

No.

24-5682

In the Supreme Court of the United States

LAN NGUYEN,

v.

KATHRYN LUEBCKE ET AL.,

Petitioner,

Supreme Court, U.S.

AUG 09 2024

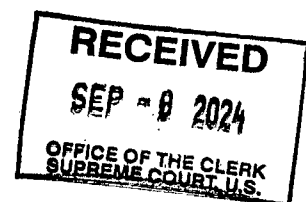
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Respondents.

On Petition for a Writ of Certiorari to the First District
Appellate Court of the State of California

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Petitioner, Lan Nguyen, has the following federal questions of law:

- 1) Whether the real property purchaser's basic consumer protection and compensation for her house damage and personal injury were deprived through seeking litigation process?
- 2) Whether the low court perform her duty of care as a fact finder and a litigating broker?
- 3) Whether the California First District Appellate Court to avoid a miscarriage of justice of the low court besides the assumption of correctness, harmless errors, and merit finding?
- 4) Whether the pro-se litigant was treated fairly, equally, and respectfully under the Court of Law?
- 5) Whether the female senior belongs to a social, social, or economically disadvantaged minority group without attorney representation can see the shed light of justice shining on her case.

TABLE OF CONTENTS

I.	Question Presented	2
II.	Table of Contents.....	3
III.	Table of Authorities.....	3, 4, 5
IV.	Statement of Parties.....	6, 7, 8
V.	Jurisdiction.....	8
VI.	Opinions Below.....	8,9
VII.	Statement of the Case.....	9
	A. Statutory background.....	9, 10
	B. Factual background.....	10, 11, 12
	C. Procedural background	12, 13, 14, 15, 16
VIII.	Reasons for Granting the Petition.....	17
	A. Jurisdictional and Structural Defects.....	17
	B. Meritless Fact Finding	17, 18, 19, 20
	C. Judicial Bias	20, 21, 22, 23, 24, 25, 26, 27, 28
	D. Aid & Abet Defendants' counsel avoiding liability.....	29, ...35
IX.	Conclusion	35
X.	Appendices.....	36
	Appendix A — Proofs of jurisdictional and structural defects	
	Appendix B — Low Court Manifesting Disregard of Law	

TABLE OF AUTHORITIES

Case	Page
<i>Arganbright v. Good</i> (1941)	25
<i>Barquis v. Merchants Collection Assn</i> (1972)	25
<i>Berger v. Godden</i> (1985).....	29
<i>Buckaloo v. Johnson</i> (1975)	30
<i>Calhoun v. Vallejo City Unified School Dist.</i> (1993).....	8, 17
<i>Chapman v. California</i> (1967).....	21
<i>Daniel V. v. Superior Court</i> (2006).....	8
<i>De Leonis v. Etchepare</i> (1898).....	31
<i>Fernelius v. Pierce</i> (Cal. 1943).....	34
<i>Fontaine v. Superior Court</i> (2009)	33
<i>Gamet v. Blanchard</i> (2001)	29
<i>Garat v. City of Riverside</i> (1991).....	13
<i>Garg v. Garg</i> (2022).....	13, 16
<i>Gift v. Ahrnke</i> (1951).....	34

<i>Gipson v. Davis Realty Co.</i> (1963).....	34
<i>Greenway v. Schriro</i> (2011)	20
<i>Gressley v. Williams</i> (1961).....	29
<i>Hall v. Harker</i> (1999).....	20
<i>Hayman v. Shoemake</i> (1962).....	34
<i>Horsford v. Board of Trustees of CA State University</i> (2005)..	28
<i>Hurles v. Ryan</i> (2014).....	20
<i>John v. Superior Court</i> (2016).....	10, 19
<i>Karnazes v. The Lauriedale Homeowners Assn.</i> (2023).....	9
<i>Kelly v. Steinberg</i> (1957).....	32
<i>Kirchmeyer v. Helios Psychiatry Inc.</i> (2023)].....	9
<i>Kruse v. Miller</i> (1956).....	31
<i>Loken v. Century 21-Award Properties</i> (1995).....	30
<i>Massei v. Lettunich</i> (1967).....	34
<i>Mayberry v. Pennsylvania</i> (1971).....	10
<i>Milliken v. Gray</i> (1969)	25
<i>Mirkin v. Wasserman</i> (1991)	33
<i>Mission Imports, Inc. v Superior Court</i> (1982).....	26
<i>Morehart v. County of Santa Barbara</i> (1994).....	13
<i>Nguyen v Superior Court</i> (1996)	26
<i>Paesano v Superior Court</i> (1988)	25
<i>People v. Abel</i> (2012).....	21
<i>People v. Avila</i> (2009).....	24
<i>People v. Jordan</i> (1986).....	27
<i>People v. Jackson</i> (2005).....	27
<i>People v. Guerra</i> (2006).....	20
<i>People v. Mendoza</i> (2000).....	24
<i>People v. Peoples</i> (2016).....	24
<i>People v. Whalen</i> (2013).....	22
<i>San Francisco Found. v Superior Court</i> (1984)	26
<i>Sanchez v. Superior Court</i> (1988).....	6, 28
<i>Saxer v. Philip Morris, Inc.</i> (1975).....	29
<i>Shamblin v. Brattain</i> (1988).....	27
<i>Steen v Board of Civil Serv. Comm'rs</i> (1945).....	9
<i>Steen v Board of Civil Serv. Comm'rs</i> (1945)	17
<i>Walker v. Department of Public Works</i> (1930)	31
<i>Wishnick v. Frye</i> (1952)	31
<i>Wolfe v. George, C.A.9</i> (Cal.2007).....	10, 19
<i>Zikratch v. Stillwell</i> (1961).....	31

