IN THE SUPREME COURT OF THE UNITED STATES

No. 23A700

CYRUS MARK SANAI,
Petitioner-Appellant,
v.
ALEX VILLANUEVA,
Respondent-Appellee,

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT
NO. 22-55763

APPLICATION FOR CERTIFICATE OF APPEALABILITY DIRECTED TO CIRCUIT JUSTICE FOR THE NINTH CIRCUIT COURT OF APPEALS

CYRUS SANAI
SANAIS
9440 SANTA MONICA BOULEVARD #301
BEVERLY HILLS, CA 90210
Telephone (310) 717-9840
cyrus@sanaislaw.com

QUESTIONS PRESENTED

In California a judgment of contempt by a Superior Court is not appealable. Code Civ. Proc. §1222. In order to challenge it, a party must file a petition for writ of certiorari, mandate and/or habeas corpus. *Brady v. Sup. Ct. (Cty. of Atherton),* 200 Cal.App.2d 69, 72-3 (1962). In doing so, the petitioner for state court relief may only raise "jurisdictional" challenges; however, in the context of petitions for relief from contempt, the terms "jurisdictional" was widened in a manner similar to that utilized in the nineteenth and early twentieth centuries, of if the underlying order is unconstitutional or the trial court's actions were outside the court's personal or subject matter jurisdiction, or in excess of the trial court's jurisdiction because the trial court did not strictly follow the statutory or case law procedural requirements. *Id.*

Decades of case law also hold in California that a party may violate an order, be held in contempt, and challenge the order constitutional and the wider jurisdictional grounds permitted without being "disentitled" at the appellate level. *Redlands etc. Sch. Dist v. Sup. Ct.,* 20 Cal. 2d 348, 363 (1942); *Ironridge Global IV, Ltd. v. ScripsAmerica, Inc.* (2015) 238 Cal.App.4th 259, 266 (Elizabeth Grimes, J., author).

Sanai was held in contempt by the trial court and filed timely challenge the Court of Appeal. However, the panel to which the appeal was assigned included a judge Elizabeth Grimes, who had been overturned as a trial court judge and disqualified for bias against Sanai. Another member of the panel, John Wiley, had also been overturned thanks to Sanai's assistance. *Moore v. Kaufman,* 189 Cal.App.4th 604 (2010) and Sanai appeared in front of Wiley after he was overturned in *Moore,* representing the successful appellant.

The appellate panel refused to recuse themselves, citing still valid California case law which eliminates any procedure to recuse California appellate justices and sets a standard for voluntary recusal that is inconsistent with the federal standard. App. I at 45-6.

The panel also refused to recognize its own prior case law which explicitly held that an appellant may not be disentitled in making jurisdictional challenges to a contempt or similar judgment or order. *See Ironridge. supra.* Sanai's writ petition was dismissed and this motion to disqualify the panel was stricken; however, he was released by an oral order on his own recognizance by the panel at oral argument. App. H at 239-43.

Sanai filed a timely petition for habeas corpus with the district court. The magistrate judge ("MJ") on his own motion recommended that the petition be denied for the procedural default of disentitlement. App. F at 13-36. Notably, the

MJ did not make the factual or legal findings necessary to support default. App. F at 21-22 He also found that Sanai's unsuccessful attempt to disqualify the panel was denied for disentitlement, when the record clearly shows it was stricken because there is no procedural pathway to disqualify appellate justices in California. Compare App. F at 32 with App. I at 45-6. Sanai filed timely objections raising all issues which were ignored by the district court.

At the Court of Appeals level, the Court took no action the petition for nearly a year, then denied it with a form order. App. B at 4. Sanai filed a petition for rehearing and rehearing en banc. Five days before the petition was denied, the Court of Appeals issued a decision which rejected the position of the MJ that there is no federal cause of action where a state court denies an appellate right. *Redd v. Guerrero,* 84 F. 4th 874 (9th Cir. 2023); App. A at 2.

Petitioner Sanai hereby requests a certificate of appealability ("COA") as to each and all of the following questions and issues:

1. Did the District Court err and violate *Vang v. Nevada,* 329 F. 3d 1069 (9th Cir. 2003) and *Day v. McDonough,* 547 US 198, 209-11 (2006) when it sua sponte dismissed the petition on procedural default grounds not raised in Respondent's answer and which were conceded as not appearing on the face of the petition?
2. Even if the District Court's sua sponte consideration of the procedural default

issue was within the limits set forth in *Vang v. Nevada,* 329 F. 3d 1069 (9th Cir. 2003) and *Day v. McDonough,* 547 US 198, 209-11 (2006), was it an abuse of discretion to do so?

3. Did the the District Court err and violate *Vang v. Nevada,* 329 F. 3d 1069 (9th Cir. 2003), *Day v. McDonough,* 547 US 198, 209-11 (2006) and Petitioner's due process rights when it sua sponte dismissed the petition on procedural default grounds not raised in Defendants' answer and which it gave Petitioner no opportunity to address prior to making its decision?

4. Did the District Court err when it failed to make any findings or analysis that the appellate disentitlement doctrine is independent of the federal question before applying it?

5. Did the District Court err when it failed to make any findings or analysis that the appellate disentitlement doctrine is "clear, consistently applied" before applying it?

6. Is the California disentitlement doctrine "clear, consistently applied" when the published case law issued by the same Court has the following differences which are set out in bold in the left-hand column:

First Disentitlement Doctrine as articulated in *Ironridge Global IV, Ltd. v. ScripsAmerica, Inc.* (2015) 238	Second Disentitlement Doctrine as articulated in *United Grand Corp. v. Malibu Hillbillies, LLC,* App. H.

Cal.App.4th 259, 266 (Grimes, J., author) and *Mazzaferri v. Mazzaferro,* Ct. App. Docket No. A143446 (Cal. Ct. App. July 11, 2016) slip. op. at 7-8 (bold emphasis added).

Under the disentitlement doctrine, a reviewing court has inherent power to dismiss an appeal when the appealing party has refused to comply with the orders of the trial court. (*Stoltenberg v. Ampton Investments, Inc.* (2013) 215 Cal.App.4th 1225, 1229 [159 Cal.Rptr.3d 1].) "`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." [Citation.]' [Citation.]" (*Id.* at p. 1230.) The rule applies even if there is no

"An appellate court has the inherent power, under the `disentitlement doctrine,' to dismiss an appeal by a party that refuses to comply with a lower court order." (*Stoltenberg v. Ampton Investments, Inc.* (2013) 215 Cal.App.4th 1225, 1229 [159 Cal.Rptr.3d 1].) .....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...." [Citation.]' [Citation.] No formal judgment of contempt is required; an

formal adjudication of contempt. (*TMS, Inc. v. Aihara* (1999) 71 Cal.App.4th 377, 379 [83 Cal.Rptr.2d 834].) The disentitlement doctrine "is particularly likely to be invoked where the appeal arises out of the very order (or orders) the party has disobeyed." (Eisenberg et al., Cal. Practice Guide: Civil Appeals and Writs (The Rutter Group 2014) ¶ 2:340, p. 2-203.) Moreover, the merits of the appeal are irrelevant to the application of the doctrine. (*See Stone v. Bach* (1978) 80 Cal.App.3d 442, 448 [145 Cal.Rptr. 599] [rejecting defendant's claim that dismissal was not warranted because the orders he violated were "invalid"].)

....

A judgment is void when there is a lack of jurisdiction over the subject

appellate court `may dismiss an appeal where there has been willful disobedience or obstructive tactics. [Citation.]' [Citation.]) The doctrine `is based upon fundamental equity and is not to be frustrated by technicalities.'" (*Id.* at p. 1230.)

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].) *United Grand Corp. v. Malibu Hillbillies, LLC,* App. H at 41-2

matter or the person. (*People v. American Contractors Indemnity Co.* (2004) 33 Cal.4th 653, 660 [16 Cal.Rptr.3d 76, 93 P.3d 1020].) Additionally, a judgment may be voidable when the trial court has subject matter and personal jurisdiction, but "exceeds its jurisdiction" because it "`"has no `jurisdiction' (or power) to act except in a particular manner, or to give certain kinds of relief, or to act without the occurrence of certain procedural prerequisites."' [Citation.]" (*Conservatorship of O'Connor* (1996) 48 Cal.App.4th 1076, 1088 [56 Cal.Rptr.2d 386]; see *Jovine v. FHP, Inc.* (1998) 64 Cal.App.4th 1506, 1527, fn. 26 [76 Cal.Rptr.2d 322].) An act that is in excess of jurisdiction, and merely voidable, is presumed valid until it is set

aside, and a party may be precluded from setting it aside by waiver, estoppel, or the passage of time. (*People v. Ruiz* (1990) 217 Cal.App.3d 574, 584 [265 Cal.Rptr. 886].) **Nevertheless, "[a] person may refuse to comply with a court order and raise as a defense to the imposition of sanctions that the order was beyond the jurisdiction of the court and therefore invalid...." (*In re Marriage of Niklas* (1989) 211 Cal.App.3d 28, 35 [258 Cal.Rptr. 921] [addressing contempt].) However, a person "may not assert as a defense that the order merely was erroneous." (*Ibid.*)**

Ironridge Global IV, Ltd. v. ScripsAmerica, Inc. (2015) 238 Cal.App.4th 259, 266 (Grimes, J.,

author)(bold emphasis added).

In *Ironridge*....[t]he defendant opposed the motion to dismiss the appeal by arguing the trial court's orders were invalid. (*Id.* at p. 266.) ***Ironridge*** **court noted that "`[a] person may refuse to comply with a court order and raise as a defense to the imposition of sanctions that the order was beyond the jurisdiction of the court and therefore invalid . . . .'" (*Id.* at p. 267, *quoting In re Marriage of Niklas* (1989) 211 Cal.App.3d 28, 35), but "`may not assert as a defense that the order merely was erroneous.'" (*Ironridge,* at p. 267.) Because the order was neither void nor voidable, the defendant "had no cause to disobey the court's order, but did so,**

repeatedly." (Ibid.)

....

as noted above, *Ironridge* indicates that the disentitlement doctrine would not apply if the orders violated by an appellant were void, as a person may refuse to comply with a court order and raise voidness of the order as a defense to sanctions. (*Ironridge, supra,* 238 Cal.App.4th at p. 267.)

Mazzaferri v. Mazzaferro, Ct. App. Docket No. A143446 (Cal. Ct. App. July 11, 2016) slip. op. at 7-8 (bold emphasis added).

7. Did the State Courts' refusals to recognize the California Supreme Court's long-established exception to disentitlement for challenges based on jurisdictional grounds violate Petitioner's rights to due process and to equal

protection of appellate procedural laws on a Class of One basis?

8. Did the District Court err when it refused to evaluate the application of the disentitlement doctrine to Petitioner as inconsistent with due process and equal protection because it found that a challenge to interpretation of state law does not present a federal claim, given the Ninth Circuit's recent decision in *Redd v. Guerrero,* 84 F. 4th 874 (9th Cir. 2023).?

9. Did the District Court err when it ruled in the alternative on the merits of Plaintiff's challenges on deferential AEDPA basis when United States Supreme Court precedent holds that where a state court has not adjudicated a claim on the merits, review is denovo? *See, e.g. Brown v. Davenport,* S. Ct. Docket No. 20-826 (April 21, 2022), slip. op. at 13, 17.

10. Did the District Court err in finding that Petitioner's judicial bias claims as to the Court of Appeal was procedurally defaulted when in fact the Court of Appeal explicitly entered an order striking the motion for disqualification on the established grounds that there is no procedural mechanism in California to seek the disqualification of Court of Appeal or California Supreme Court justices?

11. Are California appellate proceedings unconstitutional on a facial or overbreadth basis because a litigant has no ability to seek the recusal of a justice of the Court of Appeal or California Supreme Court justice on grounds

set out in *Caperton v. A. T. Massey Coal Co.*, 556 U.S. 868 (2009)?

12. If California appellate proceedings are not unconstitutional on a facial or overbreadth basis because a litigant has no ability to seek the recusal of a justice of the Court of Appeal or California Supreme Court justice on grounds set out in *Caperton,* are they unconstitutional in this case on an as applied basis because there is no procedural mechanism to seek recusal?

