sanctions award was compensatory, and therefore constitutional. Bagwell, 512 U.S. at 838; Lasar, 399 F.3d at 1110-11; Gibson, 733 F. App'x at 343.

Had the supreme court reached the merits of Petitioner's defaulted claim – which it did not – it would not have unreasonably applied federal law in denying relief. There was no "extreme malfunction" of state justice system that warrants habeas corpus relief. Richter, 562 U.S. at 102.

Judicial Bias (Ground Three)

Petitioner contends that the presence of a particular judge on the panel that heard his appeal and habeas claims violated his right to due process. (Docket # 87 at 6; # 92 at 31.)

Facts

In the early 2000s, then Superior Court Judge Grimes sat on a civil action in which Petitioner was a pro se litigant. The judge entered several orders adverse to Petitioner, noting that he "proliferated needless, baseless pleadings" in the case. Sanai v. Saltz, 2005 WL 1515401 at *8 (Cal. App. 2005). When the appellate court reversed aspects of those rulings, it

remanded the action with an instruction to reassign the case to a different judge.[12] Id.

In approximately 2005, Judge Grimes was under consideration for a position on the state court of appeal. Petitioner actively opposed her nomination. Justice Grimes was ultimately nominated and confirmed for the appellate court in 2010.

When the United Grand case was under appellate and habeas consideration in 2018-19, Justice Grimes sat on the three-judge panel.[13] She joined the decision written by another member of the panel. (Docket # 77-10 at 396-401.)

On habeas review in this Court, Petitioner contends that Justice Grimes should not have been a part of the panel that heard the appeal of the contempt judgment. Petitioner argues that the judge had been "disqualified for bias" in the earlier case, and that this "disqualification is for all other cases" in which he participated. Petitioner further notes his earlier opposition to the judge's nomination to the appellate court. He also contends that she filed a "public" and "secret bar complaint" against him. (Docket # 87 at 6.)

* * *

The appellate court decisions did not reach the merits of Petitioner's claim due to the disentitlement doctrine. The state supreme court did not take up Petitioner's claims on direct appeal or habeas review.

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[12] The appellate decision made no finding of misconduct or bias against the judge. Rather, the court cited a provision of the state civil code that allows it to "consider whether in the interests of justice it should direct that further proceedings be heard before a trial judge other than the judge whose judgment or order was reviewed by the appellate court." Cal. C.C.P. § 170.1(c).

[13] It does not appear that Justice Grimes sat on a panel that issued a decision in an earlier appeal in the action, or had other involvement in the case. United Grand Corp. v. Malibu Hillbillies, 2017 WL 222252 (Cal. App. 2017).

Analysis

As with the claim above, Petitioner's challenge to the contempt finding is procedurally defaulted from federal review under AEDPA. Walker, 562 U.S. at 315. This Court presumes that the supreme court silently adopted the reasoning regarding the procedural bar as imposed in the lower court. In the alternative, it is equally likely that the supreme court independently reached the same conclusion: Petitioner forfeited his claim by failing to comply with the trial court's contempt judgment. AEDPA precludes federal consideration of the claim.

* * *

Moreover, even assuming that the state supreme court reached the merits of Petitioner's claim of judicial bias, that decision would survive deferential independent review under AEDPA. At bottom, the state supreme court could not have unreasonably applied clearly established federal law as determined by the Supreme Court of the United States to this claim. 28 U.S.C. § 2254(d). The reason: there is none.

A basic requirement of due process is a "fair trial in a fair tribunal." In re Murchison, 349 U.S. 133, 136 (1955); Echavarria v. Filson, 896 F.3d 1118, 1128 (9th Cir. 2018) (same). That includes an impartial, unbiased judge. Murchison, 349 U.S. at 136 ("Fairness of course requires an absence of actual bias in the trial of cases."); Hurles v. Ryan, 752 F.3d 768, 788 (9th Cir. 2014) ("This most basic tenet of our judicial system helps to ensure both the litigants' and the public's confidence that each case has been adjudicated fairly by a neutral and detached arbiter."). A judge must recuse herself or himself "when the likelihood of bias on the part of the judge is too high to be constitutionally tolerable." Williams v. Pennsylvania, 579 U.S. 1, 6 (2016)

(quotation omitted) (state supreme court justice could not sit on criminal case in which he previously served as prosecutor).

