

No. 24- 607

IN THE
Supreme Court of the United States

ZHI WU, LEI JIANG,

Petitioners,

v.

COLDWELL BANKER REALTY, KEVIN CHU,
AIMEE RAN SONG AND XIAOXIN CHEN,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE CALIFORNIA COURT OF APPEAL,
FIRST APPELLATE DISTRICT, DIVISION THREE

PETITION FOR A WRIT OF CERTIORARI

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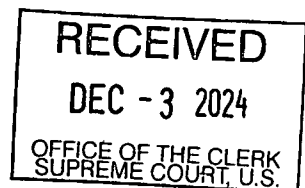
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QUESTION PRESENTED

In a civil lawsuit in California superior court about real estate properties breach of contract and fraud, respondents abused discovery, purposely created disputes in discovery, and filed an excessive number of unnecessary discovery motions without good faith meet-and-confer. The trial court claimed it lacked resources to hear these motions and issued an order appointing discovery referee for all discovery purposes and had parties to pay equal share of referee fees which was also subject to the referee's recommendation to adjust. This order was ruled without following well-established precedents to properly consider parties' financial hardship and the economic inequality between parties. In addition, there was a lack of fair procedures to nominate and select the referee. The issues presented in this petition have an impact on civil litigations nationwide since there are recurring disputes concerning the appointment of referees or masters across multiple federal circuits. This case is an ideal vehicle to resolve exceptionally important issues and to reinforce the principles of fairness in civil litigation when financial burdens imposed by the court interfere with access to legal remedies. Granting certiorari would allow the Supreme Court to address these pressing questions of due process, equal access to justice, and consistency in applying procedural protections to protect litigants' constitutional rights, particularly for the financially disadvantaged parties.

The questions presented are:

Whether the Due Process Clause, equal protection clause of the Fourteenth Amendment of the U.S.

Constitution, and the litigants' right to access justice implied in the First Amendment of the U.S. Constitution were violated when the California Superior Court for the County of Alameda appointed a discovery referee for all discovery purposes in the action without follow the precedents to properly consider parties' financial hardship and economic disparity among the parties and through an unfair referee nomination and selection process.

Whether it was a violation of the Supremacy Clause of the U.S. Constitution when the procedure in the state court conflicts with Federal Rule of Civil Procedure 53 on the court must give parties an opportunity to be heard before adopting the referee's recommendations.

PARTIES TO THE PROCEEDING

The petitioners are Lei Jiang and Zhi Wu. Petitioners were defendants and cross-complainants in the state trial court and appellants in the court of appeals.

The Respondents are Coldwell Banker Realty, Kevin Chu, Aimee Ran Song, and Xiaoxin Chen. Respondent Chu was the plaintiff and cross-defendant in the state trial court and appellee in the court of appeals. Respondents Coldwell Banker Realty, Song, and Chen were the cross-defendants in the state trial court and appellee in the court of appeals.

STATEMENT OF RELATED PROCEEDINGS

This case arises from and is related to the following proceedings in the California Superior Court for the County of Alameda, the California Court of Appeal, and the California Supreme Court:

- Chu v. Wu et al., No. HG21106221 (Cal. Super. Ct.), order appointing referee filed April 16, 2024;
- Wu et al. v. Super. Ct., No. A169631 (Cal. Ct. App.), Petition for Writ of Mandate and/or Prohibition denied August 8, 2024;
- Jiang et al. v. Super. Ct., No. S286476 (Cal.), Petition for Review and application for stay denied August 28, 2024.

TABLE OF CONTENTS

	<i>Page</i>
QUESTION PRESENTED	i
PARTIES TO THE PROCEEDING	iii
STATEMENT OF RELATED PROCEEDINGS	iv
TABLE OF CONTENTS.....	v
TABLE OF APPENDICES	vii
TABLE OF CITED AUTHORITIES	ix
PETITION FOR WRIT OF CERTIORARI.....	1
OPINIONS BELOW.....	1
STATEMENT OF JURISDICTION.....	1
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	1
STATEMENT OF THE CASE	3
I. Factual Background and Proceedings Below ...	3
II. The Trial Court Failed to Properly Consider Petitioners' Financial Hardship and Economic Disparity among the Parties before Appointing a Discovery Referee	19

Table of Contents

	<i>Page</i>
REASONS FOR GRANTING THE PETITION. . . .	22
I. The Decision Below Violated the Due Process Clause and Equal Protection Clause, as well as the Right to Access Courts.	22
II. The Decision Below Conflicts with this Court's Precedents	28
A. The Trial Court's Order Appointing Referee Did Not Follow the Precedents Regarding the Restriction on Referee's Compensation or Consider the Significant Impact of Economic Barriers of Access to Justice in Civil Cases	28
B. The Referee Had High Probability of Bias due to Financial Incentive but Did Not Follow this Court's Precedent to Recuse	31
III. This Decision Below Conflicts with Federal Rule of Civil Procedure 53.	32
IV. The Issues Presented in this Petition Have Impact on Civil Litigations Nationwide	35
CONCLUSION	37

TABLE OF APPENDICES

	<i>Page</i>
APPENDIX A — ORDER APPOINTING REFEREE IN THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA, FILED APRIL 16, 2024	1a
APPENDIX B — ORDER OF THE SUPREME COURT OF CALIFORNIA, FILED AUGUST 28, 2024.....	12a
APPENDIX C — ORDER OF THE CALIFORNIA COURT OF APPEAL, FIRST APPELLATE DISTRICT, DIVISION THREE, FILED AUGUST 8, 2024.....	13a
APPENDIX D — ORDER OF THE COURT OF APPEAL OF THE STATE OF CALIFORNIA FIRST APPELLATE DISTRICT, DIVISION THREE, DATED JUNE 11, 2024	16a
APPENDIX E — ORDER OF THE COURT OF APPEALS OF THE STATE OF CALIFORNIA, FIRST APPELLATE DISTRICT, DIVISION THREE, DATED JUNE 12, 2024.....	18a
APPENDIX F — ORDER RE: RULING ON PLAINTIFF’S MOTION TO COMPEL FURTHER RESPONSES TO REQUESTS FOR PRODUCTION OF DOCUMENTS OF THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA, FILED MARCH 28, 2024.....	20a

Table of Appendices

	<i>Page</i>
APPENDIX G — ORDER RE: ORDER APPOINTING DISCOVERY REFEREE OF THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA, DATED APRIL 12, 2024.....	23a
APPENDIX H — EXCERPTS OF TRANSCRIPT OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF ALAMEDA, DATED MARCH 28, 2024	26a
APPENDIX I — RELEVANT STATUTORY PROVISIONS	38a

TABLE OF CITED AUTHORITIES

	<i>Page</i>
Cases	
<i>Aetna Life Ins. Co. v. Superior Court</i> , 182 Cal.App.3d 431 (1986).....	28
<i>BE & K Const. Co. v. N.L.R.B.</i> , 536 U.S. 516 (2002).....	23
<i>Boddie v. Connecticut</i> , 401 U.S. 371 (1971).....	24
<i>California Motor Transport Co. v.</i> <i>Trucking Unlimited</i> , 404 U.S. 508 (1972).....	23
<i>Caperton v. A.T. Massey Coal Co.</i> , 556 U.S. 868 (2009).....	26, 31, 32
<i>Hood v. Superior Court</i> , 72 Cal.App.4th 446 (1999)	24, 29
<i>In re Murchison</i> , 349 U.S. 133 (1955).....	32
<i>Kansas v. Garcia</i> , 589 U.S. 191 (2020).....	35
<i>La Buy v. Howes Leather Co., Inc.</i> , 352 U.S. 249 (1957).....	36