Code

Page

<u>28 U.S.C. § 1257 (a)</u>	8
<u>CRC 2.259(a)(1) & (2)</u>	13
<u>CRC 2.259(c)(b)</u>	13
<u>CRC 8.155</u>	13
<u>CRC 8.25(b)(1)</u>	16
<u>CRC 8.77(d)</u>	13
<u>Cal. Rules of Ct., Rule 8.108(g)</u>	6
<u>Cal. Rules of Ct., Rule 8.147(a)</u>	6
<u>Cal. Rules of Ct., Rules 10.1000(b)</u>	6
<u>CA Civil Code § 44</u>	21
<u>CCP § 128.7</u>	32
<u>CA Civil Code 1940-1954.06</u>	21
<u>California Code, Civil Code - CIV § 1950.5</u>	20
<u>Cal. Civ. Proc. Code § 1161 (4) (2023)</u>	20
<u>Code Civ. Proc. § §170.1, 170.6</u>	19
<u>Code Civ. Proc. § 170.1(a)(6)(C)</u>	19, 26
<u>Code Civ. Proc. § 170.3(d)</u>	26
<u>Code Civ. Proc. § 335(1)</u>	21
<u>Code Civ. Proc. § 338</u>	21
<u>Code Civ. Proc. § 340 (a)</u>	17
<u>Code Civ. Proc. § 368</u>	21
<u>Code Civ. Proc. § 393</u>	24
<u>Code Civ. Proc. § 395(a)</u>	24
<u>CCP § 397(b)</u>	25, 26
<u>CCP § 402(a)(3)</u>	25
<u>Code Civ. Proc. § 452</u>	29
<u>Code Civ. Proc. § 475</u>	29
<u>Code Civ. Proc. § 575.1</u>	25
<u>CC §§ 1102 et seq.</u>	30
<u>CCP § 1005</u>	30
<u>Cal. Civ. Proc. Code § 1161(4)</u>	20
<u>Cal. Civ. Proc. Code § 1940-1954</u>	21
<u>Cal. Civ. Proc. Code § 1950.5</u>	20
<u>CCP §§ 1709</u>	32
<u>Cal Civ Code § 1710</u>	31
<u>CCP § 2079</u>	30
<u>CCP§ 2295</u>	31
<u>CCP § 2338</u>	33
<u>Cal. Code Jud. Ethics, canon 2A</u>	23
<u>Cal. Code Jud. Ethics, canon 3B(3)</u>	23
<u>Cal. Bus. & Prof. Code § 17200</u>	33
<u>Cal. Bus. & Prof. Code § 17500 et seq</u>	33

STATEMENT OF PARTIES

Petitioner, Lan Nguyen, a buyer plaintiff in the case involved in the property purchase contract signed on 10/20/2021 (see Appendix A pages 22 to 39, copies of the whole 18-page purchase agreement). She was lured to signing the buying contract for the defective house and inflated price in conjunction with the nontransferable lease of Solar City's solar roof when Tesla bought Solar City in 2018.

On 08/25/2022, Petitioner filed the complaint against the seller, realtor, escrow holder, appraiser, and Tesla agent for breaching the contract and covenant through their misrepresentation and fraud in the real property transactions and sought the liability of licensees for compensation of property damage and personal injury. However, the low court urgently dismissed the case on 04/06/2023 under the ex parte request of the joinder of the four defendant attorneys without properly serving the buyer plaintiff for failure to attend the hearing and amend her complaint in the demurring process. Procedural law conquered the substantive law after concealing the preponderant evidence to support the petitioner's claims for damage. Court denied the filing of six exhibits namely Exh A (280 pages), Exh B (167 pages), Exh C (175 pages), Exh D (98 pages), Exh E (82 pages), and Exh F (126 pages) (see page 40-41 App.A), Court clerk endorsed on 09/27/2022 for the total of 918 pages of 6 exhibits). In contrast to the fact that Nguyen filed her memorandum in opposition to the defendant counsels' demurrers to the complaint on 03/17/2023 with proofs attached of 290 pages extracted from 918-page exhibits (see page 20-21 App.A proof of filing), and this pleading was omitted from the Court filing

process. The structural defects resulted in the adverse affirmation of the First District decision on 05/26/2024 (see page 10 of App.A) wrong accusation but punishment under the assumption of correctness instead of completeness and harmless errors of the low court. Subsequently, the California Supreme Court denied the petition for review on 07/10/2024 (see page 1 of App. A).

- 1) **Valerie M Rowell**, the seller moved out of state for Illinois on 11/23/2021 before the escrow closed on 11/29/2021. Current address: 16469 Red Shale Hill Road, Perkin, IL 61554. The seller was in default status, with no response after being served on 10/26/2022 (pages 45 to 50 of App.A), 11/03/2022 (page 44 App.A), and 12/26/2022 (page 51-52 App.A proof of serving the Default Entry Judgment request) summon, complaint, case management process, and case default claim.
- 2) **Kathryn Luebcke**, Real Estate Broker. The Valley Group, Lic#00890435, 411 Davis Street Ste# 209, Vacaville, CA 95688
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Attorney: Coleen H. Lowe, (lic#163352). Carlson Law Group. 4455 Murphy Canyon Road, Suite 100, San Diego, California 92123
Tel: (858)488-6769 or (415)265-1601 Email: chl@carlsonlawgroup.com
- 3) **Andi Frattini**, an Escrow Holder, Placer Title Company, 5 Financial Plaza Ste#205, Napa, CA 94558.
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4) **David Danza**, an appraiser, State lic# AR019490, Loors Appraisal