However, the Supreme Court has cautioned that "most matters relating to judicial disqualification do not rise to a constitutional level." Caperton v. A.T. Massey Coal Co., 556 U.S. 868, 876 (2009) (cleaned up). A conflict with a judge violates due process in "rare instances." Id. at 887, 890 (state supreme court justice received campaign funds from litigant; "Our decision today addresses an extraordinary situation where the Constitution requires recusal.").

Crucially, Petitioner identifies no Supreme Court decision that deals with facts similar to the situation involving his grievance with Justice Grimes. (Docket # 92 at 32-33.) The Supreme Court has long warned habeas applicants and lower courts "against framing our precedents at such a high level of generality." Lopez v. Smith, 574 U.S. 1, 6 (2014) (quotation omitted). A party cannot, on habeas review, seek to "refine or sharpen a general principle of Supreme Court jurisprudence into a specific legal rule that this Court has not announced." Marshall v. Rodgers, 569 U.S. 58, 64 (2013). If the Supreme Court has not issued a decision that is directly controlling on a principle, a federal habeas court simply cannot conclude that a state court unreasonably applied clearly established federal law. 28 U.S.C. § 2254(d).

In the present circumstance, Justice Grimes neither served as a prosecutor in the action against Petitioner (there was none in the civil case) (Williams) nor had a financial relationship with the party opposing Petitioner on appeal (Caperton). No other Supreme Court decision comes close to extending the judicial bias principle to the situation involving Petitioner. As a result, AEDPA will not permit a finding that the state supreme court unreasonably applied federal law in Petitioner's case. Were the state court to

have addressed the merits of Petitioner's claim of bias, that decision cannot lead to habeas relief in this Court.

Remaining Claims (Grounds Two, Four through Seven)

The Court summarily concludes that Petitioner is not entitled to habeas corpus review on his remaining legal claims. All are subject to the procedural default analysis explained above; no state court considered the merits of any of these claims due to Petitioner's disentitlement finding.

However, even if those claims were to receive deferential independent review under AEDPA, Petitioner cannot receive habeas relief.

Dismissal of writ petition and "class of one" (Grounds Two and Five) – Petitioner contends that the state courts ignored "firmly established California Supreme Court law" at his contempt trial and on appeal. From this, Petitioner claims that he was discriminated against in a "class of one," which established a violation of the Equal Protection Clause. (Docket # 87 at 5-6.)

However, a challenge to the application or interpretation of state law does not present a cognizable federal claim. Estelle v. McGuire, 502 U.S. 62, 67-68 (1991) ("it is not the province of a federal habeas court to reexamine state-court determinations on state-law questions"). Further, Petitioner made no effort in the state court system or on federal habeas review to demonstrate "that [ ]he has been intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment." Village of Willowbrook v. Olech, 528 U.S. 562, 564 (2000). A conclusory or unsupported claim of constitutional injury is insufficient to lead to habeas relief. Floyd v. Filson, 949 F.3d 1128, 1146 (9th Cir. 2020).

Right to speedy appeal (Ground Four) – Petitioner complains about the state court's alleged "intentional refusal to proceed with [his] writ

petition" after the completion of briefing violated his "due process right to speedy appellate proceedings." (Docket # 87 at 6.) Petitioner concedes that he "cannot say" whether there is "now clearly established United States Supreme Court case law" describing such a right. (Docket # 92 at 34.)

The Ninth Circuit has no such qualms. There is none. Hayes v Ayers, 632 F.3d 500, 523 (9th Cir. 2011) ("no "clearly established Federal law, as determined by the Supreme Court of the United States" recognizes a due process right to a speedy appeal"). Petitioner cannot obtain habeas relief on this claim, whether it is defaulted or not.

State jurisdictional and fact-finding defects (Grounds Six and Seven) – Petitioner seeks a declaration from this federal court that the state contempt proceedings and sanctions orders were "void for lack of subject matter jurisdiction," and therefore violate the federal constitution. (Docket # 92 at 42.) That circular reasoning is unconvincing under the limited parameters of AEDPA and Petitioner's voluntary forfeiture of these contentions as explained above. A federal court sitting in habeas review is "bound to accept a state court's interpretation of state law." Butler v. Curry, 528 F.3d 624, 642 (9th Cir. 2008); Reyes v. Madden, 780 F. App'x 436, 441 (9th Cir. 2019) (same).