13. If California appellate proceedings are not unconstitutional on a facial or overbreadth basis because a litigant has no ability to seek the recusal of a justice of the Court of Appeal or California Supreme Court justice on grounds set out in *Caperton*, are they unconstitutional in this case on an as applied basis because Judge Grimes was actually biased against Appellant?

14. If California appellate proceedings are not unconstitutional on a facial or overbreadth basis because a litigant has no ability to seek the recusal of a justice of the Court of Appeal or California Supreme Court justice on grounds set out in *Caperton*, are they unconstitutional in this case on an as applied basis because Judge Grimes was biased against Appellant under the *Caperton* standard?

15. Did the District Court err when it ruled there is no right for a criminal defendant to a speedy petition in state court when the Court of Appeal held that unreasonable long time is a violation of due process in *Coe v. Thurman,*

922 F.2d 528 (9th Cir. 1990)

16. Did the District Court err when it refused to vacate the underlying state court orders as void?

17. Did the District Court err in refusing to address Petitioner's claim that state court made unreasonable factual determinations of Petitioner's guilt?

18. Did the District Court err when it ruled that Plaintiff's constitutional rights were violated when the District Court ruled that the State was not required to plead and prove that Petitioner could pay the sanctions?

PARTIES TO THE CASE

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The petitioner is CYRUS SANAI.

The Defendant is Alex Villanueva in his official capacity as the former Sherriff of Los Angeles County, California. Mr. Sanai enterd into a stipulation with the Sheriff in which the Sheriff dropped his opposition to the relief requested by Sanai. App. C at 5-7.

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APPLICATION FOR CERTIFICATE OF APPEALABILITY

This is an appeal from a judgment of dismissal of a petition for habeas corpus that was dismissed for alleged procedural default that did not appear on the face of petition and was not asserted in the answer of the Respondent, the former sheriff of Los Angeles County, who subsequently dropped all objections to relief. App. C. Instead, the default was raised sua sponte by the magistrate judge without notice or an opportunity to be heard in violation of *Vang v. Nevada,* 329 F. 3d 1069 (9th Cir. 2003) and *Day v. McDonough,* 547 US 198, 209-11 (2006). App. F at 13-36. Petitioner Sanai filed a timely challenge to the report and recommendations ("R&R"). The District Court Judge accepted the R&R without analyzing any of Sanai's new arguments—which were all them due to the violation of his right to notice and an opportunity to be heard by the sua sponte R&R—in violation of *United States v. Ramos,* 65 F.4th 427, 435 (9th Cir. 2023). App. D-E at 8-12. The District Court judge sua sponte denied a certificate of appealability. *Id.*

The State subsequently abandoned defense of the appeal, App. C at 6-7, but the Ninth Circuit Court of Appeals refused to grant a certificate of appealability in order that repeated the rote denial language of that Ninth Circuit. App. B at 4. On October 20, 2023, the Ninth Circuit issued an opinion, *Redd v. Guerrero,* 84 F. 4th 874 (9th Cir. 2023) where it validated one of the constitutional theories for Sanai's claims, but five days later it denied the motion for reconsideration before Sanai could brief it. App. A at 2.

Sanai applies to the Circuit Justice of this Court to grant a certificate of appealability as to all issues he has raised.

BASIS FOR JURISDICTION

The Circuit Justice has jurisdiction to consider this application for a certificate of appealability under 28 U.S.C. § 2253(c)(1). This application is timely because §2253(c)(1) imposes no deadline to request a certificate of appealability from the Circuit Justice and, if there were an imputed deadline, the application is filed within the deadline to file a petition for writ of certiorari in any event.

STATEMENT OF THE CASE

A. *State Court Proceedings*

Sanai was the subject of a sanctions order that had multiple procedural and jurisdictional defects. App. K-M at 49-60. These jurisdictional defects, included, but were not limited, to awarding attorneys fees directly to the attorney D. Joshua Staub instead of his client. (Staub was soon thereafter fired by his clients). Sanai filed a timely petition for writ of mandate and/or habeas corpus, as there is no right to appeal contempt judgments under California law. The briefing order acknowledged that Sanai was raising the issues of whether the underlying sanctions orders were "void or voidable." App. J at 48.

The appeal was assigned to the Division 8 of the Second Appellate District of the California Court of Appeal. Of the justices assigned to that Division, Sanai had overturned two of them when they trial court judges on issues of jurisdiction. Sanai overturned then Judge Grimes directly and she was removed by Division 7 of the

same Court of Appeal for bias. *Sanai v. Saltz,* 2005 WL 1515401 at *8 (Cal. App. 2005). Though Sanai did not know it at the time, she was under consideration for election to the Court of Appeal but her reversal and disqualification delayed it for a half-decade. Sanai opposed her appointment at the California Commission on Judicial Appointments hearing. S. Okamoto, "Elizabeth A. Grimes Confirmed as Div. Eight Justice", *Metropolitan News-Enterprise* at 1, April 6, 2010. Her colleague Justice Wiley was also overturned in the highly contentious litigation of *Moore v. Kaufman,* 189 Cal.App.4th 604 (2010). Like this case, *Moore* involved an attorney held in contempt for refusing to pay an attorney fee award imposed directly upon her who challenged the judgment and contempt order on the grounds they were void, and won. Sanai assisted the petitioner in and subsequently represented that petition before Judge Wiley, the reversed judge.

Sanai filed a motion to disqualify the justices under California and federal law. A year after the briefing order was issued and briefing completed Division 8 struck the motion for recusal based on the current law barring any such motions. App. I at 45-6. *Kaufman v. Court of Appeal,* 31 Cal.3d 933 (1982), and *First Western Dev. Corp. v. Sup. Ct.,* 212 Cal.App.3d 860, 867 (1989). These cases hold that there is no procedure to disqualify or seek the recusal of a Court of Appeal justice or California Supreme Court justice. This holding is recognized by the Ninth Circuit. *Hirsh v. Justices of Supreme Court of California,* 67 F.3d 708, 712 (9th Cir.1995) (acknowledging the "absence of a mandatory statutory recusal mechanism applicable to justices of the California Supreme Court"). This bar is recognized by

the Ninth Circuit but has never been addressed. It also dismissed the petition on grounds of disentitlement, rejecting its own recent authority holding that a party cannot be disentitled from presenting arguments that trial court's orders or void (outside the subject or personal jurisdiction of the court) or voidable (in excess of jurisdiction).

B. *Federal Court Proceedings*

Sanai filed a time petition for habeas corpus with the United States District Court for the Central District of California. Years of procedural sparring ensured. i During this period Sanai filed an interlocutory motion, Docket No. 63. to vacate the void underlying state court orders, that was denied by the district court, Docket No. 68. Eventually the Respondent, the former sheriff for Los Angeles County, filed an answer as to which Sanai filed a reply. The MK then took nearly a year to issue a report and recommendation (R&R) that sua sponte dismissed the petition on grounds of procedural default, namely disentitlement. App. F at 14-36. However, he failed to make the required findings to apply the doctrine which require that the procedural bar be clear, consistently applied, and well-established. App. F at 22:16-17.

He also, in the alternative, analyzed the issues on the merits. However, the MJ analyzed every issue on the AEDPA deferential basis, where controlling case law whihch the MJ acknowledged, holds that where the denial of state relief is on procedural grounds, any review on the merits is on the ordinary, non-deferential

basis. App. F at 8:12-15; 20:12-17; *Brown v. Davenport,* S. Ct. Docket No. 20-826 (April 21, 2022).

Sanai filed a objection to the R&R. The district court judge denied relief ina week and sua ponte denied a certificate of appealability. App. D-E at 8-12

Sanai filed a timely notice of appeal and motion for certificate of appealability and then an amended motion, identifying the issues articulated in the question presented above. While it was pending, the State dropped its objections to the grant of relief. App. C at 6-7. Nonetheless, the Ninth Circuit denied the motion. App. B at 4. Sanai filed a motion for reconsideration/petition for rehearing and rehearing en banc. Five days before the rehearing request was denied, the Ninth Circuit issued an opinion, *Redd v. Guerrero,* 84 F. 4th 874 (9th Cir. 2023), which directly overturned the analysis of the MJ on several issues, including question presented 7. However, there is no mechanism to file a second petition for rehearing based on new law.

SUMMARY OF THE ARGUMENT

The Circuit Justice should grant a certificate of appealability to permit appellate review of the dismissal of Sanai's habeas petition based on both on the multiple errors and to permit consideration of the long-identified but never resolved question of whether California's prohibition on seeking disqualification of appellate justices even on federal grounds meets due process requirements.

Sanai's challenge to the contempt judgment without complying with it was valid under California Supreme Court and Court of Appeals authority, including a

decision issued by the same panel. The District Court on its motion without notice or an opportunity to be heard dismissed the petition on the grounds of procedural bar without making a finding that the standard for disentitlement was "consistently applied" as required by case law. Because Sanai also challenged the deprivation of the case-law created right to challenge a court order without complying with it on the grounds that it is outside or in excess of the trial court's jurisdiction, the issue of disentitlement was not independent of the federal question presented.

The district court refused to consider Sanai's challenges to the violation of state law procedural requirements under due process or equal protection grounds. In addition to the case law approving this cited to the District Court and Court of Appeals, the Ninth Circuit issued a decision, *Redd, supra,* explicitly approving the deprivation of a due process right in California habeas proceedings as presenting a federal violation of due process. *Redd, supra.* The district court also failed to take into account recent authority of this Court affirming that the habeas remedy and this Court's full faith and credit jurisprudence has for centuries authorized federal courts to vacate void state judgments.

ARGUMENT

A. The Circuit Justice must grant a certificate of appealability as to any issue if jurists of reason could find an issue arguable.

Habeas petitioners are required to obtain a "certificate of appealability" before they can appeal the dismissal of a federal habeas claim brought under 28 U.S.C. §2254. That certificate may be issued by a federal district court, a court of

appeals judge, or a "circuit justice." 28 U.S.C. § 2253(c)(1). *See* B. Newton, Applications for Certificates of Appealability and the Supreme Court's "Obligatory" Jurisdiction, 5 J. App. Prac. & Process 177, 182 (2003) ("The plain language of 28 U.S.C. § 2253 empower[s] a single Circuit justice to grant a COA.").

The Circuit Justice's obligation to consider the merits of an application for a certificate of appealability is not discretionary. "A [certificate of appealability] is not an 'extraordinary' writ or any other type of extraordinary remedy or process that the Court possesses complete discretion to grant or deny irrespective of the merits of the application." *Id.* Accordingly, "[t]here appears to be no principled basis for the exercise of a certiorari type discretion" in the Circuit Justice's decision whether to grant a certificate; an applicant need not demonstrate anything "'extraordinary' or 'exceptional;'" and the Circuit Justice cannot deny the certificate without "meaningfully engaging in the legal analysis required by Section 2253." *Id.* at 183-184, 186 (citations omitted). Further, "[n]o court has ever suggested that, under 28 U.S.C. § 2253[,] *** a habeas petitioner only may seek a COA from either a circuit judge or a circuit justice *** but not both sequentially. The plain language of the statute and rule would not support such an interpretation." *Id.* at 185.13

The showing required to obtain a certificate of appealability is minimal. The certificate must issue whenever there is a "showing that reasonable jurists could debate (or for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further." *Slack v. McDaniel,* 529 U.S. 473, 484 (2000). This standard "does not require a showing that the appeal will succeed,"

and an application should not be declined "merely because [a court] believes a petitioner will not demonstrate an entitlement to relief." *Miller-El v. Cockrell,* 537 U.S. 322, 337 (2003) ("We do not require petitioner to prove, before the issuance of a [certificate of appealability], that some jurists would grant the petition for habeas corpus.").

Review "at the [certificate] stage should be consonant with the limited nature of the inquiry." *Buck v. Davis,* 137 S. Ct. 759, 774 (2017). "The statute sets forth a two-step process: an initial determination whether a claim is reasonably debatable, and, if so, an appeal in the normal course." Id. at 765. At this first stage, the only question is whether Sanai has shown that "jurists of reason could disagree with the district court's resolution of [her] constitutional claims or *** could conclude the issues presented are adequate to deserve encouragement to proceed further." *Id.* at 774. Of course, this Court separately "possesses discretionary jurisdiction to grant certiorari and reverse a Court of Appeals decision denying a COA." *Id.* at 184 n. 38.