Cited Authorities

	<i>Page</i>
<i>Lu v. Superior Court</i> , 55 Cal.App.4th 1264 (1997)	31
<i>M.L.B. v. S.L.J.</i> , 519 U.S. 102 (1996)	24, 29
<i>Mathews v. Eldridge</i> , 424 U.S. 319 (1976)	16, 18
<i>Mathews v. Weber</i> , 423 U.S. 261 (1976)	36
<i>McDonald v. Superior Court</i> , 22 Cal.App.4th 364 (1994)	21, 28, 29, 30, 31
<i>Miller v. French</i> , 530 U.S. 327 (2000)	23
<i>Mitchell v. Ocwen Loan Servicing LLC, et al.</i> , Case No. C18-02168, Superior Court of Contra Costa County, October 22, 2019	22
<i>Mullane v. Central Hanover Bank & Trust Co.</i> , 339 U.S. 306 (1950)	18
<i>National Equipment Rental, Ltd. v. Szukhent</i> , 375 U.S. 311 (1964)	18
<i>Newton v. Consolidated Gas Co. of New York</i> , 259 U.S. 101 (1922)	28

Cited Authorities

	<i>Page</i>
<i>People v. Superior Court (Laff)</i> , 25 Cal.4th 703 (2001)	31
<i>Solorzano v. Superior Court</i> , 18 Cal.App.4th 603 (1993)	26, 27, 28, 30
<i>Taggares v. Superior Court</i> , 62 Cal.App.4th 94 (1998)	27, 29, 30, 31
<i>Ward v. Monroeville</i> , 409 U.S. 57 (1972)	32

Constitutional Provisions

U.S. Const. Amend. I	2, 23
U.S. Const. Amend. V	34
U.S. Const. Amend. VI	2
U.S. Const. Amend. VI, Cl. 2	34
U.S. Const. Amend. XIV § 1	1, 23, 34

Statutes, Rules and Other Authorities

28 U.S.C. § 1257(a)	1
Fed. R. Civ. P. 53	2, 32, 33, 34
Cal. Rules of Court, rule 3.922(f)(1)	2, 13, 29

Cited Authorities

	<i>Page</i>
Cal. Civ. Code § 1689(b)(1)	2, 6
Cal. Code Civ. Proc., § 639	2, 16, 30
Cal. Code Civ. Proc., § 639(a)(5).....	9, 12, 20
Cal. Code Civ. Proc., § 639(d)(2)	10
Cal. Code Civ. Proc., § 639(d)(6)	10
Cal. Code Civ. Proc., § 639(d)(6)(A).....	20
Cal. Code Civ. Proc., § 640(b).....	2, 27
Cal. Code Civ. Proc., § 645.1	30, 31
Cal. Code Civ. Proc., § 645.1(b)	2, 10
Cal. Code Civ. Proc., § 170.3(c).....	3
Cal. Code Civ. Proc., § 170.3(c)(3)	18
Cal. Code Civ. Proc., § 170.3(c)(4).....	18
Cal. Code Civ. Proc., § 1094.5(c)	3, 17
Cal. Code Civ. Proc., § 2023.020	3, 8

PETITION FOR WRIT OF CERTIORARI

Petitioners Lei Jiang and Zhi Wu respectfully request that this court issue a writ of certiorari to reverse and remand the decisions below.

OPINIONS BELOW

The Supreme Court of California summarily denied Petitioner's Petition for Review and application for stay on August 28, 2024 with order reproduced at App.12a. The First Appellate District of the Court of Appeal of California summarily denied Petitioner's Petition for Writ of Mandate and/or Prohibition on August 8, 2024 with order reproduced at App.13a-15a. The California Superior Court for the County of Alameda issued order appointing referee on April 16, 2024. The order is unpublished and reproduced at App.1a-11a.

STATEMENT OF JURISDICTION

The Supreme Court of California entered judgment on August 28, 2024. App.12a. This petition is timely filed pursuant to Supreme Court Rule 13.1. This Court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Constitution Amend. XIV § 1 provides:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No

State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Constitution Amend. I provides:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Constitution Article VI provides, in relevant part:

* * *

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

* * *

Relevant provisions (Constitution Amend. XIV § 1; Constitution Amend. I; Constitution Article VI; Fed. R. Civ. P. 53; Cal. Code Civ. Proc., § 639; Cal. Code Civ. Proc., § 640(b); Cal. Code Civ. Proc., § 645.1(b); Cal. Rules of Court, rule 3.922(f)(1); Cal. Civ. Code § 1689(b)(1); Cal.

Code Civ. Proc., § 170.3(c); Cal. Code Civ. Proc., § 1094.5(c); Cal. Code Civ. Proc., § 2023.020) are reproduced in Appendix I to this petition at App.38a-46a.

STATEMENT OF THE CASE

I. Factual Background and Proceedings Below

In December 2020, Petitioners, Aimee Ran Song (“Song”), Xiaoxin Chen (“Chen”) (collectively “Agents”), and Coldwell Banker Realty (“Coldwell”) entered into agreements to buy and sell houses. Petitioner Jiang chose to work with Chen to show her support for moms who had gap years and re-entered the workforce since Jiang was in a similar situation. Chen introduced Song as her co-worker to Petitioners. On or around June 23, 2021, Agents worked with their buyer, Kevin Chu (“Chu”), to create a false urgency and tricked Petitioners into signing a one-page counteroffer without seeing the Purchase Agreement. Petitioners figured out the false urgency and fraudulent misrepresentations from Agents and could no longer trust Agents. On June 24, 2021, Agents sent the Purchase Agreement and asked Petitioners to sign. Petitioners refused to sign it. Agents told Petitioners there was no ratified contract if Petitioners did not sign the Purchase Agreement about the house they tried to sell (“Fremont Property”).

Petitioners sent a timely email on June 25, 2021, to cancel the listing agreement. Petitioners immediately started to pay Agents the listing costs according to the listing agreement and the Agents’ email about listing costs. However, Agents asked for more money that was not on the listing agreement, claiming Petitioners must pay

for their buyer's damages of \$150,000 because Chu had his children withdraw from school and had canceled his rental apartment immediately after he signed the counteroffer.

Agents and Chu told Petitioners if they do not pay the extra money for Chu's damages, Chu would file a lawsuit against Petitioners. Agents also referred Chu to his current counsel and encouraged him to file a malicious lawsuit against Petitioners. The Agents aggressively urged Petitioners to pay their buyer and mentioned their realty firm had strong legal team. Petitioners were never involved in any lawsuit before and feared their threats. Petitioners consulted multiple attorneys and understood they should not pay. Petitioners believed that abuse of the legal system by parties with far superior financial and legal resources for improper purposes such as extorting money, harassment, and retaliation should not be encouraged. Therefore, Petitioners did not agree to pay the unjustifiable money. Then Agents started to harass and threaten the safety of Petitioners' family. Agents kept calling and sending text messages many times a day and appeared in the house Petitioners rented from Song twice a day to urge Petitioners to pay their buyer's huge damages. On July 7, 2021, Agents called Petitioners and said: "The most important is to protect your family." This shocked Jiang, so she asked, "Are you threatening me? What do you mean? Why do I need to protect my family because we did not sell the house?" Agents did not deny or explain. The phone calls and texts from Agents continued until the end of July 2021, almost a month after Petitioners refused to sign the Purchase Agreement.