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5) **Gilberto Klobekoski**, Representative of Tesla Energy Operation Inc,

CA Lic#888104, served on 12/06/2022 at the address 8225 Mercury Ct,

San Diego, CA 92111. Tel (888)765-2489 Email: lsisk@tesla.com

Attorney: Thomas Crowell (lic#172799). Sidran Law Corp,

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JURISDICTION

The judgment of the First District Court of Appeal was entered on May 6, 2024. A petition for review was denied by the California Supreme Court on July 10, 2024. The jurisdiction of this Court was invoked under 28 U.S.C. § 1257 (a)

OPINIONS BELOW

- 1) Supreme Court of the State of California: The petition for review is denied. Kruger, J., was absent and did not participate (see page 1 of App.A)
- 2) First District held Nguyen appears to take issue with various interim orders issued by the trial court, including an order denying her motion for a change in venue and orders denying her motions to disqualify the trial court judge assigned to her case. We decline to consider her challenge to these orders because they are not appealable. [*Calhoun v. Vallejo City Unified School Dist.*(1993)] disapproved on another point as stated in [*K.J. v. Los Angeles Unified School Dist. (2020)*]; [*Daniel V. v. Superior Court (2006)*]. Nguyen's other arguments have been considered; they merit no further discussion. [See *Kirchmeyer v. Helios Psychiatry Inc. (2023)*]. If Nguyen, while representing herself, persists in filing unmeritorious writ petitions or appeals, or if she engages in frivolous tactics during the pendency of a proceeding before this court, we may dismiss the matter (In re Marriage of Deal, supra, 80 Cal. App.5th at pp. 79–81) and/or take steps to declare her a vexatious litigant and impose a prefilings order (§ 391, subd. (b); *Karnazes v. The Lauriedale Homeowners Assn. (2023)*). (see pages 8 to 13 of App. A)
- 3) The low court dismissed the case with the ex parte request of the defendant's counsel on 04/06/2023 (see pages 15 to 19 of App. A)

STATEMENT OF CASE

A. Statutory background

Petitioner challenges under the Fourteenth Amendment's Equal Protection Clause require the Court to practice equal protection, in contrast to discriminating against the self-representative senior litigant under the social and economically disadvantaged minority group. No state shall make or enforce any law that will "deny to any person within its jurisdiction the equal protection of the law. "Equal protection forces a state to govern impartially—not draw distinctions between individuals solely on differences irrelevant to a legitimate governmental objective. In addition, the Sixth Amendment warrants the right to an impartial jury and impartial Judiciary. Bias or prejudice either inherent in the structure of the trial system or as imposed by external events will deny one's right to a fair trial.[*Mayberry v. Pennsylvania (1971)*]. Also under the First Amendment right to petition, and the statute, a vexatious litigant could file potentially meritorious claims not intended solely to harass or delay, so the courthouse doors were not closed. [*Wolfe v. George, C.A.9 (Cal.)2007*) and *John v. Superior Court (2016)*].

B. Factual background

The case involved a purchase transaction of a residential property at 1707 Rio Grande Way, American Canyon, California 94503. The background of this case involved the sale of a residential house that had a bonus smoking

room and a fixture amenity on Nov 29, 2021, where (1) a Solar City's solar roof lease contract which was limited to a one-time transfer between an original owner Susan Martinez to transfer to a seller, Valerie Rowell before Tesla bought out SolarCity in 2018, but Tesla made Rowell sign SolarCity lease with Nguyen in 2021 then deceptive conversion to Tesla and Nguyen lease contract of SolarCity's obsolete part of solar roof to bill Nguyen in 2022 and thereafter without provide the Solar City's parts and free labor with trained technician, and (2) a bonus smoking room was unpermitted added result in Nguyen's Citation of the City Building Permit for living in the unsafe and unhealthy condition of the garage conversion on 03/04/2022 when the seller and property sale involved licensees failed to disclose the unpermitted additional room behind the garage and the non-assumable lease contract with SolarCity in Oct 2021 then converted to a Tesla lease contract in Dec 2021 after the close of escrow on 11/29/2021. The plaintiff buyer has suffered extreme financial hardship after purchasing the house with an inflated appraisal, unexpected Tesla billing, spending more money to renovate the room, and emotional injury for being harassed by a feuding neighbor, Russell Moulder, in conjunction with a Tesla billing harassment without providing parts and service and suffering to repair the room under the threat of the City Citation and financial exhaustion. On the other hand, the out-of-state seller was in default status, and the four defendant agents

denied their license duly and product liability but used the ex-parte request without any existing urgent circumstance and serving Nguyen on 2 granted ex-parte hearing on 04/04/2023 and 04/06/2023. Finally, the Superior Court dismissed Nguyen's case with prejudice for failure to follow the Court's verbal instruction to amend the complaint but for filing numerous frivolous pleadings, and non-compliance with the Court procedural process in contrast to the fact that Nguyen's preponderance of 6 exhibits of evidence of property damage, her income lost, and emotional/physical injury was real and undeniable.

Petitioner appealed for the lower Court's dismissal of the case with prejudice and partial ruling. The Superior Court dismissed the case based on procedural noncompliance with disregard for the merit of the case and discriminating against the appellant's pro-se status. The lower court refused to change venue because all of the demurrer rulings were not being transferred to the new jurisdiction, for the Court urgently decided to dismiss the cases after refusing to disqualify herself with the Court's lawless striking procedure.