B. The Court Should Grant a COA as to Each Issue Raised by Petitioner and Appellant

1. Did the District Court err and violate *Vang v. Nevada*, 329 F. 3d 1069 (9th Cir. 2003) when it sua sponte dismissed the petition on procedural default grounds not raised in Respondents' answer and which were conceded as not appearing on the face of the petition?

The MJ based his report on his sua sponte raising of the alleged procedural bar of "disentitlement". Respondent in this case only raised disentitlement under federal law as grounds for denying relief: Motion to Dismiss, Docket No. 19 at 12:5-13. Nowhere in the motion to dismiss did the Respondent raise any argument as to procedural bar under state law to relief.

The MJ's order concerning the motion to dismiss stated:

> 2. Respondent moved to dismiss the action for several procedural reasons. (Docket# 19.) Owing to the unconventional posture of the action, those reasons don't presently warrant dismissal (although they could provide legitimate bases for denial of relief on the merits of the petition). The motion will be denied.
>
> .....
>
> 11. The dismissal motion is denied without prejudice. Respondent is free to reassert any of these arguments (including fugitive disentitlement as a potential form of procedural default) as applicable if/when it responds to the merits of the petition.

Order of September 28, 2020, Docket No. 65 at 1, 3.

Sanai filed his amended petition, Docket No. 87 after being granted leave as follows:

> 1. Petitioner Sanai's motion to amend his habeas petition is granted. (Docket# 79, 84, 85.) The Court expresses no opinion about the viability of Petitioner's newly added constitutional challenges to his conviction. Rather, Respondent will be entitled to present all arguments (substantive, procedural, or both) in response to his claims.
> 2. That response will be due by February 12. Respondent may separately lodge any additional materials relevant to Mr. Sanai's conviction and related proceedings that will assist in evaluating his claims . Habeas Rule 5.

Order of December 23, 2020 Docket No. 86. at 1

Respondent filed an opposition/answer, Docket No. 89, on February 12, 2021. Nowhere does the Respondent argue disentitlement under state law or present any case law supporting the existence of a procedural bar to habeas relief based on disentitlement. On February 18, 2021, the MJ entered as Docket No. 90 the following order:

> Respondent filed its opposition/answer to the First Amended Petition. (Docket # 89.) Petitioner's optional reply will be due by March 22. After that, the Court will take the matter under review or set further proceedings.

Docket No. 90.

Because only a reply was allowed, Sanai filed a reply limited his argument solely to the issues raised by Respondent in the opposition/answer. *See* March 21, 2021 Reply, Docket No. 92.

Eight months after completion of briefing on the opposition, the MJ issued his RR. He based his recommendations on the procedural fault of disentitlement under California state law, not federal law. He wrote that:

> 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.

App. F at 27:10-23.

The MJ wrote that "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.) . That's simply not true. What the MJ wrote was "Respondent moved to dismiss the action for several procedural **reasons.** (Docket# 19.) Owing to the unconventional posture of the action, **those reasons** don't presently warrant dismissal (although they could provide legitimate bases for denial of relief on the merits of the petition)." Order of September 28, 2020, Docket No. 65 at 1. He never staed that "state court rulings" could provide "legitimate bases" for dismissal; he explicitly stated that the "several

procedural **reasons"** raised by Respondents "could provide legitimate bases for denial of relief on the merits of the petition."

The MJ also misrepresented the record when he wrote that 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.)" Not so. What the MJ wrote was that "The dismissal motion is denied without prejudice. **Respondent is free to reassert any of these arguments (including fugitive disentitlement as a potential form of procedural default)** as applicable if/when it responds to the merits of the petition." (bold emphasis added). At no point did did the MJ state that he was reserving the right to sua sponte raise these points, and his comment was solely devoted to the federal fugitive disentitlement raised by Defendants. Order of September 28, 2020, Docket No. 65 at 3. The Ninth Circuit has analyzed a situation almost exactly on point:

> Procedural default is an affirmative defense. *Bennett v. Mueller,* 322 F.3d 573, 585 (9th Cir.2003). Generally, the state must assert the procedural default as a defense to the petition before the district court; otherwise the defense is waived. *Franklin v. Johnson*, 290 F.3d 1223, 1229 (9th Cir.2002). However, the district court retains discretion to consider the issue sua sponte if the circumstances warrant. *Boyd v. Thompson,* 147 F.3d 1124, 1128 (9th Cir.1998).
>
> In *Boyd,* we recognized that the district court may, sua sponte, raise the issue of procedural default when the default is obvious from the face of the petition and when recognizing the default would "further the interests of comity, federalism, and judicial efficiency." *Id. As* further support for our decision in Boyd, we noted that the state had not actually waived the defense because the trial court raised the procedural default issue before the state responded. *Id.* at 1127. Indeed, the state had not yet been served with the petition. Id.
>
> This case is not like *Boyd.* Here, the sua sponte decision followed a lengthy response from the state in which it did not rely on the Nevada Supreme Court's imposition of a procedural bar as to

> claims 4, 5, and 6. Nor is the default obvious from the face of the petition, as it was in *Boyd*. Because the default was a failure to assert claims that could have been raised on direct appeal, the court had to consider Petitioner's state-court filings to determine which claims were raised in which filings.

Vang v. Nevada, 329 F. 3d 1069, 1073 (9th Cir. 2003).

Three years later this Court added an additional condition for the District Court to raise procedural issues sua sponte in a decision that cited *Vang:*

> In sum, we hold that district courts are permitted, but not obliged, to consider, sua sponte, the timeliness of a state prisoner's habeas petition...
>
> Of course, before acting on its own initiative, a court must accord the parties fair notice and an opportunity to present their positions. *See, e. g., Acosta,* 221 F. 3d, at 124-125; *McMillan v. Jarvis,* 332 F. 3d 244, 250 (CA4 2003). Further, the court must assure itself that the petitioner is not significantly prejudiced by the delayed focus on the limitation issue, and "determine whether the interests of justice would be better served" by addressing the merits or by dismissing the petition as time barred. *See Granberry,* 481 U. S., at 136. some nine months after the State answered the petition.

Day v. McDonough, 547 US 198, 209-11 (2006).

The absolute requirement for prior notice and an opportunity to be heard is set out in the decisions cited by the this Court with approval:

> Although the courts below had the authority to raise the AEDPA statute of limitation defense on their own motion, the judgments must nevertheless be vacated because the courts dismissed without affording the petitioners notice and an opportunity to be heard. *See Snider,* 199 F.3d at 112 ("The problem with the court's dismissal was not that it was done on the court's own motion, but rather that it was done without affording [petitioner] notice and opportunity to be heard."). The long-standing general rule is that a court may not dismiss an action without providing the adversely affected party with notice and an opportunity to be heard. *See Lugo,* 15 F.3d at 30; *Perez v. Ortiz,* 849 F.2d 793, 797 (2d Cir.1988); *Square D Co. v. Niagara Frontier Tariff Bureau, Inc.,* 760 F.2d 1347, 1365 (2d Cir.1985) ("`Failure to afford an opportunity to address the court's

sua sponte motion to dismiss is, by itself, grounds for reversal.'") (*quoting Lewis v. New York,* 547 F.2d 4, 5-6 & n. 4 (2d Cir.1976)).

> [P]roviding the adversely affected party with notice and an opportunity to be heard plays an important role in establishing the fairness and reliability of the order. It avoids the risk that the court may overlook valid answers to its perception of defects in the plaintiff's case. Furthermore, denying a plaintiff an opportunity to be heard may tend to produce the very effect the court seeks to avoid—a waste of judicial resources—by leading to appeals and remands. Unless it is unmistakably clear that the court lacks jurisdiction, or that the complaint lacks merit or is otherwise defective, we believe it is bad practice for a district court to dismiss without affording a plaintiff the opportunity to be heard in opposition. *Snider,* 199 F.3d at 113 (internal quotation marks, citation, and alterations omitted).

This Court has addressed sua sponte dismissal of a habeas petition without notice and an opportunity to be heard in the context of dismissal for abuse of the writ. In *Lugo,* this Court held that "a district court may not properly dismiss a habeas petition on the ground of abuse of the writ without providing the petitioner with notice of the proposed dismissal and an opportunity to be heard in opposition." 15 F.3d at 31 (§ 2254 petition).

Acosta v. Artuz, 221 F. 3d 117, 124 (2d Cir. 2000).

The fact that Sanai has a chance to appeal the dismissal motion of the MJ does not save it. Under *Acosta* and *Day* the MJ was responsible for "affording the petitioner an opportunity to show cause why the petition should not be dismissed." *Day, supra,* at 202. This issue meets the standard of a COA of a procedural or legal issue and it should be allowed in the COA. It is fairly debatable that the state procedural default issue was waived by the Respondent and did not appear on the face of the petition, particularly since the Respondent subsequently waived all objections to the granting of relief to Sanai. App. C.

2. Even if the District Court's sua sponte consideration of the procedural default issue was within the limits set forth in *Vang v. Nevada,* 329 F. 3d 1069 (9th Cir. 2003), was it an abuse of discretion to do so?

Even if the procedural default issue was within the limits of facial appearance, there was no valid justification articulated for relieving the Respondent of his default in raising the matter sua sponte. *Vang v. Nevada,* 329 F. 3d 1069, 1073 (9th Cir. 2003) ("the state in its answering brief did not explain the failure or argue why its failure should be excused."). The MJ's assertion claim that the issue had been originally raised by the Respondent is false—the Respondent never raised a state procedural bar of disentitlement as discussed above. This is a fairly debatable issue that merits being included in the COA.

3. Did the the District Court err and violate *Vang v. Nevada,* 329 F. 3d 1069 (9th Cir. 2003) and Petitioner's due process rights when it sua sponte dismissed the petition on procedural default grounds not raised in Defendants' answer and which it gave Petitioner no opportunity to address prior to making its decision?

Even if the procedural default issue was within the limits of facial appearance, it was an abuse of discretion to consider the issue without granting Petitioner the opportunity to address the new issue, and there was no justification articulated for relieving the Respondent of his default in raising the matter sua sponte. Case law approved by this Court states that this is automatic grounds for reversal. *Acosta v. Artuz,* 221 F. 3d 117, 124 (2d Cir. 2000). This is a fairly debatable issue that merits being included in the COA.

4. Did the District Court err when it failed to make any findings or analysis that the appellate disentitlement doctrine is independent of the federal question before applying it?

The MJ expaied the standards for evaluating the sufficiency of a state procedural bar to be recognized under federal habeas law as follows:

> 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").

App. F at 21:9-17.

The MJ's analysis of the application of procedural default is as follows:

> 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.

App. F at 21:9-17.

The MJ's analysis fails to address the question of whether the doctrine is "independent" of the federal question. He asserts that it is independent, but he does not actually address the federal questions Sanai presented to show that.

This issue of whether disentitlement was or was not "independent of the federal question" is fairly debatable because Petitioner's Second Ground was whether the application of disentitlement doctrine to Petitioner was a violation of Sanai's due process and equal protection rights. First Amended Petition, Docket No. 87 at 5-6.

In *Redd, supra,* the Ninth Circuit held that violation of state created procedural rights constitutes a due process violation.

5. Did the District Court err when it failed to make any findings or analysis that the appellate disentitlement doctrine is "clear, consistently applied" before applying it?

Nowhere in the RR does does the MJ assert or even show that the disentitlement doctrine is "clear, consistently applied" as well as well-established. *See Wood v. Hall,* 130 F.3d 373, 376 (9th Cir. 1997).

The reason that Judge Wilner does not make those findings is because he can't, as discussed in the next issue.

6. Is the California disentitlement doctrine "clear, consistently applied" when the published case law issued by the same Court has the following differences which are set out in bold in the left-hand column below?