Additionally, he challenges the allegedly "unreasonable determination" of the state appellate court "that Petitioner was a 'fugitive from justice.'" (Docket # 87 at 9.) However, Petitioner's disentitlement was based on his acknowledged and uncontested failure to comply with the superior court's order that he pay sanctions or surrender into custody. The appellate court's conclusions were both (a) factually correct and (b) not subject to federal court reconsideration. Poland, 169 F.3d at 584; Martinez, 926 F.3d at 1224.

CONCLUSION

On this Court's limited habeas review, Petitioner Sanai is not entitled to relief under AEDPA on his claims of constitutional error.

IT IS THEREFORE RECOMMENDED that the District Judge issue an order: (1) accepting the findings and recommendations in this Report; (2) directing that judgment be entered denying the Petition; and (3) dismissing the action with prejudice.

Dated: November 15, 2021

HON. MICHAEL R. WILNER
UNITED STATES MAGISTRATE JUDGE

APPENDIX G

Court of Appeal, Second Appellate District, Division Eight - No. B289357

S254689

IN THE SUPREME COURT OF CALIFORNIA

En Banc

UNITED GRAND CORPORATION et al., Petitioners,

v.

SUPERIOR COURT OF LOS ANGELES COUNTY, Respondent;

MALIBU HILLBILLIES, et al., Real Parties in Interest.

The motion for disclosure of documents is denied.
The petition for review and application for stay are denied.

CANTIL-SAKAUYE
Chief Justice

APPENDIX H

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

UNITED GRAND CORPORATION and CYRUS SANAI, Petitioners, v. SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES, Respondent; MALIBU HILLBILLIES, et al., Real Parties in Interest.	B289357 (Super. Ct. No. BC554172) (Mark Borenstein, Judge) **ORDER**

We have read and considered the petition for writ of mandate, habeas corpus or other appropriate relief, and request for an immediate stay filed on April 12, 2018. We have also read and considered the response by the superior court filed on April 17, 2018, and the opposition by D. Joshua Staub filed on April 16, 2018, the non-opposition filed by Marcie Stollof on April 17, 2018, and petitioner's reply filed on April 19, 2018.

In addition, we have read and considered the motion to disentitle petitioner Cyrus Sanai filed on July 18, 2018, the opposition filed on August 27, 2018, and the reply filed on August 29, 2018. The requests for judicial notice filed in connection with the motion are granted.

An appellate court has the inherent power to apply the disentitlement doctrine when a party refuses to comply with a lower court order. (*Stoltenberg v. Ampton Investments, Inc.* (2013) 215 Cal.App.4th 1225, 1229.) Disentitlement "is not applied as punishment for criminal contempt. Rather, it is an exercise of a state court's inherent power to use its processes to induce compliance with a presumptively valid order. Appellate disentitlement is not a jurisdictional doctrine, but a discretionary tool that may be applied when the balance of the equitable concerns make it a proper sanction. [Citations.] No formal judgment of contempt is required; an appellate court may dismiss an appeal where there has been willful disobedience or obstructive tactics. [Citations.] The doctrine is based upon fundamental equity and is not to be frustrated by technicalities. [Citations.]" (*Id.* at p. 1230, internal quotes omitted.)

"The rationale upon which [appellate] relief is denied is that it would be a flagrant abuse of the principles of equity and of the due administration of justice to consider the demands of a party who becomes a voluntary actor before a court and seeks its aid while he stands in contempt of its legal orders and processes." (*Stone v. Bach* (1978) 80 Cal.App.3d 442, 444 (*Stone*).)

While the doctrine is typically used in appeals, appellate courts have similarly denied writ relief using the same rationale. (See *Weeks v. Superior Court* (1921) 187 Cal. 620, 622 ["No party to an action can, with right or reason, ask the aid and assistance of a court in hearing his demands while he stands in an attitude of contempt to its legal orders and processes"]; *Monterey Coal Co. v. Superior Court* (1909) 11 Cal.App. 207, 208-209; *Paddon v. Superior Court* (1924) 65 Cal.App. 479; *Knackstedt v. Superior Court* (1947) 79 Cal.App.2d 727, 729-731.)

The merits of the challenged order are irrelevant to the application of the doctrine. (*Ironridge Global IV, Ltd. v. ScripsAmerica, Inc.* (2015) 238 Cal.App.4th 259, 265; see *Stone, supra,* 80 Cal.App.3d 442, 448 [rejecting defendant's claim that application of the doctrine was not warranted because the orders he violated were invalid].)