C. Procedural background

Nguyen alleged the Napa Superior Court teams failed to fact findings, obstructed justice by their manufacturing disregard of standard rule of law in Court filing, processing, record keeping, and transferring, and most of all

biased judges. The complexity of the issues, evolving in jurisdictional and structural defects extended to the systemic connection between the Superior Court and First District Court of Appeal Division Two always dismissed Nguyen's appeal cases for whatever reasons because her cases were randomly routed to Division Two Appellate Court to affirm Superior Court Ruling. Initially, the Superior Court tried to localize Nguyen's cases under small claim cases and limited civil cases to rule against her under their jurisdiction. Then, for the unlimited case Superior Court and Division Two Appellate Court had a pattern of delay in processing, misleading, misstatement, then adverse rejecting the filing or dismissing without reason. The petitioner was drained of her strength and emotion to follow their commands to repeatedly file the notice of appeal because of the structural defects of Court Clerks who violated either manual filing or electronic filing by disregarding CRC8.155 (Augmenting and correcting the record); CRC 2.259(b); CRC 2.259(c); CRC 8.77(d) [see *Garg v. Garg (2022)*]. However, both courts forced her to file individual notices of appeal for each case, and then they rejected or requested filing again and again. Nguyen exhausted filing a notice of appeal, civil case information statement, and appellant's designating of record on appeal that broadly enough to include any possible appealable judgments and orders (although this approach will probably not suffice to secure a review of appealable orders rendered after the notice of appeal is filed). [See *Garat v.*

City of Riverside (1991) (disapproved on other grounds by *Morehart v. County of Santa Barbara (1994)* —“general appeal” presents for appellate review all material, non-appealable orders entered in proceedings.

The Presiding Superior Court who is in charge of executive officers, and judicial officials of the entire court functioning as (1) a tremendous lapse in judgment; (2) an unnecessary delay case to drainage and exhaust a pro-se litigant of all resources; (3) underlying facts of the case merits; (4) factual finding under alternate facts or in substantial conflict of interest; (5) damage the merits of the cases and public confidence in justice system; (6) unpersuasive, baseless merit argument but relying on procedural defects; (7) depriving and discriminating Nguyen's rights to have a fair hearing, pro-se litigant status, equal protection, privacy invasion and her protected characteristics (non-native English speaker, and a senior female citizen) as well. In conjunction with the biased judges, the Court clerks also made a tremendous error in Court filing, processing, recording, and transfer of record in appeal Judgments shall not be reversed for errors in proceedings unless a court of appeal concludes that the error has resulted in a miscarriage of justice.

Nguyen declared that (1) her self-represented litigate was deprived of a fundamentally fair proceeding as a Complete denial of the right to counsel; (2) Omission of filed pleading, suppression of her exhibit filing, misleading

her about the form used, defaming Nguyen as a vexatious litigant and dropping her filed pleading to aid and abet the opponent defendant counsels. See *In re James F. (2008)*; (3) Structural error is reversible per se, and more than trial error such as biased judicial officers in legal processing and proceeding (filing, scheduling hearing date, record keeping and transferring, incompetent interpreter; (4) Complete absence of notice of proceedings of record of serving such as ex-parte ruling that warrant for case reversed. (5) The Napa County Transmitting Clerk, Estella Garcia, who was requested to transmit to the Clerk of the First District Court of Appeal, Division 2, the following original affidavits, exhibits, and pleading not being filed after 03/28/2023 and also rejected Nguyen's filing her case to the Appellate court for review and rehearing. Estella Garcia declared Nguyen's motion was not appealable; (6) Improper filing and processing - Upon receipt of an electronically filed notice of appeal, the court will send the filer confirmation of the document's receipt; and if the document complies with all filing requirements and all filing fees have been paid, the court will send the filer confirmation that the document has been filed, indicating the date and time of filing. [CRC 2.259(a)(1) & (2)], (7) Shifting the burden to the filer with No presumption of receipt and filing. Absent those confirmations from the court, there is no presumption of receipt and filing. The filer is responsible for verifying that the document was received and filed. [CRC 2.259(a)(4)];

(8) Rejection of noncompliant filings: The court must promptly notify the filer if a noncompliant filing is rejected. The court's notice must explain why the filing was rejected. [CRC 2.259(b)]; (9) Delayed filing caused by technical problems: The following rules apply where there is a technical problem or failure in the process of e-filing a notice of appeal: If a "technical problem with a court's electronic filing system" prevents the document's timely filing, the court must deem the document filed on the date of the attempted filing. [CRC 2.259(c); see *Garg v. Garg* (2022)]. A motion for an order permitting the notice of appeal to be filed nunc pro tunc under CRC 8.77(d) must be filed in the court of appeal (not the superior court) "as soon ... as practicable." [CRC 8.77(d); see *Garg v. Garg* (2022)]—filing of motion 29 days after a failed attempt at e-filing and 15 days after the filing deadline "was not as soon as practicable". A "good cause" showing under CRC 8.77(d) means a showing by "a preponderance of the evidence that an attempt to electronically file the document was made before the expiration of the deadline and that diligence was shown in promptly filing the notice of appeal after the failed attempt." [*Garg v. Garg* (2022)]. Paper filing deemed "filed" on the date received by clerk's office: A paper-filed notice of appeal is effectively "filed" when it is presented to and received by any deputy clerk of the office of the superior court clerk for purposes of filing [CRC 8.25(b)(1)]

However, her electronic and manual filings were improperly handled by clerks to threaten Nguyen with a written order for being a vexatious filler after multiple verbal labels Nguyen by the defendants in contrast to clerks' unprofessional behaviors of blocking Nguyen's calls, not returning voice messages, misleading, and misstatement over the phones.