The appellate disentitlement doctrine comes in two different forms: one that is is set out in California Supreme Court precedent, and one that was especially rewritten to apply to Petitioner. The two different doctrines are placed side by side in the questions presented for this Court to compare:

As the above comparison shows, there are now two different disentitlement doctrines articulated by the same court. In the first disentitlement doctrine, there is an exception for appellate challenges from void or voidable orders:

> ***Ironridge* court noted that "`[a] person may refuse to comply with a court order and raise as a defense to the imposition of sanctions that the order was beyond the jurisdiction of the court and therefore invalid . . . .'" (*Id.* at p. 267, *quoting In re Marriage of Niklas* (1989) 211 Cal.App.3d 28,**

> **35), but "`may not assert as a defense that the order merely was erroneous.'" (*Ironridge,* at p. 267.) Because the order was neither void nor voidable, the defendant "had no cause to disobey the court's order, but did so, repeatedly." (Ibid.)**
>
> ....
>
> **as noted above, *Ironridge* indicates that the disentitlement doctrine would not apply if the orders violated by an appellant were void, as a person may refuse to comply with a court order and raise voidness of the order as a defense to sanctions. (*Ironridge, supra,* 238 Cal.App.4th at p. 267.)**

Mazzaferri v. Mazzaferro, Ct. App. Docket No. A143446 (Cal. Ct. App. July 11, 2016) slip. op. at 7-8 (bold emphasis added).

An order or judgment which is unconstitutional or is based on an unconstitutional law or rule, is void within the meaning of the exception to disentitlement:

> Petitioner could properly invoke certiorari to test the court's order of contempt if the court exceeded its jurisdiction. Since the order of contempt is not appealable, it may under such circumstances, be reviewed on certiorari. (Code Civ. Proc., § 1222; *Tripp v. Tripp* (1922) 190 Cal. 201, 202 [211 P. 225]; *Nutter v. Superior Court* (1960) 183 Cal. App. 73*73 2d 72, 73 [6 Cal. Rptr. 404]; *Auto Equity Sales, Inc. v. Superior Court* [*](Cal.) [18 Cal. Rptr. 479, 368 P.2d 97].)
>
> A series of California cases hold that the violation of an order which exceeds the court's jurisdiction cannot produce a valid judgment of contempt. The Court of Appeal in *Oil Workers Intl. Union v. Superior Court* (1951) 103 Cal. App.2d 512 [230 P.2d 71] ruled: "If it be determined that in the rendition of said judgment the trial court acted within its jurisdiction, then the inquiry ends, and the only order the reviewing court is authorized to make is one affirming the proceedings of the trial court. On the other hand, should it appear from the record as certified to us that the court either had no jurisdiction to pronounce said judgment, or exceeded its jurisdiction in doing so, then the proceedings should be annulled." (P. 526.) (*See also In re DeSilva* (1948) 33 Cal.2d 76, 80 [199 P.2d 6]; *Harlan v. Superior Court* (1949) 94 Cal. App.2d 902, 905 [211 P.2d 942]; *Silvagni v. Superior Court* (1958) 157 Cal. App.2d 287, 291 [321 P.2d 15]; *McLaughlin v. Superior Court* (1954) 128 Cal. App.2d 62, 65 [274 P.2d 745].) As Witkin states: the "view, long settled in California, is that a void order is never binding, and that its violation cannot constitute contempt. A party affected by an order may, and usually

> will, seek some orderly judicial means of setting it aside; but he may also ignore or disobey it at his peril. If he guesses wrong, he may be punished; if he guesses right, the final judicial determination that the order was without or in excess of jurisdiction is necessarily a determination that he committed no punishable wrong in violating it." (1 Witkin, Cal. Procedure, § 155, pp. 421, 422.)
>
> Turning then to the question of jurisdiction, we note that that concept, which originally attached only to the cause and to the parties, has in recent cases been extended. ..... "Speaking generally, any acts which exceed the defined power of a court in any instance, whether that power be defined by **constitutional provision, express statutory declaration, or rules developed by the courts and followed under the doctrine of stare decisis, are in excess of jurisdiction,** in so far as that term is used to indicate that those acts may be restrained by prohibition or annulled on certiorari." (P. 291.)

Brady v. Sup. Ct. (Cty. of Atherton), 200 Cal.App.2d 69 (1962) (bold emphasis added).

The California Supreme Court has repeatedly held that when an appeal challenges a void order, the reviewing court lacks jurisdiction to do anything other than issue an order vacating the void order or judgment. Under California law as articulated by the California Supreme Court, it is impossible to procedurally default a claim of absence of subject matter jurisdiction on appeal, as the jurisdiction of the reviewing court is strictly limited to vacating the void judgment or order and nothing else. *See Varian Medical Systems, Inc. v. Delfino,* 35 Cal.4th 180, 196 (2005), *quoting Rochin v. Pat Johnson Manufacturing Co.,* 67 Cal.App.4th 1228, 1240 (1998). "When, as here, there is an appeal from a void judgment, the reviewing court's jurisdiction is limited to reversing the trial court's void acts." *Id., quoting Griset v. Fair Political Practices Com.,* 25 Cal.4th 688 (2001).

> "The rule is well recognized that judgments void on their face may always be attacked either directly or collaterally. In *Estate of Pusey,* 180 Cal. 368, 374 [181 P. 648], it is said, quoting from *Forbes v. Hyde,*

> 31 Cal. 342, 348: " 'A judgment absolutely void may be attacked anywhere, directly or collaterally whenever it presents itself, either by parties or strangers. It is simply a nullity, and can be neither a basis nor evidence of any right whatever.' (*See, also, Pioneer Land Co. v. Maddux,* 109 Cal. 638 [50 Am.St.Rep. 67, 42 P. 295], and *Adams v. Adams,* 154 Mass. 290 [13 L.R.A. 275, 28 N.E. 260].) Moreover, the affirmance of a void judgment on appeal does not make it valid. (*Ball v. Tolman,* 135 Cal. 375 [87 Am.St.Rep. 110, 67 P. 339]; *Pioneer Land Co. v. Maddux,* 109 Cal. 633 [50 Am.St.Rep. 67, 42 P. 295].)""
> *Redlands etc. Sch. Dist v. Sup. Ct.,* 20 Cal. 2d 348, 363 (1942).

The second disentitlement doctrine, the one found in *United Grand* appeal and relied upon by the MJ, has no exception for void or voidable orders. App F at 23:1-11:2.

There is clear division in the law between the version Petitioner relied upon set out in *Ironridge, supra,* which prohibited disentitlement because he was raising the argument in his writ petitions that the underlying proceedings were void, voidable, and unconstitutional, and the version of the law articulated by the same Court of Appeal that issued *Ironridge,* which finds that there is no exception for challenging void, voidable and unconstitutional judgments. *Ironridge Global IV, Ltd. v. ScripsAmerica, Inc.,* 238 Cal.App.4th 259, 266 (2015) (Grimes, J., author)

The mere fact of the established existence of two doctrines of disentitlements, one that recognizes an exception for void, voidable, and unconstitutional orders, and one which does not, renders appellate disentitlement ineligible as a procedural bar because it is neither "clear" nor "consistently applied". *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"). This is an issue that is fairly debatable and merits inclusion in the certificate.

7. Did the State Courts' refusals to recognize the California Supreme Court's long-established exception to disentitlement for challenges based on jurisdictional grounds violate Petitioner's rights to equal protection of appellate procedural laws on a Class of One basis?

The fact that Division Eight of the Second Appellate District refused to apply the exception to disentitlement articulated in its own decision of *Ironridge, supra,* is the basis of Sanai's Second Ground or Second Claim. First Amended Petition, Docket No. 87 at 5-6. There are two ways to address this treatment of Sanai different from the published case law. The first is a violation of equal protection. As Sanai explained in this briefing

> The Respondent cited the 1991 decision of *Estelle v. McGuire,* 502 U.S. 62, 67-68 (1991) for the proposition that federal courts adjudicating state habeas claims may not pass on the correctness of state law determinations. This case law is not relevant, because nine years later the United States Supreme Court formally recognized class of one equal protection in *Village of Willowbrook v. Olech,* 528 U.S. 562 (2000). In *Willowbrook,* the United States Supreme Court formally clarified that an equal protection claim can be raised by a person without alleging he belongs in any protected class. The Supreme Court pointed out, as stated by Petitioner, that
>
> A class of one equal protection claim can overlap with, but is fundamentally different from, a claim of state law error. A claim of state law error says that the law is X, but the state courts ruled Y. A claim of equal protection violation is that the highest state court (or a consensus of state intermediate courts in precedental decisions) have stated that the law is X, but in the petitioner's case, the state court ruled Y or otherwise ignored the relevant law.
>
> The Supreme Court has applied the equal protection clause in state criminal cases. In one of the earliest examples of class of one application, the United States Supreme Court held that a rule which effectively prohibited a state court prisoner from filing a state court appeal was a violation of the equal protection clause. *Dowd v. United States ex rel. Cook,* 340 U.S. 206 (1951). In particular, the United States Supreme Court stated that "a discriminatory denial of the statutory right of appeal is a violation of the Equal Protection Clause of the Fourteenth Amendment." *Id.* at 208.

....

It is clearly established United States Supreme Court that were a party is provided a right of appellate review under state law, it is a denial of equal protection if he cannot use it.

Firmly established California Supreme Court law provides that a person convicted of contempt may attach both the contempt conviction and the underlying order without complying with it.

The California Supreme Court's most recent articulation of this principle was as follows:

> As we said in *Berry, supra,* 68 Cal.2d 137, unlike in jurisdictions that do not permit collateral challenges to injunctive orders, "[i]n this state a person affected by an injunctive order has available to him two alternative methods by which he may challenge the validity of such order on the ground that it was issued without or in excess of jurisdiction. He may consider it a more prudent course to comply with the order while seeking a judicial declaration as to its jurisdictional validity. [Citation.] On the other hand, he may conclude that the exigencies of the situation or the magnitude of the rights involved render immediate action worth the cost of peril. In the latter event, such a person, under California law, may disobey the order and raise his jurisdictional contentions when he is sought to be punished for such disobedience. If he has correctly assessed his legal position, and it is therefore finally determined that the order was issued without or in excess of jurisdiction, his violation of such void order constitutes no punishable wrong." (*Id.* at pp. 148-149, italics added.)
>
> ....
>
> California courts continue to reject the collateral bar rule adopted by other jurisdictions. Instead, they apply the rule that in the contempt proceeding, the contemner may, for the first time, collaterally challenge the validity of the order he or she is charged with violating. (See *Corenevsky v. Superior Court* (1984) 36 Cal.3d 307, 327 [204 Cal. Rptr. 165, 682 P.2d 360]; *United Farm Workers of America v. Superior Court* (1975) 14 Cal.3d 902, 907, fn. 3 [122 Cal. Rptr. 877, 537 P.2d 1237]; *Condor Enterprises, Ltd. v. Valley View State Bank* (1994) 25 Cal. App.4th 734, 741-742 [30 Cal. Rptr.2d 613]; *Zal v. Steppe* (9th Cir.1992) 968 F.2d 924, 927; *see also* 7 Witkin, Summary of Cal. Law (9th ed. 1988) Constitutional Law, § 84, p. 134; 6 Witkin, Cal.

> Procedure, supra, Provisional Remedies, § 329, pp. 277-278; Note, Defiance of Unlawful Authority, *supra,* 83 Harv. L.Rev. at p. 633, fn. 48.)

People v. Gonzalez (1996) 12 Cal.4th 804, 818-819.

Amusingly enough, the very panel that denied Petitioner this right confirmed that a party may defy an order and attack it as void for lack of fundamental jurisdiction or an act in excess of jurisdiction.

> A judgment is void when there is a lack of jurisdiction over the subject matter or the person. (*People v. American Contractors Indemnity Co.* (2004) 33 Cal.4th 653, 660 [16 Cal.Rptr.3d 76, 93 P.3d 1020].) Additionally, a judgment may be voidable when the trial court has subject matter and personal jurisdiction, but "exceeds its jurisdiction" because it "`"has no `jurisdiction' (or power) to act except in a particular manner, or to give certain kinds of relief, or to act without the occurrence of certain procedural prerequisites."' [Citation.]" (*Conservatorship of O'Connor* (1996) 48 Cal.App.4th 1076, 1088 [56 Cal.Rptr.2d 386]; *see Jovine v. FHP, Inc.* (1998) 64 Cal.App.4th 1506, 1527, fn. 26 [76 Cal.Rptr.2d 322].) An act that is in excess of jurisdiction, and merely voidable, is presumed valid until it is set aside, and a party may be precluded from setting it aside by waiver, estoppel, or the passage of time. (*People v. Ruiz* (1990) 217 Cal.App.3d 574, 584 [265 Cal.Rptr. 886].) **Nevertheless, "[a] person may refuse to comply with a court order and raise as a defense to the imposition of sanctions that the order was beyond the jurisdiction of the court and therefore invalid...." (*In re Marriage of Niklas* (1989) 211 Cal.App.3d 28, 35 [258 Cal.Rptr. 921] [addressing contempt].)** However, a person "may not assert as a defense that the order merely was erroneous." (*Ibid.)*

Ironridge Global IV, Ltd. v. ScripsAmerica, Inc. (2015) 238 Cal. App. 4th 259, 267 (bold emphasis added).