Petitioners asked Agents multiple times to stop harassing them since they had an attorney handling the

lawsuit, but Agents continue working with Chu to bypass Petitioners' attorney to contact them. After threatening the safety of Jiang's family, Agents even attempted to get hold of the keys to the new house Petitioners bought, without Petitioners' authorization. Petitioners also found out Chu was not a good buyer as Agents claimed, as Chu has criminal records such as being prosecuted felony for attempted cheating at river boat gambling, owes Federal Tax Lien of \$43,469.60, has multiple defaults, foreclosures, and bankruptcy based on public records. All the threat, harassment and the buyer's criminal records caused Jiang and her family great fear for their safety, including an elder over 65 and three children under ten. Jiang had to file restraining orders ("RO") (No. HG21106045 (Cal. Super. Cr.) and No. HG21106052 (Cal. Super. Ct.)) to stop Agents from contacting her, which were granted on September 16, 2021, after two hearings. Agents had appealed but got dismissed. A few hours after Chu and Song's husband Jeffery Wang visited Jiang's LinkedIn profile in August 2021, there were many fake accounts on social media to harass Jiang. Shortly after the ROs were granted, Petitioners started to suffer a lot of harassments such as blackmail email extorted money, email titled "ARE YOU STILL ALIVE?", and non-stop calls that forced Jiang to change phone number. Jiang had suffered severe emotional distress from Agents' harassment and threatening and had to see therapist for two years.

With the counsel referred to by Song, in July 2021, Chu filed a complaint against Petitioners, alleging breach of contract, specific performance, and actual damage of \$150,000, even though no fully executed contract existed. After three years in the lawsuit, despite a lot of efforts to meet and confer, Chu still has not produced any supporting

evidence to his claim of damages for withdrawing his children from school and had canceling his rental apartment immediately after he signed the counteroffer. Petitioners sent discovery requests for such evidence, but Chu filed a motion for protective order to refuse to response to Petitioners' special interrogatories entirely.

Petitioners brought a cross-complaint against Chu, Agents, and Coldwell for fraud, breach of contract, and intentionally infliction of emotional distress. Petitioners also had a cause of action to rescind the counteroffer on the grounds of fraud in their cross-complaint under Cal. Civ. Code § 1689(b)(1). App.45a.

Thereafter, Agents and Coldwell cross-complained against Petitioners alleging Petitioners owe Coldwell commission of \$63,200 for the house that was not sold through Coldwell. Coldwell also claimed in their cross-complaint that Petitioners owe them the cost of preparing Fremont Property for marketing of \$9,100, even though by that time Petitioner had already paid Agents all the items with valid receipt provided which was over \$8,000 of the listing cost.

Moreover, Respondents tried to gain unfair leverage and increase Petitioners' litigation costs by further abuse of litigation. In January 2022, Song was advised by her broker firm's attorneys to file a baseless copyright infringement lawsuit against Petitioners with fabricated evidence to support the claim. The case number is 3:22-cv-00002-JD Song v. Jiang et al in California Northern District (San Francisco). In that lawsuit, Song fabricated a backdated Copyright Assignment Agreement between Song and the photographer Ruixiang Yu, so that she

could have a standing to file the lawsuit which claimed Petitioners had used her photos of Petitioner's Fremont Property to market Fremont Property for rent in July 2021. Song lied to the court under penalty of perjury about signing the copyright assignment agreement with Yu in June 2021. But the business records produced by third party DocuSign showed the copyright assignment was signed in December 2021. Song lied about the critical time and committed perjury because otherwise she would have no standing to bring the lawsuit since she did not even own the copyright during the time she claimed there was copyright infringement. Song testified in a sworn declaration filed to court that her broker firm's attorneys advised her to file the copyright infringement lawsuit.

Petitioners always responded to discovery requests diligently. Petitioners answered excessive number of discovery requests, including 194 special interrogatories, 90 requests for production of documents, 81 requests for admission, and form interrogatories from Coldwell with good faith and produced over 1,800 pages of responsive documents.

Petitioners also met and conferred in good faith to try to solve the discovery disputes informally. No material issues were raised by opposing parties during the meet-and-confer and Petitioners agreed to provide amended response and did so within a timeline without prejudicing any party.

However, the opposing parties coordinated and created discovery disputes so that they could file an excessive number of unnecessary discovery motions and use these motions as an excuse to file joint motion to continue the trial date.

Without good faith meet-and-confer, six motions to compel further responses were filed by Coldwell on November 30, 2023, which was the same day Petitioners served hundreds of pages of responses as promised in a previous meet-and-confer phone call with Coldwell's attorneys. Opposing parties later filed motions to compel further responses on the same set of discovery requests again without good faith meet-and-confer. These behaviors are sanctionable for abuse of discovery under Cal. Code Civ. Proc., § 2023.020, App.46a. But Coldwell was not sanctioned by the referee they nominated. On the contrary, the referee recommended, in his Recommended Decision and Order No. 4, to sanction Petitioners for over \$10,000 although the opposing party filed motions to compel further responses without good faith meet-and-confer. And the recommendation was later adopted by the trial court without giving parties a chance to be heard.

On January 19, 2024, Chu filed a motion to continue trial date.

On February 1, 2024, Coldwell Banker filed a motion to join Chu's motion to continue trial date.

On February 5, Petitioners filed fee waiver applications because of their financial hardship to pay for court reporter on top of the court fees, which were denied by trial court on February 6, 2024.

The motion to continue trial date was heard on March 6, 2024. As Jiang pointed out during the March 6, 2024 hearing, among the 20 discovery motions the court saw, only one protective order was filed by Petitioners

to prevent deposition from being taken in person due to Song and Chen's history of severe harassment and threats, the rest of 19 motions were all filed by opposing parties and mostly without good faith meet-and-confer. In addition, Coldwell's attorney purposely filed unnecessarily and unjustified lengthy documents such as a 1401-page declaration in support of Song's motions to compel further responses filed on March 6, 2024 to make the issues time-consuming.

After March 6, 2024 hearing, the trial date was continued from May 31, 2024 to November 22, 2024.

In the March 25, 2024 tentative ruling, the trial court ordered "Department 20 does not have the resources to devote this much time to discovery disputes in a single case. The Court therefore intends to appoint a discovery referee to resolve this and all future discovery motions in this case, at the parties' expense, pursuant to Code of Civil Procedure section 639(a)(5)." However, the exceptional circumstance was created by the opposing parties by filing large number of unnecessary discovery motions.