REASON FOR GRANTING THE PETITION

A. JURISDICTIONAL AND STRUCTURAL DEFECTS that deprived Nguyen of rights. The adverse ruling of the Superior Court and the First District denial without prejudice is appealable when it is clear no further orders are expected. *Steen v Board of Civil Serv. Comm'rs (1945)* (minute order denying alternative writ without prejudice is appealable). Denying a motion for change of venue, though reviewable by immediate writ petition, is also reviewable on appeal from the final judgment in the action [*Calhoun v. Vallejo City Unified School Dist. (1993)*]. Jurisdictional and structural defects of the Napa County Superior Court deprived Nguyen, a senior female with non-native English speaking, rights to have a fair hearing, equal protection, personal privacy, and enjoyment of her house ownership.

B. MERITLESS FACT-FINDING

Nguyen experienced suffering Napa Superior Court judges under Judge Cynthia Smith, the Napa Superior presiding judge who is in charge of

executive officers, and judicial officials of the entire court functioning as (1) tremendous lapse in judgment; (2) unnecessary delay case to drainage and exhaust a pro-se litigant of all resources; (3) underlying facts of the case merits; (4) factual finding under alternate facts or in substantial conflict of interest; (5) damage the merits of the cases and public confidence in justice system; (6) unpersuasive, baseless merit argument but relying on procedural defects; (7) depriving and discriminating Nguyen's rights to have a fair hearing, pro-se litigant status, equal protection, privacy invasion and her protected characteristics (non-native English speaker, and a senior female citizen) as well. In conjunction with the biased judges, the Court clerks also made a tremendous error in Court filing, processing, recording, and transfer of record in appeal Judgments shall not be reversed for errors in proceedings unless a court of appeal concludes that the error has resulted in a miscarriage of justice.

Nguyen declared that (1) her self-represented litigate was deprived of a fundamentally fair proceeding as a Complete denial of the right to counsel; (2) Omission of filed pleading, suppression of her exhibit filing, misleading her about the form used, denying to augment record, and defaming and dropping her filed pleading to aid and abet the opponent defendant counsels. See *In re James F. (2008)*; (3) Structural error is reversible per se, and more than trial error such as biased judicial officers in legal processing and

proceeding (filing, scheduling hearing date, record keeping and transferring, incompetent interpreter; (4) Complete absence of notice of proceedings of record of serving such as ex-parte ruling, and confidentiality of an unlawful detainer trial case that warrant for case reversed; (5) The Napa County Appeal transmitting Clerk in connection with the Clerk of the First District, Division 2, the following original affidavits, exhibits, and pleading not being filed after 03/28/2023 and also rejected and declared Nguyen's motion was not appealable; (5) Nguyen has been warned about California's vexatious litigant statute, whereby such litigants could be required to furnish security or to obtain leave of court before filing any litigation, was not unconstitutionally overbroad, as there was no right to file frivolous litigation under First Amendment right to petition, and under the statute, a vexatious litigant could file potentially meritorious claims not intended solely to harass or delay, so the courthouse doors were not closed. [see *Wolfe v. George* (Cal.2007) and *John v. Superior Court* (2016)]; (6) Inflicting emotional harm and jeopardizing Nguyen's health, wellbeing, and financial exhaustion via denial to transfer jurisdiction, refusal to disqualify under CCP § 170.6, 170.1, but abused discretion to repeatedly order Nguyen to attend the Court hearing of the same case# 22CV000977 while it has been pending in First District docket# A167428 (see App. B total of 19 pages). To avoid being inflicted with emotional distress, being defamed by the defendant with the judge's aid and

abet, discriminated against by the judge for misstatement and misleading questions, misapplication of law in favor of the defendants, and false fact findings. Nguyen repeatedly filed requests to change of venue to disqualify the Court and appeal to the First District because her illness was triggered at the Court hearing where she got attacked by headaches, palpitation, emergency high blood pressure, unable to focus on the issue, low threshold of management of reaction, and inability to control her voice and tone of voice when being harassed and tortured by biased judges.

C. JUDICIAL BIAS: This issue falls under the umbrella of judicial misconduct of both the state and federal Constitutions. (U.S. Const., 14th Amend.; Cal. Const., art. I, §§ 7, 15; *People v. Guerra (2006)*). “A fair trial in a fair tribunal is a basic requirement of due process.” (In re Murchison (1955)). The basic tenet of our judicial system helps to ensure both the litigants’ and the public’s confidence that each case has been adjudicated by a neutral and detached arbiter.” (*Hurles v. Ryan (2014)*) Although fairness “requires an absence of actual bias in the trial of cases,” it is “endeavored to prevent even the probability of unfairness.” (Murchison, supra, 349 U.S. at p. 136; see also *Greenway v. Schriro (2011)*). The inquiry into judicial bias is an objective one that does not require proof of actual bias. “[D]ue to the sensitivity of the question and inherent difficulties of proof as well as the importance of public confidence in the judicial system,” it is not required that actual bias be proved.

(*Catchpole v. Brannon*, *supra*, 36 Cal.App.4th at p. 246.) “A judge’s impartiality is evaluated by an objective, rather than subjective, standard.” [*Hall v. Harker* (1999)]

1) Standard of Review: Independent: the appellate court’s role “is not to determine whether the trial judge’s conduct left something to be desired, or even whether some comments would have been better left unsaid. Rather, we must determinewhether the judge’s behavior was so prejudicial that it denied [the defendant] a fair, as opposed to a perfect, trial . . . We make that determination on a case-by-case basis, examining the context of the court’s comments and the circumstances under which they occurred . . . Thus, the propriety and prejudicial effect of a particular comment are judged by both its content and the circumstances surrounding it.” (*People v. Abel* (2012) 53 Cal.4th 891, 914.)