Division Eight, which in 2015 articulated the correct California state law protecting an alleged contemnor's right to challenge by writ petition a contempt judgment without complying it, and permitting challenge of the underlying order as well, denied Petitioner equal protection of this appellate right when it dismissed Petitioner's writ application

....Division Eight's March 4, 2019 order is directly refuted by the very case law, also penned by Division Eight, four years prior. The

> underlying order can be challenged if it is either void or voidable; as Division Eight stated, "**[n]evertheless, "[a] person may refuse to comply with a court order and raise as a defense to the imposition of sanctions that the order was beyond the jurisdiction of the court and therefore invalid...." (*In re Marriage of Niklas* (1989) 211 Cal.App.3d 28, 35 [258 Cal.Rptr. 921] [addressing contempt].)**" *Ironridge, supra* Plaintiff may also challenge the order on the grounds that it was itself void or voidable due to the failure to comply with the required procedures imposed by statute and case law. Petitioner did both in this case, but Division Eight denied Petitioner equal protection of the appellate procedures.
>
> Petitioner was explicitly denied the protections of the state law appellate review process by Division Eight, in violation of its own case law and the case law of the California Supreme Court. This constituted an unreasonable application of firmly established United States Supreme Court law, specifically *Village of Willowbrook, supra, Dowd, supra, Griffin, supra* and *Coppege, supra. See* 28 U.S. §2254(d)(1).

Reply in Support of First Amended Petition, Docket No. 92, March 22, 2021 at 25:1-30.

This Court has explicitly held that the equal protection clause requires that the same rules regarding state-court appeals apply to all persons. *Dowd v. United States ex rel. Cook,* 340 U.S. 206 (1951). In particular, it stated that "a discriminatory denial of the statutory right of appeal is a violation of the Equal Protection Clause of the Fourteenth Amendment." *Id.* at 208 (addressing Indiana criminal appellate procedure).

This issue is thus intertwined with the other issue of whether the procedural bar disentitlement is not "independent." "A state court's decision is not "independent" if the application of a state's default rule depends on a consideration of federal law. *Park v. California,* 202 F.3d 1146, 1152 (9th Cir.2000)." *Vang, supra,* at 1075. Under *Ironridge,* the application of the default rule must include whether the order is void or voidable under federal law, including voidness for lack of personal

jurisdiction, voidness for conflict with federal law under the Supremacy Clause, and unconstitutionality. The existence of these exception means the rule is not independent.

The second basis for finding a violation of state procedural law can be treated as a constitutional violation is *Redd, supra,* at 891-2 This issue is clearly fairly debatable and was not considered by the Court of Appeal because *Redd* was published after Sanai's pleadings were finished, and so merits inclusion in the COA.

8. Did the District Court err when it refused to evaluate the application of the disentitlement doctrine to Petitioner as inconsistent with equal protection because it found that a challenge to interpretation of state law does not present a federal claim?

The MJ declined to address the question of whether the two versions of the appellate disentitlement doctrine now present in California law, the second specifically created for Sanai, violated equal protection because he contended it required a review of state law.

> 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.

App. F at 34:3-22:26.

Sanai contends that there is no review of the correctness of state appellate law when it is attacked on an equal protection basis. Indeed, the exact same inquiry is required when the appellate court must analyze whether a state procedural bar is clearly and consistently applied.

Just as important, the publication of *Redd* demonstrates that a violation of a state-created procedural right can constitute a federal due process violation. *Redd, supra,* at 891-2.

It is therefore quite debatable whether the District Court erred in regards to this issue, and version dependent on Redd could not have been raised to the Court of Appeals. It should be included in the certificate of appealability.

9. **Did the District Court err when it ruled in the alternative on the merits of Plaintiff's challenges on deferential AEDPA basis when United States Supreme Court precedent holds that where a state court has not adjudicated a claim on the merits, review is denovo? *See, e.g. Brown v. Davenport,* S. Ct. Docket No. 20-826 (April 21, 2022), slip. op. at 13, 17.**

This Court's decisions are clear that when a state court refuses to consider the merits of an appeal based on a procedural bar, it is presumed, absent extremely strong evidence, not to have reached the merits.

> 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).

App. F, at 18:11-17.

Thus,

> [w]hen a procedural default is the reason for denial, absent any evidence to the contrary, the reviewing court is presumed not to have reached the merits. 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.

App. F, at 20:12-17.

What this means in this case is that if the procedural default are not recognized as "adequate and independent" under federal habeas law (which they are not), the merits of the constitutional claims must be evaluated de novo and not on an AEDPA deferential basis. *Brown v. Davenport,* S. Ct. Docket No. 20-826 (April 21, 2022), slip. op. at 13, 17 (where state court has not adjudicated claim on the merits, review is de novo and not deferential).

All of the hypothetical discussion by the MJ of what the merits would like like under a hypothetical deferential AEDPA analysis is irrelevant to this litigation. Because it is undisputed that the Court of Appeal applied a procedural bar, there is no possibility that deferential AEDPA review applies in these habeas proceedings. This is an issue that is fairly debatable and merits inclusion in the COA.

10. Did the District Court err in finding that Petitioner's judicial bias claims as to the Court of Appeal was procedurally defaulted when in fact the Court of Appeal explicitly entered an order striking the motion for disqualification on the established grounds that there is no procedural mechanism in California to seek the disqualification of Court of Appeal or California Supreme Court justices?

The MJ found that:

> **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.)
>
> * * *
>
> 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.

App. F at 30:17-21:2.

This is perhaps the most spectacular example of the district court's failure to review the record properly. He contends that "The appellate court decisions did not reach the merits of Petitioner's claim due to the disentitlement doctrine." That's not what happened. *See* App. I at 45-6. A jurist of reason would reject the MJ's factual finding.

11. Are California appellate proceedings unconstitutional on a facial or overbreadth basis because a litigant has no ability to seek the recusal of a justice of the Court of Appeal or California Supreme Court justice on grounds set out in *Caperton*?

Sanai moved to disqualify the Division Eight Court of Appeals panel in the underlying litigation. The panel struck the motion based on the well-established California authority of *Kaufman v. Court of Appeal,* 31 Cal.3d 933 (1982), which

holds that there is no motion available to seek recusal of Court of Appeal or California Supreme Court Justices. The District Court contended that the order had been denied based on disentitlement, but that is judicially noticeable as false; a copy of the Court of Appeal's order is attached as Appendix II.

Kaufman is recognized by the Ninth Circuit. *Hirsh v. Justices of Supreme Court of California,* 67 F.3d 708, 714 (9th Cir.1995) (acknowledging the "absence of a mandatory statutory recusal mechanism applicable to justices of the California Supreme Court" but finding no standing by appellant to raise it).

While a party *cannot* move for recusal of a state appellate justice—the motion will be stricken—a party *can* file a petition for review of non-recusal of a Court of Appeal justice, alleging that one or more justices should have recused. However, the standard for review is to demonstrate actual, prejudicial bias, which is not the federal standard. *Compare Kaufman, supra* at 940 ("in this court the sole question would be: "Because of his bias, did the appellate proceeding wherein a justice participated become illegally and prejudicially unfair?") *with Williams v. Pennsylvania,* 136 S. Ct. 1899, 1905-1909 (2016) (in applying federal standard, "Court asks not whether a judge harbors an actual, subjective bias, but instead whether, as an objective matter, "the average judge in his position is `likely' to be neutral, or whether there is an unconstitutional `potential for bias'" and "a due process violation arising from the participation of an interested judge is a defect "not amenable" to harmless-error review"). *See also Caperton v. A. T. Massey Coal Co.,* 556 U.S. 868 (2009) There is no need to show under the federal standard that

the unconstitutional bias, whether actual or under the *Caperton* standard, is "prejudicially unfair" as California law requires, because federal law dictates that actual subjective bias or *Caperton* risk of bias is, in either case, a structural error. *Neder v. United States,* 527 U.S. 1, 8-9 (1999).

It is therefore impossible to move to disqualify a California Court of Appeal judge or justice under the federal standard—there is no procedure to do it, and the standard applied for disqualification is not the federal standard and requires proof of prejudice that federal law does not. Nor is there any mechanism to obtain disclosures of potential conflict of interests, or to conduct discovery against California judges to determine whether a conflict of interest exists.

The question of whether California appellate proceedings are facially (or an overbreadth basis) unconstitutional because there is no mechanism to disqualify appellate justices for violation of the federal constitutional guarantee of impartiality is clearly debatable.

12. If California appellate proceedings are not unconstitutional on a facial or overbreadth basis because a litigant has no ability to seek the recusal of a justice of the Court of Appeal or California Supreme Court justice on grounds set out in Caperton, are they unconstitutional in this case on an as applied basis because there is no procedural mechanism to seek recusal?

If this Court finds that this is not an issue amenable to resolution on a facial or overbreadth basis, then in the alternative it will be debatable whether it violates the constitutional rights under the Fourteenth Amendment on an as applied basis, and so should be included along with the tenth issue in the COA.

13. If California appellate proceedings are not unconstitutional on a facial or overbreadth basis because a litigant has no ability to seek the recusal of a justice of the Court of Appeal or California Supreme Court justice on grounds set out in *Caperton*, are they unconstitutional in this case on an as applied basis because Judge Grimes was actually biased against Appellant?

Sanai presented facts showing that Judge Grimes was humiliated by Appellant in being reversed; that the Court of Appeal found that she had to be disqualified for actual or apparent bias; and that Appellant's disqualification of Judge Grimes caused her appointment to the Court of Appeal to be delayed by many years; even then, Appellant opposed her nomination. These are facts sufficient to show a case of actual bias, which is prohibited under the constitution and distinct from constitutionally intolerable risk of bias. *See Echavarria v. Filson,* 896 F.2d 1118 (9th Cir. 2018). This is a fairly debatable issue under the facts alleged.

14. If California appellate proceedings are not unconstitutional on a facial or overbreadth basis because a litigant has no ability to seek the recusal of a justice of the Court of Appeal or California Supreme Court justice on grounds set out in *Caperton*, are they unconstitutional in this case on an as applied basis because Judge Grimes was biased against Appellant under the *Caperton* standard?

Sanai presented facts showing that Judge Grimes was humiliated by Appellant in being reversed; that the Court of Appeal found that she had to be disqualified for actual or apparent bias; and that Appellant's disqualification of Judge Grimes caused her appointment to the Court of Appeal to be delayed by many years; even then, Sanai opposed her nomination. These are facts sufficient to show

a case of intolerable risk of bias on the constitutional standard set out in *Caperton, supra.* This issue is clearly debatable.

15. Is there a right for a criminal defendant to a speedy appeal in state court?

Judge Wilner held that all of Petitioner's claims were subject to a procedural bar, and thus not disposed of on the merits by the State Courts. However, as discussed above, that the issues are not subject to deferential AEDPA review if the procedural bar is invalid, which it is. *Brown v. Davenport,* S. Ct. Docket No. 20-826 (April 21, 2022), slip. op. at 13, 17 (where state court has not adjudicated claim on the merits, review is de novo and not deferential). Nonetheless, he reviewed them on the deferential basis, including the claim concerning speedy appeal. RR, Docket No. 94 at 21:3-22:26 In *Redd, supra,* the Ninth Circuit held for the first time that a state-created due process right can be subject to federal due process analysis on the issues of timeliness and speed. Id. at 896. This is now fairly debatable issue that is presented to this Court now and allows this Court to address the issue on its own merits and not based on whether it has been addressed by the United States Supreme Court.