In February 2017, the superior court ordered Mr. Sanai to pay $4,600 in monetary sanctions. Mr. Sanai disobeyed the order and continued to disobey it for over one year. On March 21, 2018, the superior court held a trial and found Mr. Sanai guilty of contempt of court. Mr. Sanai was released on his own recognizance and later sentenced on March 26, 2018. Ultimately, the superior court ordered Mr. Sanai to pay the amount or surrender himself to the county jail by April 23, 2018 at 4 pm.

On April 12, 2018, Mr. Sanai filed the present petition in this court. We denied his request for a stay on April 23, 2018. Mr. Sanai filed a petition for review in the Supreme Court, which was denied on April 25, 2018. (Case No. S248417.) Mr. Sanai neither paid the

sanctions nor surrendered himself to the county jail. On May 1, 2018, after Mr. Sanai failed to appear for a judgment debtor examination, the superior court found him to be in violation of the March 26, 2018 contempt judgment and issued a bench warrant for his arrest. He is currently a fugitive from justice. He continues to willfully disobey the superior court's orders.

"[Mr. Sanai] has willfully and purposely evaded the processes of the superior court and contumaciously defied its orders. Such contempt bars him from receiving the consideration of this court. It is contrary to the principles of justice to permit one who has flaunted the orders of the courts to seek judicial assistance." (*Estate of Scott* (1957) 150 Cal.App.2d 590, 594.)

Consequently, we conclude, under the circumstances of this case, that Mr. Sanai is not entitled to writ relief.

The petition is denied.

BIGELOW, P. J. GRIMES, J. RUBIN, J.*

* Presiding Justice of the Court of Appeal, Second Appellate District, Division Five, assigned by the Chief Justice pursuant to article IV, section 6 of the California Constitution.

APPENDIX I

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

UNITED GRAND CORPORATION and CYRUS SANAI, Petitioners, v. SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES, Respondent; MALIBU HILLBILLIES, et al., Real Parties in Interest.	B289357 (Super. Ct. No. BC554172) (Mark Borenstein, Judge) **ORDER**

We have read and considered the following:

(1) The motion by Cyrus Sanai to disqualify Division 8 of this appellate district from considering his petition filed on August 29, 2018, the amended motion to disqualify filed September 10, 2018, the opposition filed on September 10, 2018, and the amended motion for immediate stay and disqualification filed on February 20, 2019;

(2) The motion to declare petitioner Cyrus Sanai a vexatious litigant filed on September 6, 2018, the accompanying request for

judicial notice, the supplement to the request for judicial notice filed on November 9, 2018, and the opposition filed on October 22, 2018.

(3) The motion to dismiss the petition for lack of verification filed on February 21, 2019.

As to the motion to disqualify, the motion is stricken. No member of this panel or of Division 8 will disqualify themselves. (See *Kaufman v. Court of Appeal* (1982) 31 Cal.3d 933, 937-940; *First Western Dev. Corp. v. Superior Court* (1989) 212 Cal.App.3d 860, 867.) The request for an immediate stay is denied.

Concerning the motion to declare petitioner Cyrus Sanai a vexatious litigant, the request for judicial notice is granted. The motion is denied, without prejudice.

The motion to dismiss the petition for lack of verification is moot given our denial of the petition by separate order.

BIGELOW, P. J. GRIMES, J. RUBIN, J.*

* Presiding Justice of the Court of Appeal, Second Appellate District, Division Five, assigned by the Chief Justice pursuant to article IV, section 6 of the California Constitution.

APPENDIX J

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

UNITED GRAND CORPORATION, Petitioner, v. SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES, Respondent; MALIBU HILLBILLIES, et al., Real Parties in Interest.	B289357 (Super. Ct. No. BC554172) (Mark Borenstein, Judge) **ORDER**

We have read and considered the petition for writ of mandate or other appropriate relief, and request for an immediate stay filed on April 12, 2018.

Real parties in interest, including D. Joshua Staub, are ordered to serve and file an opposition to the petition on or before April 17, 2018, addressing, among other things, whether the original citation order was void or voidable, whether the contempt adjudication met all of the elements necessary for contempt (including ability to comply with the order), and whether sanctions can be ordered paid directly to a party's attorney. Respondent superior court is invited to file a response to the petition on or before April 17, 2018. Petitioners may serve and file a reply on or before April 18, 2018.

RUBIN, Acting P.J. GRIMES, J.

APPENDIX K