2) Nguyen argues that the lower court’s actions and comments reveal actual bias and constitute structural error that affected the appellant’s substantial rights. (See *Chapman v. California* (1967)) [evidence of a partial judge is a structural error where an error affects the substantial rights of the defendant, the integrity of the judiciary, and the structural integrity of the trial are implicated, such that it would be a miscarriage of justice to allow

the conviction to stand].)

- 3) The patterns of judicial abuse of discretion that more than the instant defendant's rights are at stake. Judicial disqualification statutes are "not solely concerned with the rights of the parties before the court but [are] also 'intended to ensure public confidence in the judiciary.'" [citing *Curle v. Superior Court* (2001)] To that end, the appellate courts should reach the merits of a claim of judicial bias to promote confidence in the judiciary for the public at large
- 4) Nguyen's case is an exception to the Justices' inherent authority: "[t]he fact that a party, by failing to raise an issue below, may forfeit the right to raise the issue on appeal does not mean that an appellate court is precluded from considering the issue." (Witkin & Epstein, *Reversible Error*, § 36, p. 497.) "Generally, whether or not an appellate court should excuse the lack of a trial court objection is entrusted to its discretion." (Abbaszadeh, *supra*, 106 Cal. App.4th at p. 649, internal citation omitted.) Moreover, the California Supreme Court has "reached the merits of similar claims notwithstanding the defendant's failure to object" where the issue on appeal challenges the fairness appellant's right to a fair trial. [*People v. Whalen* (2013)]

- 5) The evident hostility between the judges and Nguyen left her in the fundamentally unfair position of either objecting to the judicial misconduct and risking retaliation against her or sacrificing the review claim. (Sturm, *supra*, 37 Cal.4th at p. 1237.). The evident hostility between the judges and Nguyen left her in the fundamentally unfair position of either objecting to the judicial misconduct and risking retaliation against her or sacrificing the review claim. (Sturm, *supra*, 37 Cal.4th at p. 1237.)
- 6) To support her claim of judicial bias can also come from the California Code of Judicial Ethics. “A judge shall avoid impropriety and the appearance of impropriety in all of the judge’s activities.” (Cal. Code Jud. Ethics, canon 2.) “A judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. A judge shall not make statements, whether public or nonpublic, ... that are inconsistent with the impartial performance of the adjudicative duties of judicial office.” (Cal. Code Jud. Ethics, canon 2A.) In addition, “[a] judge shall require order and decorum in proceedings before the judge.” (Cal. Code Jud. Ethics, canon 3B(3).) “A judge shall be patient,

dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity” (Cal. Code Jud. Ethics, canon 3B(4).) “A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, engage in speech, gestures, or other conduct that would reasonably be perceived as (a) bias or prejudice, including but not limited to bias or prejudice based upon race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, or (b) sexual harassment.” (Cal. Code Jud. Ethics, canon 3B(5).) However, under federal law at least, a violation of a state statute or judicial canon does not necessarily prove a due process violation. [See *People v. Mendoza (2000)*]

- 7) Some adverse case law implies that judicial bias cannot be demonstrated by relying on the trial court’s erroneous evidentiary rulings or from the trial court judge’s improper reactions to the facts of the case. [See *People v. Peoples (2016)*; see also *People v. Avila (2009)*] But this does not preclude finding bias from the court’s comments that reflect it is relying on prejudicial factors that are not material to the facts of the case, such as taking

advantage of her pro-se status and mental illness of a female senior of a non-native English speaking community. Judge Smith denied Nguyen's motion to change venue to a neutral county multiple times with her claiming territorial jurisdiction. In contrast to distinction between jurisdiction and venue is established. Jurisdiction refers to the power of the court to decide a case on the merits, [*Milliken v. Gray (1969)*]. It includes the power to inquire into facts, to apply the law, to make decisions, and to declare judgment [*Arganbright v. Good (1941)*]. As the venue relates only to the place where the suit should be heard, it is not jurisdictional in the fundamental sense. It does not relate to whether a particular court has the power to try the action [*Barquis v. Merchants Collection Assn.(1972)*] see CCP§ 571.13 regarding jurisdictional venue.

CCP § 397(b): On the motion of any party, a judge may change the place of trial of an action or proceeding if there is reason to believe that an impartial trial cannot be had in the original court. This statutory provision is intended to guarantee Nguyen a trial before a fair and impartial tribunal and to provide a procedure for the enforcement and protection of that right.[*Paesano v Superior Court (1988)*](motion filed by a victim defendant Nguyen).