16. Did the District Court err when it refused to vacate the underlying state court orders as void?

The MJ refused to address the issue of whether or not the underlying orders were void or to vacate them when asked twice by interlocutory order. The analysis in the RR was as follows:

> State jurisdictional .... defects (Grounds Six ....) – 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).

App. F at 34:3-22:26.

The District Court was wrong that federal courts, presiding over habeas claims or civil claims in general, cannot vacate as void state court judgments, as demonstrated by case from the this Court issued last year.

a. California Law Provides that Any Court May Vacate a Void Order of Any other State Court

California law provides that any court in California may vacate a void judgment or order entered in a different state:

> "The rule is well recognized that judgments void on their face may always be attacked either directly or collaterally. In *Estate of Pusey,* 180 Cal. 368, 374 [181 P. 648], it is said, quoting from *Forbes v. Hyde,* 31 Cal. 342, 348: " 'A judgment absolutely void may be attacked anywhere, directly or collaterally whenever it presents itself, either by parties or strangers. It is simply a nullity, and can be neither a basis nor evidence of any right whatever.' (*See, also, Pioneer Land Co. v. Maddux,* 109 Cal. 638 [50 Am.St.Rep. 67, 42 P. 295], and *Adams v. Adams,* 154 Mass. 290 [13 L.R.A. 275, 28 N.E. 260].) Moreover, the affirmance of a void judgment on appeal does not make it valid. (*Ball v. Tolman,* 135 Cal. 375 [87 Am.St.Rep. 110, 67 P. 339]; *Pioneer Land Co. v. Maddux,* 109 Cal. 633 [50 Am.St.Rep. 67, 42 P. 295].)""

Redlands etc. Sch. Dist v. Sup. Ct., 20 Cal. 2d 348, 363 (1942).

In *Estate of Pusey*, the issue was whether a divorce judgment entered in Oregon was void or not. *Estate of Pusey,* 180 Cal. 368, 374 (1919). The California Supreme Court held that the divorce judgment was void and of no effect; this rendered a subsequent marriage in California void as well, as an order, judgment or legal act which is premised on the validity of void judgment or order is itself void under California law. *Rochin v. Pat Johnson Manufacturing Co.,* 67 Cal.App.4th 1228, 1240 (1998).

b. Federal Law Generally Requires Federal Court to Vacate Void State Court Orders

Federal courts are required to apply the same rules of validity concerning California orders and judgments as the law of California dictates. 28 U.S.C. §1738. Accordingly, if the published case law of California dictates (or the Court finds that the California Supreme Court would find) that a judgment is void, the courts of any other state, and federal courts, must vacate the order. Federal courts have granted motions to vacate void state court judgments or orders as well when they have jurisdiction. *See Atchison, T. & S. F. Ry. Co. v. Wells,* 265 U.S. 101, 103 (1924). In *Atchison*, the plaintiff secured a default judgment over a railroad in Texas state court. *Id.* at 102. Once the railroad received notice of the action and judgment, it sued in federal court to enjoin enforcement of the state-court judgment. *Id.* The railroad argued that the state court lacked personal jurisdiction when it entered judgment. *Id.* at 102–03. The *Atchison* Court agreed and held that "[r]elief against the void judgments entered was properly sought by the [railroad] in the federal

court," and "[t]he [railroad] was not obliged to assert its rights in the courts of Texas." *Id.* at 103. As the Supreme Court stated in a later case,

> But the Clause does not make a sister-State judgment a judgment in another State. The proposal to do so was rejected by the Philadelphia Convention. 2 Farrand, The Records of the Federal Convention of 1787, 447-48. "To give it the force of a judgment in another state, it must be made a judgment there." *M'Elmoyle v. Cohen,* 13 Pet. 312, 325. **It can be made a judgment there only if the court purporting to render the original judgment had power to render such a judgment.** A judgment in one State is conclusive upon the merits in every other State, but only if the court of the first State had power to pass on the merits — had jurisdiction, that is, to render the judgment.

*Williams v. North Carolina*325 U.S. 226, 227-229 (1945) (bold emphasis added).

Here, the underlying sanctions order, the judgment of contempt, and the Court of Appeal orders dismissing the writ petitions and appeals, are all void and of no effect. And because the Sheriff maintains that these orders, judgment and opinions should be treated as valid, Petitioner has the right, and this Court has the power, to vacate them all as void.

c. The Core Common Law Habeas Power is to Vacate Convictions Which are Based on Void Orders, Proceedings, or Judgments.

In addition to the general requirement that Federal Court's vacate and give no power to void state court judgments, the core common law power of common law courts was to vacate void sentences and judgments. As Justice Goresuch explained last year:

> At the same time, even this writ had its limits. Usually, a prisoner could not use it to challenge a final judgment of conviction issued by a court of competent jurisdiction. *See, e.g.,* Opinion on the Writ of Habeas Corpus, Wilm. 77, 88, 97 Eng.

Rep. 29, 36 (K. B. 1758). If the point of the writ was to ensure due process attended an individual's confinement, a trial was generally considered proof he had received just that. See, e.g., Bushell's Case, Vaugh. 135, 142-143, 124 Eng. Rep. 1006, 1009-1010 (C. P. 1670).

This traditional understanding extended from England to this country and persisted through much of our history..... Acknowledging that Congress had authorized the Court to "inquire into the sufficiency of" the cause of the petitioner's detention, Marshall asked rhetorically, "is not that judgment in itself sufficient cause?" *Id.,* at 202 (emphasis added); see also Ex parte Parks, 93 U. S. 18, 21-22 (1876); P. Bator, Finality in Criminal Law and Federal Habeas Corpus for State Prisoners, 76 Harv. L. Rev. 441, 465-469 (1963) (Bator).

If the answer was nearly always yes, an important exception existed in both English and American law: A habeas court could grant relief if the court of conviction lacked jurisdiction over the defendant or his offense. *See Watkins*, 3 Pet., at 202-203; Bator 471-472.....Instead, a habeas court could "examin[e] only the power and authority of the court to act, not the correctness of its conclusions." *Harlan v. McGourin,* 218 U. S. 442 (1910).

Brown v. Davenport, S. Ct. Docket No. 20-826 (April 21, 2022), slip. op. at 8-9.

The scope of what was "void" increased over time, through Justice Gorsuch's majority and Justice Kagan's dissent do not agree on how far and how fast that increase happened. But by 1953 in *Brown v. Allen* the Supreme Court found that state court judgments had no res judicata or preclusive effects. *Brown v. Davenport, supra,* slip. op. at 10. Eventually Congress reigned the scope of habeas collateral attacks in their post *Brown v. Allen* form via the passage of AEDPA. However, AEDPA only restrains the Federal courts as to claims involving the "merits". *See Brown v. Davenport, supra,* slip. op. at 13. Subject matter jurisdiction and personal jurisdiction do not implicate the "merits". *Brown, supra,*

slip. op. at 13; *id.* at 18 ("if a state court has not adjudicated the petitioner's claim on the merits, AEDPA falls away"); *id.* at 6 (Kagan, J., diss.)("The jurisdictional inquiry was then (though of course not now) often "merits based."); *see also Semtek Int'l Inc. v. Lockheed Martin Corp.*, 531 US 497 (2005) (adjudication on the merits is the opposite of "dismissal without prejudice" such as a dismissal on jurisdictional grounds); *Union & Planters' Bank v. Memphis,* 189 US 71, 74 (1903)(holding that review of the jurisdiction of the lower court is "not on the merits": "we are constrained to reverse the decree of the Circuit Court of Appeals, not on the merits, but by reason of the want of jurisdiction in that court.")

Ninth Circuit case law is in accord with view that jurisdictional issues are not "on the merits":

> The Supreme Court has made no distinction between the two types of jurisdiction when considering the effect of a judgment. *See e.g., Costello,* 365 U.S. at 285, 81 S.Ct. 534 (noting the "fundamental jurisdictional defects which render a judgment void ... such as lack of jurisdiction over the person or subject matter"). And the underlying logic applies equally to both types of jurisdiction: if the court lacks power to act, then it may not pronounce a binding judgment on the merits — regardless of the reason for the court's lack of authority to act.

Ruiz v. Snohomish County Public Utility Dist. No. 1, 824 F.3d 1161 (9th Cir. 2016)

The Ninth Circuit's decision in *Ruiz* was supported by case law from other Circuits:

> *See Remus Joint Venture v. McAnally,* 116 F.3d 180, 184 n.5 (6th Cir. 1997) ("[T]he state court correctly recognized that when a district court's ruling rests on alternative grounds, at least one of which is based on the inability of the court to reach the merits, the judgment should not act as a bar in a future action."); *Bunker Ramo Corp. v. United Bus. Forms, Inc.*, 713 F.2d 1272, 1279 (7th Cir. 1983) ("Once a court expresses the view that it lacks jurisdiction, the court thereafter does not have the power to rule on any other matter. Any finding made by a court when the

> court has determined that it does not have subject matter jurisdiction carries no res judicata consequences." (citations omitted)); see also 18 Federal Practice § 4421, at 575-78 ("If a first decision is supported both by findings that deny the power of the court to decide the case on the merits and by findings that go to the merits, preclusion is inappropriate as to the findings on the merits. A court that admits its own lack of power to decide should not undertake to bind a court that does have power to decide." (footnote omitted)).

Ruiz, supra, at 1165-6 (footnotes omitted).

AEDPA never got rid of the original, jurisdiction-focused writ of habeas corpus, and the Courts are regularly called upon to apply pre-AEDPA standards when the state court has not made a ruling on the merits of the petitioner's claims. *Cone v. Bell,* 556 U.S. 449 (2009)(claims not ruled upon "on the merits" by state court evaluated under pre-AEDPA standards); *see* 28 U.S. §2241 (general power to grant writ of habeas as to federal and state detainments).

Accordingly, whenever a habeas petitioner asserts a right to habeas relief that is based on lack of jurisdiction of the state court, then AEDPA does not apply as to evaluation of that claim. *Brown v. Davenport, supra,* at 18. For this reason it cannot be procedurally defaulted under Federal law; under California law as articulated by the California Supreme Court, it is impossible to procedurally default a claim of absence of subject matter jurisdiction on appeal, as the jurisdiction of the reviewing court is strictly limited to vacating the void judgment or order and nothing else. *See Varian Medical Systems, Inc. v. Delfino,* 35 Cal.4th 180, 196 (2005), *quoting Rochin, supra.* "When, as here, there is an appeal from a void judgment, the reviewing court's jurisdiction is limited to reversing the trial court's void acts." *Id.,* quoting *Griset v. Fair Political Practices Com.,* 25 Cal.4th

688, 701 (2001); *see also Redlands etc. Sch. Dist., supra.* It is also clear that as part of a regular civil action or a habeas petition, a petitioner may request that the underlying void orders, decrees and judgments be vacated as void. *See Atchitson, supra* (Supreme Court holding, one year after *Rooker,* that a plaintiff may file an action to vacate an allegedly void state judgment); *Ex parte Royall,* 117 U.S. 241, 248 (1886) (federal court may vacate judgment and order release of state prisoner if state court lacks jurisdiction or the state law violated is unconstitutional as "[a]n unconstitutional law is void, and is as no law. An offence created by it is not a crime. A conviction under it is not merely erroneous, but is illegal and void, and cannot be a legal cause of imprisonment."); *Moore v. Dempsey,* 261 U.S. 86 (1923) (on a petition for writ of habeas corpus alleging that supposed state court trial was in fact a lynching conducted under mob rule, the federal court must hold an evidentiary hearing to determine whether the conviction was made by a court of competent jurisdiction or a mob-dominated tribunal).

The question of whether a federal court has authority to vacate judgment in habeas proceedings, or civil proceedings generally, is not only an issue which can be fairly debated, it was debated this year in the Supreme Court. This issue should be included in the COA.

17. Did the District Court err in refusing to address Petitioner's claim that state court made unreasonable factual determinations of Petitioner's guilt?

The MJ does not even discuss the factual claims of unreasonable determination of Sanai's guilt in Ground 7 of the Habeas Petition. App. F. He took the position

that the Court of Appeal never found Petitioner to be a "fugitive from justice" and further that he is not one. The second ruling is correct and not challenged.