Petitioners contested the Tentative Ruling on the grounds that this tentative ruling will significantly prejudice the defendants. This ruling effectively allows the opposing parties to abuse discovery and create disputes to increase Petitioners litigation costs. Referee process would only be an unnecessary further delay of legal proceedings. Moreover, opposing parties filed Motions to Compel without good faith meet and confer which should be sanctioned and the sanction should not be avoided by the referee process.

In the March 28, 2024 hearing, Wu objected to the appointment of the referee by arguing:

“Defendants contest the tentative exactly related to the part of the tentative rule being to refer the discovery disputes to a referee. So based on a report of the referee process in 2004, the referee process is rarely used. It’s about 1 in 1,000. And my understanding, please correct me if I’m wrong, Your Honor, that the court’s ground of the exceptional circumstances to appoint a referee under Cal. Code Civ. Proc., § 639(d)(2) is the volume of the discovery motions. However, the courts need to balance between the benefit of appointing a referee and the prejudice to the parties.

So I have a list of prejudice of the referee process to defendants. The first is the cost. Due to the financial hardship, defendants previously requested for a fee waiver and the defendants also explained that delay in trial will prejudice defendants in the opposition to motion to continue trial date.

The referee process will further prejudice defendants due to the additional litigation cost and defendant’s economic hardship under Cal. Code Civ. Proc., § 639(d)(6) and Cal. Code Civ. Proc., § 645.1(b), which were amended in year 2000, after the appellate court’s opinions in multiple cases. In one case, [Taggares], T-a-[g-g]-a-r-e-s, vs. Superior Court, in 1998, the appellate court provided this opinion that if there’s no available cost-free alternative, the court should not refer it to a referee.

Second, based on the opposing party’s previous behaviors of 18 discovery disputes to delay the trial

date and also filing motions without good faith meet-and-confer, the referee process is likely to be futile, but it's just causing additional delay on the resolution of the discovery disputes.

No. 3, the last one, is the referee's impartiality and neutrality will be questionable. So defendants are, *per se*, without connection in the field of litigation. A referee with legal experience will likely be in the same club as the opposing counsels. In summary, the discovery disputes in this case should not be referred to a referee." App.27a-29a.

However, the trial court still ruled in its March 28, 2024 order that it intended to appoint referee stating Petitioners submitted no evidence that they would be unable to pay referee's fees. App.21a. Knowing plaintiff and cross-defendants are on the same side, the court ordered parties to provide nominees for discovery referee, "two each for plaintiff, defendants collectively, and cross-defendants collectively" without mentioning a knockout process would be used to select discovery referee. App.22a. The process of selecting a referee was not transparent. Moreover, the trial court ordered parties to file a Joint Status Report to nominate referee by no later than April 4. App.22a. The time allowed was only four court days, which was unreasonably short. Petitioners had requested an extension of time to look for referees but was not allowed by the trial court. The trial court also ordered parties shall not identify which party nominated which referee but later allowed Coldwell's attorney to inform Hon. Kevin Murphy (ret.) ("Judge Murphy"), a retired judge from Santa Clara County Superior Court, was their nominee.

On April 1, 2024, before the referee started to work on the case, Petitioners filed Ex Parte Application for Determination of Economic Inability to Pay Referee's Fee. Petitioners made adequate showing of their financial hardship and how the opposing parties abused legal proceeding with unethical and illegal tactics to cause their financial hardship. On April 3, Petitioners' ex parte was denied by the trial court on procedural ground and with prejudice.

On April 11, 2024, a hearing on referee appointment was held. Petitioners found the March 28, 2024 order lack of transparency on the method to select the referee since it did not mention there would be a knockout process. The trial court interrupted Jiang when she tried to argue about the referee selection process. After Coldwell's attorney Alex Ramon informed the trial court that Judge Murphy was their nominee, which violated the trial court's March 28, 2024 order, the trial court immediately decided the referee to be Judge Murphy.

On April 12, 2024, the trial court published an order regarding Order Appointing Discovery Referee. App.23a-25a. This order mentioned knockout process in April 11 hearing as "The Court therefore advised the parties that, of the five names offered, each party could veto one name, and the Court would select from those that remained."

On April 18, 2024, the trial court published on the court docket an order appointing referee under Cal. Code Civ. Proc., § 639(a)(5) dated April 16, 2024. App.1a-11a. The order justified the exceptional circumstances to appoint discovery referee to be "extreme volume of discovery disputes", although the discovery disputes were created

by opposing parties without good faith meet-and-confer. The order stated "No party has established an economic inability to pay a pro rata share of the referee's fees." The order appointed discovery referee to be Judge Murphy after Coldwell's attorney Alex Ramon informed the trial court he was Coldwell's nominee in April 11 hearing. Judge Murphy is a contractor working for ADR Services, Inc. The order stated "The discovery referee is appointed for All discovery purposes in the action." The order specified the referee's compensation to be "The parties shall share in the costs of the discovery referee equally, subject to the referee's ability to recommend a different allocation of costs for particular discovery disputes based on the referee's determination as to which side, if any, is more to blame for that particular dispute." The maximum number of hours was not specified in this order. Petitioners immediately requested the Court to specify the maximum number of hours for which the Referee may charge under Rules of Court, rule 3.922(f)(1) but the court did not take any action to do so.

In the May 30, 2024 referee hearing via zoom meeting, the referee acted biased. For example, one of the motions heard was Petitioners' Motion for Protective Order to protect Petitioners from attending Song's in-person deposition and request for remote or written deposition. Petitioners showed valid evidence about their serious concern of safety based on Song and Chen's history of harassment and credible threats which caused a permanent RO granted by Alameda County Superior Court in 2021. As an experienced Judge for both criminal and civil departments for two decades, the referee challenged Petitioners' credibility by saying "you represented in your brief, or somebody did, that that was

a permanent restraining order and it's not. It expired." When Jiang tried to clarify this issue, Judge Murphy interrupted and ended the hearing. Jiang had to type in zoom chat that "Permanent RO is referred by the court" and "it means it is not temporary RO" before the zoom meeting closed.

On June 11, 2024, Petitioners filed a petition for writ of mandate and/or prohibition and request for stay to California Court of Appeals challenging trial court's order appointing referee. The petition and request for stay was denied on the same day without prejudice because Petitioners failed to provide the evidence of financial hardship and inability to pay referee fees. App.16a-17a.

On June 12, 2024, Petitioners refiled a petition following California Court of Appeal's order and provided the evidence of financial hardship and inability to pay referee fees. The California Court of Appeals granted the stay pending consideration of the petition and ordered due dates for parties to file opposition and reply. App.18a-19a.

In opposition to petition for writ, opposing parties argued they were prejudiced by the referee fees they had paid but none of them provided any admissible evidence on their payment of referee fees to ADR Services, Inc.

On August 8, 2024, California Court of Appeals summarily denied Petitioners' petition with one ground being lack of April 11, 2024 hearing transcript, hence lack of an adequate record to enable informed review (App.14a.), although the trial court orders on March 28, 2024 and April 12, 2024 clearly documented the improper knockout process in April 11 hearing. In addition, if the

fee waiver applications filed by Petitioners on February 5 were granted, the April 11, 2024 hearing transcript could have been available in Petitioners' petition.

Chu's Motion to Continue Trial Date filed on June 25, 2024 was again granted such that a new trial date would be decided in Case Management Conference on November 12, 2024 according to the trial court's order.