CCP § 402(a)(3): Nguyen has overwhelming actual prejudice if the venue is not changed and her injury repeatedly inflicts her emotional distress leading to her physical damage and unable to keep her voice low and focus to respond to the adverse judgment. She showed a widespread feeling of prejudice against that party extending over a long period, and she has suffered financial exhaustion, and medical and mental deterioration because of being deprived of a fair trial before a judge. [*Nguyen v Superior Court (1996)*]. The prospect of a jury trial is extremely important, if not crucial, in determining whether an impartial trial is unlikely in the court in which the matter is pending. [*San Francisco Found. v Superior Court (1984)*]. Nguyen filed this motion of venue change and awaits the outcome of the change of venue motion. [*Mission Imports, Inc. v Superior Court (1982)*]

CCP § 397 because the convenience of the witnesses is the same as the plaintiff in this action of her linguistic suppression (competent Vietnamese Interpreter)

- 8) Repeating refusal Nguyen disqualified under CCP 170.1 where judicial bias worth noting concerns whether or not the trial counsel sought to disqualify the trial court judge under Code of Civil Procedure section 170.1. Such an occurrence should be

included in a procedural history of the bias issue raised. It is important to note that the denial of a motion under the Code of Civil Procedure, section 170.1, is considered a non-appealable order and can only be reviewed by a writ of mandate to the Court of Appeal. (Code Civ. Proc., § 170.3, subd. (d).) This means that if the defendant motioned to recuse the trial court judge and that motion was denied, it cannot be argued on appeal that the denial was legally erroneous. However, the best available appellate argument is that the trial court judge's bias violated due process.

- 9) An abuse of discretion, not because it is irrational but because it is based on an erroneous legal conclusion or a finding that lacked substantial evidence making it difficult to identify, analyze, and argue abuse. Although varying in their precise wording, they generally consist of vague and indeterminate descriptions that boil down to the conclusion that the trial court has acted irrationally. [*Shamblin v. Brattain (1988)*]. "The appropriate test for abuse of discretion is whether the trial court exceeded the bounds of reason"; [*People v. Jordan (1986)*][trial court abuses discretion when it acts "in an arbitrary, capricious or patently absurd manner". [*People v. Jackson (2005)*] ["abuse of discretion standard is itself much abused"]. Nguyen's cases invoke the

statute of fraud, equal protection, fair hearing, and vexatious litigation. "The discretion of a trial judge is not a whimsical, uncontrolled power, but a legal discretion, which is subject to the limitations of legal principles governing the subject of its action, and to reversal on appeal where no reasonable basis for the action is shown." [*Westside Community for Independent Living, Inc. v. Obledo (1983)*]. Where a statute is the source of the trial court's discretion, the language and policy of the statute typically provide the "legal principles governing the subject of (the) action." [*Horsford v. Board of Trustees of California State University (2005)*] "Judicial discretion must be measured against the general rules of law and, in the case of a statutory grant of discretion, against the specific law that grants the discretion". In a sense, the substantial evidence requirement imposes a boundary on the factual findings involved in a discretionary ruling in the same way that applicable legal principles impose a boundary on the legal conclusions involved in such a ruling; both the substantial evidence standard and the abuse of discretion standard provide "considerable deference to the fact-finding tribunal" [*Department of Parks & Recreation v. State Personnel Bd. (1991)*]; where Nguyen conceived the Court's ruling was

irrational and biased.

D. AID & ABET DEFENDANTS' COUNSEL AVOIDING LIABILITY

Court's denial of the venue change, refusal to recusal request, and urgent dismissal of the case to help defendant joinders avoid liability and accountability where the petitioner's legal ground for seeking damage compensation is as follows:

- 1) Real Estate Broker Counsel condemned and discriminated against Nguyen, a laywoman, and a self-represent buyer plaintiff as well. The in propria persona litigant is held to the same restrictive rules of procedure as an attorney [*A.G. v. C.S. (2016)*]. However, in [*Gamet v. Blanchard (2001)*] to assert trial courts have "the responsibility to ensure that when one party is represented by counsel and the other is not, the playing field is level.". Based on principles of fairness, it is inappropriate for a court to make suggestions to solve a procedural difficulty likely to result in a decision that is not on the merits, such as a defect in the pleadings. In the construction of a pleading, to determine its effect, its allegations must be liberally construed, with a view to substantial justice between the parties Code Civ. Proc. § 452; [*Saxer v. Philip Morris, Inc. (1975)*]. A court is required, in every stage of an action, to disregard any defect in the pleadings that in the opinion

of the court does not affect the substantial rights of the parties (Code Civ. Proc. §475)[*Gressley v. Williams (1961)*]. The defendant's counsel insisted the trial court punish the plaintiff for filing a frivolous complaint in contrast to [*Berger v. Godden (1985)*] under the Appellate Review § 118- An appeal is frivolous when it is prosecuted for an improper motive, such as solely for delay, or when it indisputably has no merit.

- 2) Agent's denial of liability and accountability of a license holder with their effort to get the Judge's support to dismiss Nguyen's complaint of being defrauded and taken advantage of by all agents in her transactions of purchasing a residential property. [*Buckaloo v. Johnson (1975)*] where the principal allegation in the complaint was that the acts of the defendants constituted the tort of intentional interference with prospective economic advantage. The demurrer was sustained, and after the plaintiff declined to amend, the action was dismissed. The Supreme Court reversed the judgment as to the count alleging intentional interference with prospective economic advantage.
- 3) Broker defendant Counsel accused Nguyen of filing a frivolous complaint CCP § 1005 when a home buyer's action against the seller's real estate broker and agent for per se violations of CC §§ 1102 et seq.(required disclosures on the transfer of residential property) When

the defendant's actions for breach of a real estate broker's duty to inspect and disclose under CCP § 2079 since the action sounded in negligence and stemmed from the duty imposed on the broker. [*Loken v. Century 21-Award Properties (1995)*]. Nguyen, a lay woman, filed a complaint against all defendants who defrauded her into buying a defective house where any relation of confidence and trust exists between parties that demands that information communicated respecting the subject of their dealings be complete, any concealment or misrepresentation will amount to fraud sufficient to entitle the injured party to an action. [*Kruse v. Miller (1956)*]