However, Ground Seven also included a claim that the factual determination that Plaintiff had over committed any litigation misconduct was based on an unreasonable determination of the facts. Because the MJ admits that the state court never addressed this claim on the merits, this claim is one that is fairly debatable because the District Court not only seemed ignorant it had been raised, it never addressed it.

19. Did the District Court err when it ruled that Plaintiff's constitutional rights were violated when the District Court ruled that the State was not required to plead and prove that Petitioner could pay the sanctions?

20.

The MJ declined to address Plaintiff's second claim on the merits due to his erroneous conclusion that a procedural bar applied. He also wrote that :

> 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....
>
> 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."

App. F at 26:22-17:16.

The MJ applied the wrong standard in his alternative deferential review. Because he acknowledged that the Court of Appeal imposed a procedural default, and because the disentitlement doctrine in this case was not independent of the federal question or clear or consistently applied, the review of Plaintiff's second grounds should have been de novo. *Brown v. Davenport,* S. Ct. Docket No. 20-826 (April 21, 2022), slip. op. at 13, 17 (where state court has not adjudicated claim on the merits, review is de novo and not deferential). The issue of whether the MJ was mistaken in apply de novo review and the issue of whether pleading and proving ability to pay was required in Petitioner's case is a matter that is the subject of reasonable debate.

CONCLUSION

For the forgoing reasons, the request for a certificate of appealability should be granted.

Dated this January 22, 2024

Respectfully submitted,

Cyrus Sanai
Sanais
9440 Santa Monica Blvd.
#301
Beverly Hills, CA 90212
(310) 717-9840

PROOF OF SERVICE

I, Marcus Sanai do swear or declare that on this date, January 23, 2024 as required by Supreme Court Rules I have served one copy of the enclosed

APPLICATION FOR CERTIFICATE OF APPEALABILITY
DIRECTED TO CIRCUIT JUSTICE FOR THE NINTH CIRCUIT COURT OF APPEALS

on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid.

The names and address of those served are as follows:

Laura E. Inlow
Collinson, Daehnke, Inlow & Greco – Attorneys at Law
21515 Hawthorne Blvd.
Suite 800
Torrance, CA 90503

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

Executed on January 23, 2024 at Santa Monica, CA

M Sanai

APPENDIX

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APPENDIX A

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

OCT 25 2023

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

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

FILED

AUG 1 2023

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

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
9440 Santa Monica Boulevard Suite 301
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.

///

///

///

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

DATE: 8/5/2022

Gary Klausner
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

---

[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

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[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.

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[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

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[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.)

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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

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

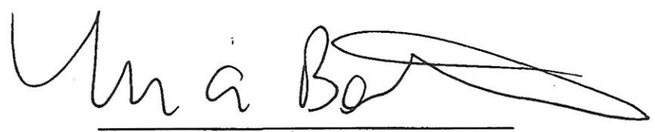
United Grand Corporation, Plaintiff, v. Malibu Hillbillies LLC, Defendant.	Case No. BC554172 Judgment on Conviction for Contempt

The Court, having arraigned Cyrus Sanai for judgment of conviction for contempt pursuant to the Order to Show Cause re: Contempt issued on December 18, 2017, and having heard arguments concerning the appropriate sentence now ORDERS and ADJUDGES as follows:

1. Pursuant to Civil Procedure Code §1219(a), Mr. Sanai shall be imprisoned in the Los Angeles County jail until he performs the acts specified in the Court's orders dated February 2 and February 22, 2017; and
2. Pursuant to Civil Procedure Code §1218(a), Mr. Sanai shall pay to D. Joshua Staub reasonable attorneys' fees and costs incurred in connection with the contempt proceedings.
3. Execution of this sentence is stayed until 4 pm on April 13, 2018, at which time Mr.

Sanai shall surrender at the Inmate Reception Center at the Los Angeles County Jail, until a further stay is granted.

DATED: March 26, 2018



Mark A. Borenstein
Judge of the Superior Court

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 03/26/18			DEPT. 35
HONORABLE Mark A. Borenstein	JUDGE	B. GREGG	DEPUTY CLERK
HONORABLE	JUDGE PRO TEM		ELECTRONIC RECORDING MONITOR
	Deputy Sheriff	NONE	Reporter

12:00 pm BC554172

UNITED GRAND CORPORATION

VS

MALIBU HILLBILLIES LLC ET AL

Plaintiff Counsel: NO APPEARANCE

Defendant Counsel:

NATURE OF PROCEEDINGS:

NOTICE OF ENTRY OF
JUDGMENT ON CONVICTION FOR CONTEMPT

Judgment on Conviction for Contempt is signed and filed this date and a copy is sent to the parties this date to accompany this minute order.

CLERK'S CERTIFICATE OF MAILING

I, the below-named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served the minute order and judgment upon each party or counsel named below by placing the document for collection and mailing so as to cause it to be deposited in the United States mail at the courthouse in Los Angeles California, one copy of the original filed/entered herein in a separate sealed envelope to each address as shown below with the postage thereon fully prepaid, in accordance with standard court practices.

Dated: 3-26-2018

Sherri R. Carter, Executive Officer/Clerk

MINUTES ENTERED
03/26/18
COUNTY CLERK

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 03/26/18			DEPT. 35
HONORABLE Mark A. Borenstein	JUDGE	B. GREGG	DEPUTY CLERK
HONORABLE	JUDGE PRO TEM		ELECTRONIC RECORDING MONITOR
	Deputy Sheriff	NONE	Reporter

12:00 pm BC554172

UNITED GRAND CORPORATION

VS

MALIBU HILLBILLIES LLC ET AL

Plaintiff Counsel: NO APPEARANCE

Defendant Counsel:

NATURE OF PROCEEDINGS:

By: B. GREGG

CYRUS M. SANAI
SANAIS
433 NORTH COMDEN DRIVE, #600
BEVERLY HILLS, CA 90210

D. JOSHUA STAUB
LAW OFFICE OF D. JOSHUA STAUB
13015 WEST WASHINGTON BOULEVARD
LOS ANGELES CA 90066

MINUTES ENTERED
03/26/18
COUNTY CLERK

APPENDIX L

44

CIV-130

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):	FOR COURT USE ONLY
D. Joshua Staub, Bar No. 170568 Law Office of D. Joshua Staub 13015 Washington Boulevard Los Angeles CA 90066 TELEPHONE NO.: 310-929-5269 FAX NO. (Optional): E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): Defendant Marcie Stollof	FILED Superior Court of California County of Los Angeles MAR 02 2017 Sherri R. Carter, Executive Officer/Clerk By Raul Sanchez Deputy
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Los Angeles STREET ADDRESS: 111 North Hill Street MAILING ADDRESS: 111 North Hill Street CITY AND ZIP CODE: Los Angeles CA 90012 BRANCH NAME: Central	
PLAINTIFF/PETITIONER: United Grand Corp. DEFENDANT/RESPONDENT: Malibu Hillbillies, LLC et al	
NOTICE OF ENTRY OF JUDGMENT OR ORDER (Check one): ☑ UNLIMITED CASE (Amount demanded exceeded $25,000) ☐ LIMITED CASE (Amount demanded was $25,000 or less)	CASE NUMBER: BC554172

TO ALL PARTIES :

1. A judgment, decree, or order was entered in this action on *(date)*: February 22, 2017

2. A copy of the judgment, decree, or order is attached to this notice.

Date: February 24, 2017

D. Joshua Staub

(TYPE OR PRINT NAME OF ☑ ATTORNEY ☐ PARTY WITHOUT ATTORNEY)

(SIGNATURE)

03/05/2017

Form Approved for Optional Use
Judicial Council of California
CIV-130 [New January 1, 2010]

NOTICE OF ENTRY OF JUDGMENT OR ORDER

www.courtinfo.ca.gov

D. Joshua Staub, Bar No. 170568
Law Office of D. Joshua Staub
13015 Washington Boulevard
Los Angeles, CA 90066
Telephone: (310) 929-5269

Attorney for Defendant Marcie Stollof

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELE S, CENTRAL DISTRICT

UNITED GRAND CORPORATION,

Plaintiff,

vs.

MALIBU HILLBILLIES, LLC et al.,

Defendants.

Action filed 8/8/2014

Assigned to Hon. Sotelo

Case No. BC554172

[PROPOSED] ORDER IMPOSING SANCTIONS ON CYRUS MARK SANAI AFTER ORDER TO SHOW CAUSE HEARING

BY FAX

Date: February 2, 2017
Time: 9:15 a.m.
Dept: 44 (Hon. Borenstein)

On 2/2/17, the hearing on the Court's "Order to Show Cause Re Issue of Stay" made 1/13/17 was held in Department 44 ("OSC"), Judge Mark Borenstein presiding. Cyrus Mark Sanai appeared at the hearing. D. Joshua Staub appeared for Defendant Marcie Stollof.

The Court held oral argument on the OSC.

At the hearing on the OSC, the Court found that that the "Objection and Response to Order to Show Cause of January 5, 2017" executed 1/26/17 ("Opposition"), and incorporated herein by this reference, was not timely filed in Department 44 as required by the 1/13/17 minute order, and further that the Opposition was not timely served in accordance with the Court's 1/13/17 minute order.

After reviewing and considering the moving papers, and the Opposition - - notwithstanding its untimely filing and service, and the records on file in the action, the Court finds that the request for attorney's fees, and sanctions in the "Notice of Ex Parte [handwritten interlineation] Motion and Motion to Issue Order Staying Contempt Proceedings Against United Grand Corporation and Awarding Attorney Fees of $16,188 Against Marcie Stollof and Sanctions of $16,188 Against Marcie Stollof and $16,188 Against D. Joshua Staub; Notice of Ruling; Memorandum of Points and Authorities and Declaration of C. Sanai in Support Thereof" executed 1/5/17 ("Ex Parte Application"), and incorporated herein by this reference, was frivolous within the meaning of *Code of Civil Procedure* Section 128.5 because there was no legal basis supporting the requests for attorney's fees or sanctions in the Ex Parte Application, and further that the Ex Parte Application did not set forth any conduct on the part of either Defendant Stollof or D. Joshua Staub that could have supported any such request. The Court finds that no reasonable attorney would have sought over $48,000 of sanctions as Cyrus Mark Sanai did in the Ex Parte Application, and the Opposition offered no evidence or justification to support a contrary conclusion.

IT IS HEREBY ORDERED THAT pursuant to *Code of Civil Procedure* Section 128.7 Cyrus Mark Sanai pay monetary sanctions in the amount of $1,000 to the Los Angeles County Superior Court on or before March 1, 2017;

IT IS HEREBY FURTHER ORDERED THAT pursuant to *Code of Civil Procedure* Section 128.5 Cyrus Mark Sanai pay monetary sanctions in the amount of $3,600 to D. Joshua Staub on or before March 1, 2017;

IT IS HEREBY ORDERED THAT no party to this action can telephonically appear in Department 44 without leave of the Court (Hon. Borenstein);

IT IS HEREBY ORDERED THAT no party to this action can make an ex parte application in department 44 (Hon. Borenstein) unless that party has given notice at least 3 court days in advance; and

IT IS HEREBY FURTHER ORDERED THAT all moving, opposing, and reply papers for proceedings in department 44 (Hon. Borenstein) shall be personally served or served for next day delivery.

The request for reconsideration submitted on 2-8-17 is denied

IT IS SO ORDERED.

FEB 22 2017

Dated: February ___ 2017

JUDGE MARK BORENSTEIN

Judge of the Superior Court

Order prepared & submitted by:

D. Joshua Staub, Bar No. 170568
Law Office of D. Joshua Staub
13015 Washington Boulevard
Los Angeles CA 90066
(310) 929-5269

CIV-130

PLAINTIFF/PETITIONER: United Grand DEFENDANT/RESPONDENT: Malibu Hillbillies, LLC	CASE NUMBER: BC554172

PROOF OF SERVICE BY FIRST-CLASS MAIL
NOTICE OF ENTRY OF JUDGMENT OR ORDER

(NOTE: You cannot serve the* Notice of Entry of Judgment or Order *if you are a party in the action. The person who served the notice must complete this proof of service.)