On August 9, 2024, Judge Murphy took action to schedule a hearing date for a second set of discovery motions on August 30, 2024. Plaintiff's counsel, Hartnett objected to this date in his email without a motion to continue, Judge Murphy changed the hearing date to September 4, 2024. However, when pro se Petitioners objected to the hearing date on the same day, the referee required them to file a motion to continue.

On August 26, 2024, Petitioners filed Motion to Disqualify Discovery Referee which was scheduled to be heard on September 26, 2024, which hearing date was reserved in June 2024.

On August 28, 2024, the trial court adopted multiple recommendations from the referee and ordered a hearing regarding Referee Recommendation No. 2 to be scheduled for September 17, 2024. Referee's Recommendation No. 2 was about the protective order motion Petitioners filed to request the in-person deposition to be written or other alternative method to avoid triggering Jiang's PTSD caused by Song and Chen's harassment and threat in 2021. The order stated the hearing was "solely for the purpose of addressing the time(s) and location(s) where the deposition shall be taken" and "No substantive argument shall be heard".

On September 4, 2024, the referee held hearings for ten discovery motions. Judge Murphy treated Petitioners differently from opposing parties when deciding this hearing date for only changing the hearing date according to the availability of opposing parties but refused to consider Petitioners' availability. At the beginning of the hearing, Jiang requested to continue the hearing. Jiang asked the referee if the scheduled time 8 a.m. to 9 a.m. would be sufficient to fairly and fully hear the 10 motions since the motions were assigned to the discovery referee under Cal. Code Civ. Proc., § 639 due to the complicated nature of the motions. Jiang also told the discovery referee that she had to leave at 9 a.m. to send her child to school. After knowing Jiang's conflict of time due to family obligation—to drive her child to school, the referee refused to continue the hearing. "As expected, the hearing went beyond 9 a.m." Consequently, Jiang had to leave at 9 a.m. and did not get a chance to fully participate in the hearing of opposing parties' motions.

During the September 17 hearing, the trial court did not allow parties to argue the merit since the August 28 order stated "No substantive argument shall be heard". As reflected in the court reporter transcript, when Petitioners attempted to argue the merit, the trial court asked them to stop. The trial court adopted Referee's Recommended Decision and Order No. 2 to sanction Petitioners to pay the opposing party \$2,800 and set a time for the in-person deposition after asking for Coldwell's attorney's input on their preferred time but refused to allow Petitioners to have any input on their availability. The quality of hearing for September 17 hearing could not likely pass the *Mathews* test (*Mathews v. Eldridge*, 424 U.S. 319 (1976)).

On September 19, Jiang was rear ended when stopped and waited for red light. Jiang was severely injured in the car accident and was sent to an emergency room in an ambulance for the first time in her life. Imaging showed Jiang had potential life-threatening brain injury therefore further treatments were required. Because of her injury, Jiang's medical doctor advised her to refrain from work and legal proceedings to allow her to recover in a sworn declaration. The doctor also stressed that it was crucial for her to avoid stress and physical strain that may impede recovery.

On September 23, 2024, Petitioners filed an ex parte to stay all proceedings in this case with sworn declaration from Jiang's medical doctor about Jiang's medical condition would not allow her to participate in legal proceedings. Petitioners also argued that when a party cannot participate in legal proceedings due to her medical condition, legal proceedings should be stayed for fairness, especially the rulings were regarding depriving that party's property. Also, there was no prejudice against the opposing parties to stay.

The trial court ruled in its September 25 order denying Petitioners' request to stay that:

"The request for a three week stay of the proceedings is DENIED. While the ex parte application supports relief, the relief requested is broader than necessary." This ruling is clear abuse of discretion since the findings were not supported by the weight of evidence. (Cal. Code Civ. Proc., § 1094.5(c). App.46a.)

On September 26 hearing on Motion to Disqualify Discovery Referee, Wu asked to continue the hearing since Jiang was not able to attend the hearing due to her serious injury in the car accident. But the trial court denied this request. In this motion, Petitioners argued that according to Cal. Code Civ. Proc., § 170.3(c)(3) and (4) (App.45a-46a), when the referee did not file verified answer timely, the motion to disqualify referee should be granted upon Judge Murphy's consent to his disqualification.

In addition, in the motion to disqualify referee, Petitioners established the service of motion passed *Mullane* test (*Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950)) and was personal service since it was served to a valid authorized agent to receive legal documents for the referee. (*National Equipment Rental, Ltd. v. Szukhent*, 375 U.S. 311 (1964).) However, the trial court still denied Petitioners motion stating the service was substitute service. Since the hearing was held without all parties presented, the quality of hearing for September 26 hearing could not pass the *Mathews* test and due process had been violated.

On October 14, 2024, Petitioner filed a petition for writ of mandate and/or prohibition and request for stay challenging trial court's order denying motion to disqualify referee. The petition and the stay request were summarily denied on the same day.

On November 7, 2024, a new trial date was set in a case management conference to be December 5, 2025. Since the trial court had continued the trial date, there is sufficient time for the court to hear the discovery motions in this case, therefore a discovery referee is not necessary.

II. The Trial Court Failed to Properly Consider Petitioners' Financial Hardship and Economic Disparity among the Parties before Appointing a Discovery Referee.

The economic inequality between Petitioners and opposing parties is substantial. Petitioners are individuals who are engineer and data scientist living on limited salaries. Jiang is a Data Scientist with deep knowledge in Biomedical Engineering who applied state-of-art AI technologies to help diagnose cancer and treat cancer patients and build machine learning models to protect the financial security of consumers. Wu is a senior hardware engineer in the semiconductor industry. Petitioners worked hard in their jobs to contribute to society and make money to support their family of three young children and their elderly mother. Unfortunately, for the past three years, Petitioners also had to work in most of their spare time on lawsuits due to opposing parties' litigation abuse.

Coldwell is one of the largest real estate companies in the United States with sales volume of \$234 Billion in 2023 and its parent company Anywhere Real Estate's market capitalization is over \$500 Million as of the close of market on November 22, 2024.

Using dishonest tactics that violated National Association of Realtors Code of Ethics Article 2 by not disclosing the existence of judgment liens on the property, Song worked as both the owner and the listing agent and sold one of her investment properties at 3183 Bruce Dr, Fremont, CA 9439 in May 2024 for \$3.4 million dollars which she and her husband purchased in 2021 for \$1.485 million.

Although Chu claimed to be an individual, he worked closely with Coldwell during the lawsuit which could be demonstrated by Chu did not compel Coldwell when Coldwell did not provide verified responses to Chu's written discovery requests, while Chu filed multiple motions to compel Petitioners after Petitioners responded with hundreds of pages of verified responses. The opposing parties have substantial financial resources while Petitioners only have limited means.