- 4) So far, Cal Civ Code § 1710 stated fraud and deceit which will impose a liability for damages must consist of representations known by the parties charged to be false, or which are not warranted by the information which they possess. Deceit may also consist of suppression of facts which it is the fiduciary's duty to reveal/ disclose. See [*Zikratch v. Stillwell (1961)*]. Where Nguyen was lured to buy a house with a bonus room for which the unpermitted room got a city citation 4 months after escrow closed. See [*Walker v. Department of Public Works (1930)*]. The elements of actionable fraud that must be pleaded and proved are a false representation of a material fact, made with knowledge of its falsity and with intent to induce reliance thereon, on

which the plaintiff justifiably relies to his injuries, see [*Wishnick v. Frye (1952)*]

- 5) The liability between a principal and agent is founded on contract as CCP§ 2295, see [*De Leonis v. Etchepare (1898)*] when the agent's duty to obey instructions of his principal and exercise in his employment reasonable skill and ordinary diligence.[*Kelly v. Steinberg (1957)*]. The agent is not permitted to obtain any advantage over his principal by the slightest misrepresentation, concealment, threat, or adverse pressure of any kind; he may not use or deal with the subject matter of the agency for his profit, or for any purpose unconnected with an agency in any manner. [*Southern California Disinfecting Co. v. Lomkin (1960)*]
- 6) The defendant's counsel filed with Judge Smith to sanction Nguyen relied on CCP § 128.7. However, Nguyen properly backfired them for their improper purpose as CCP §128.7 (g), (h) sanction shall not apply to disclosures and discovery requests, responses, objections, and motions. A motion for sanctions brought by a party or a party's attorney primarily for an improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation, shall itself be subject to a motion for sanctions.
- 7) a cause of action for deceit based on a misrepresentation and she relied on the misrepresentation of the Tesla agents' fraud, misrepresentation,

and deceit of SolarCity's lease contract to Tesla contract operation under CCP §§ 1709, 1710 that met definitions of "deceit": (1) The fact suggestion which is not true, by one who does not believe it to be true; (2) The assertion as a fact, by one who has no reasonable ground for believing it to be true; and (3) The suppression of a fact, by one who is bound to disclose it, or who gives information of other facts which are likely to mislead for want of communication of that fact. See [*Mirkin v. Wasserman (1991)*]. In *Morgan v. AT&T Wireless Service, Inc. (2009)*, and [*Gitmed v. General Motors Corp. (1994)*]. The court held that plaintiffs alleged sufficient facts to state causes of action under the UCL and the CLRA, as well as for fraud FAL. UCL forbids "unlawful, unfair or fraudulent" conduct in connection with virtually any type of business activity. the Unfair Competition Law, California Business and Professions Code sections 17200–17209 ("UCL"); and the Consumers Legal Remedies Act, California Civil Code sections 1750–1784 ("CLRA"). The UCL forbids "unlawful, unfair or fraudulent" conduct in connection with virtually any type of business activity. With its sweeping liability standards and broad equitable remedies. The CLRA applies to any "consumer" transaction involving the "sale or lease of goods or services"³ and authorizes recovery of actual, statutory, and punitive damages.

- 8) Cal. Bus. & Prof. Code § 17200. The UCL also expressly prohibits "unfair, deceptive, untrue or misleading advertising" and incorporates California's False Advertising Law, Cal. Bus. & Prof. Code § 17500 et seq. Fair Debt Collection Practices Act (FDCPA) [*Fontaine v. Superior Court* (2009)] CCP § 2338- Where the relation of master and servant exists, the master is responsible to third persons for damage caused by wrongful acts or omissions of his servants in the course of their employment. *Nussbaum v. Traung Label & Lithograph Co.*(1920) Under the rule of respondeat superior, as ordinarily understood, the master is liable for the tort of his servant committed within the course of employment. *Fernelius v. Pierce* (Cal. 1943). A principal cannot split an agency transaction into separate parts, and take the benefits without the burden. *Gift v. Ahrnke* (1951).
- 9) Also, Deceit is a tort action not requiring the existence of any contract though one may coincide with tort. *Hayman v. Shoemake* (1962). Deceit may arise from mere nondisclosure (CC §§ 1709, 1710). *Massei v. Lettunich* (1967). Liability of principal for acts of the agent, or of employer for an employee, is predicated on the fact of employment. *Gipson v. Davis Realty Co.*(1963)

- 10) An agent is liable for his acts, regardless of whether the principal is liable or amenable to judicial action. *James v. Marinship Corp.* (Cal. 1944) under Cal Civ Code § 2343

CONCLUSION

The Unavailability of Intervention to manifest disregard for the Law, and obstruction of justice, fosters Injustice and Undermines the Public's Faith in the Judicial and Legal Processes. The Unavailability of Review for Manifest Disregard of the Law Exacerbates Public Perception of a Potential for a Trial Court Bias when a trial court makes the award in favor of the defendant, disregards the merit of the case, and ignores the preponderant substantial material facts. The Unavailability of Review for Manifest Disregard of the Law Discourages the Strong public confidence in the judicial system where the trial court circumvents the applicable law willfully and has judicial approval to ignore controlling legal principles. The Manifest Disregard Standard Strikes the Right Order Between the substantive law and procedural law, and the Interest in Justice and Fairness.

WHEREFORE, the petitioner respectfully requests this Court to grant a reversal of the judgment based on the reasons stated above, and the judgment in favor of the self-represented petitioner be entered.

APPENDICES

Appendix A — Proofs of jurisdictional and structural defects

Appendix B — Low Court Manifesting Disregard of Law