1. I am at least 18 years old and **not a party to this action.** I am a resident of or employed in the county where the mailing took place, and my residence or business address is *(specify):*

   13015 Washington Blvd. Los Angeles CA 90066

2. I served a copy of the *Notice of Entry of Judgment or Order* by enclosing it in a sealed envelope with postage fully prepaid and *(check one):*
   a. ☑ deposited the sealed envelope with the United States Postal Service.
   b. ☐ placed the sealed envelope for collection and processing for mailing, following this business's usual practices, with which I am readily familiar. On the same day correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service.

3. The *Notice of Entry of Judgment or Order* was mailed:
   a. on *(date):* February 24, 2017
   b. from *(city and state):* Los Angeles, California with Priority Mail 1 Day Postage Prepaid

4. The envelope was addressed and mailed as follows:

   a. Name of person served: Cyrus Sanai, SANAIS
      Street address: 433 N. Camden Drive Suite 600
      City: Beverly Hills
      State and zip code: CA 90210

   c. Name of person served:
      Street address:
      City:
      State and zip code:

   b. Name of person served:
      Street address:
      City:
      State and zip code:

   d. Name of person served:
      Street address:
      City:
      State and zip code:

   ☐ Names and addresses of additional persons served are attached. *(You may use form POS-030(P).)*

5. Number of pages attached 3.

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

Date: February 24, 2017

D. Joshua Staub
(TYPE OR PRINT NAME OF DECLARANT)

(SIGNATURE OF DECLARANT)

APPENDIX M

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 02/02/17

DEPT. 44

HONORABLE MARK A. BORENSTEIN JUDGE | B. GREGG L. GARCIA DEPUTY CLERK

HONORABLE 12. JUDGE PRO TEM | ELECTRONIC RECORDING MONITOR

H. AVALOS, C.A. Deputy Sheriff | NONE Reporter

9:15 am | BC554172

Plaintiff Counsel: CYRUS M. SANAI *

UNITED GRAND CORPORATION

VS

Defendant Counsel: D. JOSHUA STAUB *

MALIBU HILLBILLIES LLC ET AL

NATURE OF PROCEEDINGS:

ORDER TO SHOW CAUSE
(SET BY COURT ON 1-13-17)

Matter is called for hearing and is heard.

The Court makes its disclosure to Defendant's counsel that the Plaintiff's attorney Mr. Sanai approached and spoke to the Court in the court hallway two days ago.

The Court makes its global order on this case as follows:

1. Any ex parte application by either party is to give the opposing party three court days notice.

2. For any future hearing in this court, neither side is to appear by CourtCall. Parties are to personally appear for the hearings.

3. Any document ordered filed is to be personally served on the opposing party, or served in a manner to be delivered by the next business day. Any document served by a service agency must reflect the type of service rendered on its proof of service.

Matter is heard on today's order to show cause hearing.

Exhibit F

02/03/2017

MINUTES ENTERED
02/02/17
COUNTY CLERK

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 02/02/17			DEPT. 44
HONORABLE MARK A. BORENSTEIN	JUDGE	B. GREGG L. GARCIA	DEPUTY CLERK
HONORABLE 12.	JUDGE PRO TEM		ELECTRONIC RECORDING MONITOR
H. AVALOS, C.A.	Deputy Sheriff	NONE	Reporter

9:15 am BC554172

Plaintiff Counsel: CYRUS M. SANAI *

UNITED GRAND CORPORATION

Defendant Counsel: D. JOSHUA STAUB *

VS

MALIBU HILLBILLIES LLC ET AL

NATURE OF PROCEEDINGS:

The request of Mr. Sanai for sanctions in the amount of $16,000 against Mr. Straub and his clients is in connection with the January 5, 2017 ex parte application is frivilous. Under CCP 128.5(b)(1), the request for fees was "totally and completely without merit." The Court also finds the sole purpose of the request was to harass the opposing party and counsel.

Pursuant to CCP 128.5(c), the Court orders Plaintiff's attorney Cyrus M. Sanai Esq. to pay attorney fees in the amount of $3,600.00 to Defendant's attorney D. Joshua Staub Esq. by March 1, 2017. The Court finds since there was no need to file the ex parte application since the identical motion was already on calendar for January 13, 2017, Defendant could have ignored the ex parte application entirely. However, because of the frivilous attorney's fee request, counsel was required to prepare for and attend the ex parte hearing, causing Defendant to incur these expenses.

Pursuant to CCP 128.7(d), the Court imposes a penalty in the amount of $1,000.00 against Plaintiff's attorney Cyrus M. Sanai Esq. (CA State Bar #150387) and payable to the court by March 1, 2017. The Court finds this amount should be sufficient to deter a repetition of the frivilous conduct.

Defendant to prepare an order that complies with

02/08/2017

MINUTES ENTERED
02/02/17
COUNTY CLERK

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 02/02/17

DEPT. 44

HONORABLE MARK A. BORENSTEIN JUDGE | B. GREGG DEPUTY CLERK

HONORABLE 12. JUDGE PRO TEM | L. GARCIA ELECTRONIC RECORDING MONITOR

H. AVALOS, C.A. Deputy Sheriff | NONE Reporter

9:15 am BC554172

UNITED GRAND CORPORATION

VS

MALIBU HILLBILLIES LLC ET AL

Plaintiff Counsel: CYRUS M. SANAI *

Defendant Counsel: D. JOSHUA STAUB *

NATURE OF PROCEEDINGS:

CRC 3.1312 and to give notice.

02/08/2017

MINUTES ENTERED
02/02/17
COUNTY CLERK

RECEIVED
FEB 15 2017
FILING WINDOW

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):	CIV-130
D. Joshua Staub, Bar No. 170568 Law Office of D. Joshua Staub 13015 Washington Boulevard Los Angeles CA 90066 TELEPHONE NO.: 310-929-5269 FAX NO. (Optional): E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): Defendant Marcie Stollof	FOR COURT USE ONLY CONFORMED COPY ORIGINAL FILED Superior Court of California County of Los Angeles FEB 15 2017 Sherri R. Carter, Executive Officer/Clerk By Raul Sanchez, Deputy
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Los Angeles STREET ADDRESS: 111 North Hill Street MAILING ADDRESS: 111 North Hill Street CITY AND ZIP CODE: Los Angeles CA 90012 BRANCH NAME: Central	
PLAINTIFF/PETITIONER: United Grand Corp. DEFENDANT/RESPONDENT: Malibu Hillbillies, LLC et al	
NOTICE OF ENTRY OF JUDGMENT OR ORDER (Check one): ☑ UNLIMITED CASE (Amount demanded exceeded $25,000) ☐ LIMITED CASE (Amount demanded was $25,000 or less)	CASE NUMBER: BC554172

TO ALL PARTIES :

1. A judgment, decree, or order was entered in this action on *(date)*: February 2, 2017

2. A copy of the judgment, decree, or order is attached to this notice.

Date: February 9, 2017

D. Joshua Staub
(TYPE OR PRINT NAME OF ☑ ATTORNEY ☐ PARTY WITHOUT ATTORNEY)

(SIGNATURE)

Exhibit F

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 02/02/17			DEPT. 44
HONORABLE MARK A. BORENSTEIN	JUDGE	B. GREGG L. GARCIA	DEPUTY CLERK
HONORABLE 12.	JUDGE PRO TEM		ELECTRONIC RECORDING MONITOR
H. AVALOS, C A.	Deputy Sheriff	NONE	Reporter

9:15 am	BC554172 UNITED GRAND CORPORATION VS MALIBU HILLBILLIES LLC ET AL	Plaintiff Counsel	CYRUS M. SANAI *
		Defendant Counsel	D. JOSHUA STAUB *

NATURE OF PROCEEDINGS:

ORDER TO SHOW CAUSE
(SET BY COURT ON 1-13-17)

Matter is called for hearing and is heard.

The Court makes its disclosure to Defendant's counsel that the Plaintiff's attorney Mr. Sanai approached and spoke to the Court in the court hallway two days ago.

The Court makes its global order on this case as follows:

1. Any ex parte application by either party is to give the opposing party three court days notice.

2. For any future hearing in this court, neither side is to appear by CourtCall. Parties are to personally appear for the hearings.

3. Any document ordered filed is to be personally served on the opposing party, or served in a manner to be delivered by the next business day. Any document served by a service agency must reflect the type of service rendered on its proof of service.

Matter is heard on today's order to show cause hearing.

02/02/2017

MINUTES ENTERED
02/02/17
COUNTY CLERK

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE. 02/02/17			DEPT. 44
HONORABLE MARK A. BORENSTEIN	JUDGE	B. GREGG L. GARCIA	DEPUTY CLERK
HONORABLE	JUDGE PRO TEM		ELECTRONIC RECORDING MONITOR
12. H. AVALOS, C.A.	Deputy Sheriff	NONE	Reporter

9:15 am	BC554172	Plaintiff Counsel	CYRUS M. SANAI *
	UNITED GRAND CORPORATION VS MALIBU HILLBILLIES LLC ET AL	Defendant Counsel	D. JOSHUA STAUB *

NATURE OF PROCEEDINGS:

The request of Mr. Sanai for sanctions in the amount of $16,000 against Mr. Straub and his clients is in connection with the January 5, 2017 ex parte application is frivilous. Under CCP 128.5(b)(1), the request for fees was "totally and completely without merit." The Court also finds the sole purpose of the request was to harass the opposing party and counsel.

Pursuant to CCP 128.5(c), the Court orders Plaintiff's attorney Cyrus M. Sanai Esq. to pay attorney fees in the amount of $3,600.00 to Defendant's attorney D. Joshua Staub Esq. by March 1, 2017. The Court finds since there was no need to file the ex parte application since the identical motion was already on calendar for January 13, 2017, Defendant could have ignored the ex parte application entirely. However, because of the frivilous attorney's fee request, counsel was required to prepare for and attend the ex parte hearing, causing Defendant to incur these expenses.

Pursuant to CCP 128.7(d), the Court imposes a penalty in the amount of $1,000.00 against Plaintiff's attorney Cyrus M. Sanai Esq. (CA State Bar #150387) and payable to the court by March 1, 2017. The Court finds this amount should be sufficient to deter a repetition of the frivilous conduct.

Defendant to prepare an order that complies with

02/08/2017

MINUTES ENTERED
02/02/17
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NATURE OF PROCEEDINGS:

CRC 3.1312 and to give notice.

02/08/2017

MINUTES ENTERED
02/02/17
COUNTY CLERK

CIV-130

PLAINTIFF/PETITIONER: United Grand	CASE NUMBER: BC554172
DEFENDANT/RESPONDENT: Malibu Hillbillies, LLC	

PROOF OF SERVICE BY FIRST-CLASS MAIL
NOTICE OF ENTRY OF JUDGMENT OR ORDER

(NOTE: You cannot serve the **Notice of Entry of Judgment or Order** *If you are a party in the action. The person who served the notice must complete this proof of service.)*

1. I am at least 18 years old and **not a party to this action.** I am a resident of or employed in the county where the mailing took place, and my residence or business address is *(specify):*

   13015 Washington Blvd. Los Angeles CA 90066

2. I served a copy of the *Notice of Entry of Judgment or Order* by enclosing it in a sealed envelope with postage fully prepaid and *(check one):*
   a. [✓] deposited the sealed envelope with the United States Postal Service.
   b. [ ] placed the sealed envelope for collection and processing for mailing, following this business's usual practices, with which I am readily familiar. On the same day correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service.

3. The *Notice of Entry of Judgment or Order* was mailed:
   a. on *(date):* February 9, 2017
   b. from *(city and state):* Los Angeles, California

4. The envelope was addressed and mailed as follows:

   a. Name of person served: Cyrus Sanai, SANAIS
      Street address: 433 N. Camden Drive Suite 600
      City: Beverly Hills
      State and zip code: CA 90210

   c. Name of person served:
      Street address:
      City:
      State and zip code:

   b. Name of person served:
      Street address:
      City
      State and zip code:

   d. Name of person served:
      Street address:
      City:
      State and zip code:

   [ ] Names and addresses of additional persons served are attached. *(You may use form POS-030(P).)*

5. Number of pages attached 3.

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

Date: February 9, 2017

D. Joshua Staub
(TYPE OR PRINT NAME OF DECLARANT)

(SIGNATURE OF DECLARANT)