During the trial court hearing on March 28, 2024, Petitioners had argued that the court should not refer to a referee because of Petitioners' economic hardship and reminded the Court about the confidential fee waiver application they filed with the court on February 5 as valid evidence for their economic hardship. Petitioners did not have enough income to pay for household basic needs and the court fees, due to the large amount of attorney fees caused by the malicious copyright infringement lawsuit filed by Song, as well as the costs on the house in dispute, which Petitioners could not sell due to Plaintiff Chu's lis pendens on the house. Fee waiver application showed Petitioners' total monthly expenses are much higher than their total monthly household income. However, the trial court ordered on March 28, 2024 after the hearing that "The Court therefore intends to appoint a discovery referee to resolve this and all future discovery motions in this case, at the parties' expense, pursuant to Code of Civil Procedure section 639(a)(5). The Court finds that no party has established an economic inability to pay a pro rata share of the referee's fees. (See Code of Civil Procedure section 639(d)(6)(A).) Although Defendants Zhi Wu and Lei Jiang argued at the hearing of this motion that they would find appointment of a discovery referee

to be burdensomely expensive, they have submitted no evidence that they would be unable to pay their share of the referee's fees."

On April 1, 2024, Petitioners filed an Ex Parte Application for Determination of Economic Inability to Pay Referee's Fee. In this Ex Parte, Petitioners included a sworn declaration about their financial hardship to pay referee's costs under penalty of perjury which was competent evidence. "McDonald's personal declaration under penalty of perjury as to her financial condition and its impact on her ability to proceed with the litigation was competent evidence. The court abused its discretion by its apparent failure to consider it in determining how discovery disputes should be handled." (*McDonald v. Superior Court*, (1994) 22 Cal.App.4th 364 ("McDonald"), at 370.)

Additionally in the ex parte, Petitioners demonstrated that they suffered monthly deficit of about \$5,000 proven by Fee Waiver Application filed with the trial court on February 5, 2024. Petitioners also made clear arguments about the economic inequality between Petitioners and opposing parties.

"[W]henever the issue of economic hardship is raised before the commencement of the referee's work, the referring court must determine a fair and reasonable apportionment of reference costs before issuing its order." (*McDonald*, at 370.)

Although Ex Parte Application for Determination of Economic Inability to Pay discovery referee was granted in another California Superior Court in a similar situation

(*Mitchell v. Ocwen Loan Servicing LLC, et al.*, Case No. C18-02168, Superior Court of Contra Costa County, October 22, 2019), the trial court did not hear the merit of Petitioners' ex parte filed on April 1 and denied it on procedural ground and with prejudice. In the April 3, 2024 order denying the ex parte, the trial court stated "It appears to be a procedurally improper motion for reconsideration of the Court's Order of 3/28/24 and is denied on that basis" without providing any reasoning on how Petitioners did not establish financial hardship to pay referee fees.

The trial court's failure to properly consider Petitioners' financial hardship and economic disparity among the parties before appointing a discovery referee raises due process and equal protection concerns under the Fourteenth Amendment.

REASONS FOR GRANTING THE PETITION

I. The Decision Below Violated the Due Process Clause and Equal Protection Clause, as well as the Right to Access Courts.

In this case, a purchase agreement dispute that could potentially force Petitioners to sell their house is of significant legal importance, as it directly impacts Petitioners' fundamental property rights and their ability to retain ownership of their house. Petitioners as individuals must have meaningful access to the courts to address these issues. However, the trial court's order appointing referee ordered Petitioners to pay significant amount of referee's fees for their discovery motions to be heard by the referee. This order created a financial barrier

for Petitioners to access the court and thus is a violation of a litigant's constitutional rights.

The Due Process Clause of Fourteenth Amendment protects individuals from arbitrary government actions and ensures that before depriving a person of life, liberty, or property, the government must follow fair procedures and that laws themselves must be fair and just. Constitutional due process "principally serves to protect the personal rights of litigants to a **full and fair hearing**." (*Miller v. French* (2000) 530 U.S. 327, 350, emphasis added.)

The Equal Protection Clause of Fourteenth Amendment requires that states treat individuals in similar situations in a similar manner and prohibits discriminatory laws or practices that unjustly favor one group over another, ensuring that no person or group is denied the same protection under the law as others. Since the trial court did not follow the established precedents when issuing the order appointing referee, Petitioners were not treated equally as parties in similar situations and the equal protection clause was also violated.

In addition, the First Amendment implies a right to access the courts as part of the right to petition the government for a redress of grievances and ensures that individuals have a constitutional right to seek remedies for violations of their legal rights through the judicial system. The Court affirmed that First Amendment's freedom to petition extends to all branches of government, including the judiciary, and that the right of access to the courts is part of the right to petition. (*California Motor Transport Co. v. Trucking Unlimited*, 404 U.S. 508 (1972); *BE & K Const. Co. v. N.L.R.B.*, 536 U.S. 516 (2002).)

Due process requires courts to consider the economic burdens on litigants. *M.L.B. v. S.L.J.* emphasized the ability to pay should be carefully considered to ensure equal access to justice, especially when an inability to pay could significantly prejudice one party's rights. (*M.L.B. v. S.L.J.*, 519 U.S. 102 (1996).) In the above case, the Court held that Mississippi statutes conditioning an indigent mother's right to appeal a judgment terminating her parental rights on prepayment of costs violated equal protection and due process.

In *Boddie v. Connecticut*, 401 U.S. 371 (1971), the Court emphasized that differences in access to legal instruments based on financial status are unconstitutional, reinforcing the principle that economic barriers should not impede access to justice.

Moreover, in *Boddie*, The Court found that access to the courts is a fundamental aspect of due process when those courts are the exclusive avenue for resolving disputes or obtaining relief. *Boddie* also emphasized that financial barriers must not prevent individuals from vindicating their legal rights, particularly in matters that involve significant personal interests. *Boddie* had established an important principle: that the state cannot create insurmountable barriers to accessing essential legal processes.

In *Hood v. Superior Court* (1999) 72 Cal.App.4th 446 ("*Hood*"), 449, the Court of Appeal confirmed that a trial court should not impose the costs of a referee on a litigant of modest means, because of the existence "of a litigant's right of access to the courts without the payment of a user's fee." (*Hood*, at 449.)

The appointment of a discovery referee without proper consideration of economic inequality and procedural fairness is a violation of these constitutional rights.

The trial court's order appointing referee effectively deprived parties with less financial resources' right to discovery. The discovery motions filed by parties who could not pay the referee's expensive retainer would be taken off the referee's calendar which adversely impacts these parties' right to discovery. For example, in Petitioners' case, on June 5, 2024, ADR Services sent an email on Judge Murphy's behalf to Chu stating "I have been informed that retainer for the referee services have not been paid and are overdue. Therefore, plaintiff's motion to compel is taken off calendar." Petitioners had already paid \$ 11,083.34 to the referee. The referee sent invoice for more retainers, but Petitioners would not be able to pay further referee's retainers due to their financial hardship as evident in their April 1, 2024 ex parte. As the referee's policy applies to all parties, Petitioners' future motions to compel are at the risk of being taken off calendar due to inability to pay referee's expensive retainers. These outcomes would prevent Petitioners from obtaining sufficient evidence to establish their claims and defenses which effectively prevent Petitioners from pursuing a fair trial. Consequently, it will lead to Petitioners losing their Fremont Property and/or must pay the \$150,000 damages Chu claimed in his complaint.

What is equally concerning is that imposition of referee's fees to parties that are financially disadvantaged could help parties with far superior financial means to avoid discovery compliance. The fees "charged by privately compensated discovery referees allow affluent litigants

to avoid discovery compliance by pricing enforcement of legitimate discovery demands beyond the means of indigent plaintiffs. This advantage based on wealth flows directly from the trial court's order imposing equal division of fees between indigent plaintiffs and an adverse litigant of far superior financial means." (*Solorzano v. Superior Court*, (1993) 18 Cal.App.4th 603 ("Solorzano"), 614.)

In addition to not properly considering parties' economic hardship and inequality, the trial court's failure to follow proper procedures in nominating and selecting the referee are also a procedural due process violation.

In *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868 (2009) ("*Caperton*") the Court emphasized the importance of safeguards to prevent potential bias in judicial assignments. As procedural safeguards and to avoid claims of bias or procedural unfairness, California courts allow procedures ensuring transparency in nominating referees and allowing input from all parties. For example, California appellate courts' precedents allow all parties to be given the opportunity to select an acceptable referee and sufficient number of names of nominees to be provided for parties to choose. In this case, Petitioners were deprived of these rights when the trial court denied a reasonable time extension request to find referee nominees and ordered to nominate insufficient number of referees by parties.

"We believe that even in cases where both parties agree to a reference, they always should be given the opportunity to select an acceptable referee. This not

only avoids potential criticism arising from concerns that a court may routinely select a particular private service, but also permits the parties to agree on a referee whose fees, availability and/or expertise they perceive to be mutually favorable.” (*Taggares v. Superior Court* (1998) 62 Cal.App.4th 94 (“*Taggares*”), 105, emphasis added.) In this case, the trial court’s order on March 28, 2024 only allowed four court days to find referee nominees. By refusing Petitioners’ request to extend time to allow parties to find referee nominates, the trial court did not give Petitioners the opportunity to select an acceptable referee.

In this case, there was also no sufficient number of referee nominees allowed in the referee selection procedure so that an improper knockout process significantly prejudiced Petitioners. “In selecting the referee, the court shall accept nominations from the parties and **provide a sufficient number of names so that the parties may choose the referee by agreement or elimination.**” (*Solorzano*, at 617, emphasis added.) Cal. Code Civ. Proc., § 640(b) allows 3 nominees from each party but March 28 order only allow 2.

The trial court was also not transparent in its March 28 order that there would be a knockout process for referee selection. Additionally, the trial court immediately decided that Judge Murphy would be selected as the referee after Coldwell’s attorney informed the court that Judge Murphy was their nominee.

The trial court’s approach neglected the fairness of the nomination and selection process. This omission

disregards the principles of impartiality and transparency protected in judicial procedure.

Additionally, the trial court must not assign all discovery issues to a referee simply because the issues are time-consuming. “[T]he interests of the court in reducing its workload must be balanced against the economic hardship imposed on litigants.” (*McDonald*, at 370.) “[E]fficiency is not more important than preserving the constitutional integrity of the judicial process.” (*Solorzano*, at 615, Quoting *Aetna Life Ins. Co. v. Superior Court*, (1986) 182 Cal.App.3d 431.)

It is necessary for the Supreme Court to review how courts balance their resource constraints with parties’ rights to have their cases heard fully and fairly and provide guidance on referee appointment criteria and process.

II. The Decision Below Conflicts with this Court’s Precedents.

A. The Trial Court’s Order Appointing Referee Did Not Follow the Precedents Regarding the Restriction on Referee’s Compensation or Consider the Significant Impact of Economic Barriers of Access to Justice in Civil Cases.

Newton v. Consolidated Gas Co. of New York, 259 U.S. 101 (1922) states that the compensation for a master should be liberal but not exorbitant. *Newton* found the allowance was too high (15 times of trial judge salary and 8 times of US Supreme Court justice). In this case, the referee estimated 70 hours for this case which is much higher

than state average of 16 hours. With the \$800 hourly rate, the referee's cost is also too high which is about 15 times of average trial judge salary and over 5 times of chief justices' hourly rate of this Court.

When Petitioners requested the trial court to limit the maximum number of hours the referee could charge pursuant to Cal. Rules of Court, rule 3.922(f) (1), the Petitioners encountered with frustration of the requirement to file extra motion that was not required in the statute.

Case law has established that order appointing discovery referee must not be granted lightly. *M.L.B. v. S.L.J.* highlighted that the ability to pay should be carefully considered to ensure equal access to justice, especially when an inability to pay could significantly prejudice one party's rights. In this case, the parties' economic hardship and inequality were not properly considered as in the precedents.

Lower court's decision conflicts with established legal principles. First, the considerations on economic inequality of parties when making order appointing referee is obligated as confirmed in multiple precedents. (*Solorzano*, at 614; *McDonald*, at 366; *Taggares*, at 99.) Furthermore, the appellate court held that unless the trial court makes a cost-free option available to the parties, it may not order a reference in any case in which a party objects. (*Taggares*, at 106.) In *Hood*, the Cour of Appeal issued preemptory writ "commanding the trial court to vacate its reference orders and to place the discovery disputes back on calendar for decision by the trial court." (*Hood*, at 450.)

Moreover, Parties do not need to qualify for in Forma Pauperis status for the court to consider if cases are appropriate for reference. “Sections 639 and 645.1 are similarly silent with respect to the dilemma of a party of modest means who does not qualify for the cost protection afforded by proceeding in forma pauperis. Reference to a discovery referee imposes a substantial economic burden on such a party.” (*Solorzano*, at 615)

The consideration on in forma pauperis parties also applies to situations when parties clearly have economic inequality. “As stated in *Solorzano* in discussing in forma pauperis plaintiffs . . . **The same policy considerations apply where one party has financial resources far superior to an opposing party who, while not proceeding in forma pauperis, has clearly limited financial means.**” (*McDonald*, at 369, emphasis added.)

“[W]e concluded that **a party need not be declared indigent before a court is obligated to consider** whether it is reasonable to force parties to equally share costs of a special master.” (*Taggares*, at 101, citing *McDonald*, emphasis added.)

Furthermore, to order the parties to bear fees equally and subject to the referee’s ability to recommend a different allocation of costs as in the April 12 (App.24a) and April 16 (App.11a) orders does not comply with the statute and precedents. In *McDonald*, the Court of Appeals opinioned “Bechtel . . . contends the court considered the financial impact on McDonald and changed its reference order accordingly to have the referee make a recommendation to the court regarding the allocation of costs. Bechtel misses the point. **It is not the referee’s responsibility to**

determine how fees should be allocated. By statute it is the court's responsibility to determine what manner of payment is fair and reasonable to the parties. (§ 645.1.)" (*McDonald*, at 370, emphasis added.) "We further concluded the issue of allocation is one for the court—not the referee." (*Taggares*, at 102, citing *McDonald*.)

Based on the precedents, order appointing referee was inappropriate in this case and the Superior Court lacked statutory or inherent authority to require Petitioners to pay one-half the fees of the master.

Lu v. Superior Court, (1997) 55 Cal.App.4th 1264 had confirmed if petitioners made showing of the costs associated with a referee impose a significant financial hardship, it would be inappropriate for the court to order that party to contribute to such costs, even if the case is properly classified as "complex".

People v. Superior Court (Laff) (2001), 25 Cal.4th 703 recognized the inherent power of courts to appoint referees but emphasized this power must be exercised fairly and justly. This case also suggested that the Superior Court lacked statutory or inherent authority to require the People to pay one-half the fees of the master.

B. The Referee Had High Probability of Bias due to Financial Incentive but Did Not Follow this Court's Precedent to Recuse.

In *Caperton*, a "probability of bias" of the decisionmaker is sufficient ground to trigger mandate recuse of judges and the Court ruled that judges must recuse themselves from cases that have a reasonable chance of bias.

Proof of actual bias is not required in the context of decisionmakers. “. . . **the Due Process Clause** has been implemented by objective standards that **do not require proof of actual bias**. See *Tumey*, 273 U.S., at 532; *Mayberry*, 400 U.S., at 465-466; *Lavoie*, 475 U.S., at 825.” (*Caperton*, emphasis added.)

In this case, the probability of bias is high due to the financial incentives, and it caused concern of conflict of interest. The referee Judge Murphy had worked with opposing parties’ attorneys for 8 times in the past two years based on ADR Services’ disclosure. Assuming the 8 times referee worked with Coldwell’s attorneys had 70 hours estimation on average, and the referee’s hourly rate was \$800 like in this case, the referee had earned about \$448,000 in the past two years due to Hoge Fenton’s business. “. . . It was also concerned with a more general concept of interests that tempt adjudicators to disregard neutrality. **This concern with conflicts resulting from financial incentives was elaborated in *Ward v. Monroeville*, 409 U.S. 57 (1972), which invalidated a conviction** in another mayor’s court. . . .” (*Caperton*, emphasis added.) *In re Murchison*, 349 U.S. 133, 136 (1955) underscores that proceedings involving a potentially biased decision-maker can undermine the fairness of judicial proceedings.

III. This Decision Below Conflicts with Federal Rule of Civil Procedure 53.

In this case, a conflict exists between a state court order issued under a state statute and a federal rule.

Federal Rule of Civil Procedure 53 sets the rules related to masters. App.41a. It provides, in relevant part:

“In acting on a master’s order, report, or recommendations, the court must give the parties notice and an opportunity to be heard; may receive evidence; and may adopt or affirm, modify, wholly or partly reject or reverse, or resubmit to the master with instructions.”

Discovery referees, who oversee discovery disputes, fall within the broader category of “masters” under this rule. Courts may appoint discovery referees when discovery issues are extraordinarily complex, or the court lacks the resources to handle numerous disputes. However, such appointments must adhere to the procedural and substantive requirements of fairness and cannot prejudice economically weaker parties.

The federal law requires the court to give parties an opportunity to be heard before adopting a referee’s recommendation. State court procedures should not infringe upon federally protected rights. However, the trial court adopts most of the referee’s recommendations (6 out of 7) without giving Petitioners the opportunity to be heard despite Petitioners had argued in the trial court about the referee’s high probability to be biased. For example, when adopting referee’s Recommended Decision and Order No. 2, August 28, 2024 order stated “No substantive argument shall be heard” which showed court did not allow parties to argue the merit about the referee’s recommendation. Even when Petitioners attempted to argue the merit in the September 17, 2024 hearing, the trial court asked Petitioners to stop. In another order adopting referee’s Recommended

Decision and Order No. 4, which sanctioned Petitioners for over \$10,000 although the opposing party filed motions without good faith meet-and-confer, it was also adopted by the court without a hearing. Similarly, almost all the recommendations were adopted by the trial court without hearing. Therefore, the majority of orders about discovery motions in this case were ruled without being heard in front of a neutral decision-maker and these discovery orders were also violated due process. The trial court's procedure to adopt the referee's recommendations conflicted with the Federal Rule 53.

“[T]he Fifth and the Fourteenth Amendments of the U.S. Constitution guarantee due process to all citizens. . . . Procedural due process refers to the constitutional requirement that when the government acts in such a manner that denies a citizen of life, liberty, or property interest, the person must be given notice, the opportunity to be heard, and a decision by a neutral decision-maker . . . ”¹ The six orders adopting the referee's recommendations (Nos. 1-5 and 7) that sanction Petitioners for a total of \$23,760 were ruled without fair and full hearing and was a violation of Due Process and should be voided.

Moreover, the trial court's decisions regarding the referee's recommendations were violations of the Supremacy Clause of the U.S. Constitution. The Supremacy Clause, found in Article VI, Clause 2 of the U.S. Constitution, provides: “This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall

1. https://www.law.cornell.edu/wex/procedural_due_process, emphasis added

be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.” This means that federal law takes precedence over conflicting state laws, and state judges are bound to adhere to it, regardless of any state law to the contrary. (*Kansas v. Garcia*, 589 U.S. 191 (2020).)

This case involves a significant federal question on interpretation of federal rules of civil procedure. It is compelling for the Supreme Court to grant review on this issue and ensure uniformity in the interpretation and application of federal law across different jurisdictions.

IV. The Issues Presented in this Petition Have Impact on Civil Litigations Nationwide.

The recurring disputes across multiple federal circuits concerning the appointment of referees or masters highlight a nationwide issue of public importance. This issue has broader implications nationwide as it raises questions about fairness, economic inequality, access to justice, procedural uniformity, and judicial efficiency. This is particularly relevant when courts order parties to pay fees for referees, as this may disproportionately affect financially disadvantaged parties, raising due process and equal protection concerns.

While the specific rules and procedures may vary from state to state, the general concept of appointing a neutral third-party to resolve discovery disputes is common across many jurisdictions. The Supreme Court held that the judge’s referral of complex cases to a master must

be justified by “exceptional circumstances” otherwise it was an abuse of discretion as in the decisions of *La Buy v. Howes Leather Co., Inc.*, 352 U.S. 249 (1957) with the original case from 7th circuit and *Mathews v. Weber*, 423 U.S. 261 (1976) with the original case from 9th circuit. However, there is no unified nationwide standard for “exceptional circumstances” required to appoint a referee in civil lawsuits, as the determination typically depends on jurisdictional rules and specific case contexts.

In cases involving high referee fees or procedural unfairness, significant impacts may arise for low-income or economically disadvantaged parties. These impacts are not limited to individual cases but represent structural issues that are widely present and are considered public interest issues. Inconsistent approaches to discovery costs and referee appointments affect not just this case but civil litigations more broadly, potentially deterring parties with fewer resources from fully participating in the legal process. The Supreme Court’s review could lead to a nationwide standard on how economic disparities and procedural fairness are addressed in the appointment of referees and allocation of discovery costs.

Granting certiorari would allow the Supreme Court to address these pressing questions of due process, equal access to justice, and consistency in applying procedural protections. This case is an ideal vehicle to resolve exceptionally important issues and is an opportunity to reinforce the principles of fairness in civil litigations when financial burdens imposed by the court interfere with access to legal remedies.

Without U.S. Supreme Court's review and guidance, economic superior party would be allowed to create discovery disputes and create exceptional circumstances for appointing referee, where they could utilize their long-term partner to further prejudice parties with fewer financial resources. Guidance from U.S. Supreme Court can also increase judicial economy and efficiency by preventing the tactics of creating numerous discovery disputes by economic superior party to wear down economic disadvantaged parties.

CONCLUSION

For the foregoing reasons, certiorari should be granted.

Respectfully submitted,

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