October Term, 2017

IN THE SUPREME COURT OF THE UNITED STATES

NINA RINGGOLD et al,
***Petitioners*,**

v.

MYER SANKARY,
***Respondent*.**

On Writ of Certiorari to the
California Court of Appeal Second Appellate District

EXHIBITS TO DECLARATION IN SUPPORT OF APPLICATION FOR EXTENSION OF TIME IN WHICH TO FILE PETITION FOR WRIT OF CERTIORARI

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EXHIBITS ATTACHED TO DECLARATION

1. **Exhibit 1** is the judgment of the California Supreme Court dated January 24, 2018. (Cal. Sup. Ct. Case No. S245760). (Bates Stamp Nos. 1-2)

2. **Exhibit 2** is the Petition for Review filed in the California Supreme Court on December 1, 2017. (Cal. Sup. Ct. Case No. S245760). (Bates Stamp Nos. 3-46)

3. **Exhibit 3** is the Appellants' Opening Brief filed in the related voting rights case filed in the United States Court of Appeals for the Ninth Circuit on April 4, 2018. (USCA 9th Cir. Case No. 17-16269). (Bates Stamp Nos. 47-140)(Excluding the Addendum).

EXHIBIT 1

SUPREME COURT
FILED

JAN 24 2018

Jorge Navarrete Clerk

Deputy

Court of Appeal, Second Appellate District - No. B279276

S245760

IN THE SUPREME COURT OF CALIFORNIA

En Banc

MYER SANKARY, as Trustee, etc. et al., Plaintiffs and Respondents,

v.

NINA RINGGOLD et al., Defendants and Appellants.

The petition for review is denied.

CANTIL-SAKAUYE

Chief Justice

EXHIBIT 2

2nd Appellate Civil Case No. B279276

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

MYER J. SANKARY, et al.
Plaintiffs and Respondents,
v.

NINA RINGGOLD et al
Defendants and Appellants,

After October 24, 2017 Order of Justice Dennis M. Perluss Acting Administrative Presiding Justice of the Court of Appeal Second Appellate District

PETITION FOR REVIEW

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TO THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE CALIFORNIA SUPREME COURT:

Petitioners Nina Ringgold ("Ringgold") in her capacity as named trustee of the Aubry Family Living Trust, Named Trustee of the Aubry Family Testamentary Trust, and Named Executor of the Will of Robert Aubry; and Justin Ringgold-Lockhart ("Lockhart") in his capacity as within the class of beneficiaries in the Trust Instrument Article VI A (5)c) respectfully petition for review following the October 24, 2017 Order of the Acting Administrative Justice of the Second Appellate District in *Myer Sankary et al v. Nina Ringgold et al* (B279276). The face of the order indicates a decision on the merits of an appeal and indicates that the matter was taken under submission on January 11, 2017.

Without compliance with California Constitution Article VI, Section 19 a decision was rendered over eight (8) months later on October 24, 2017. The decision erroneously presumes that a prefiling order was required and was rendered without any record whatsoever or briefing on the appeal filed on September 26, 2016. The decision indicates that the September 26, 2016 appeal was dismissed pursuant to California Code of Civil Procedure § 391.7 (c) because appellants failed to meet the burden of showing the appeal had merit and had not been taken for purposes of harassment or delay. A copy of this decision is attached hereto as Exhibit A.[1]

ISSUES PRESENTED FOR REVIEW

1. Whether CCP § 391.7 (a) can be applied to persons acting in a representative capacity or imputed to clients of a law office who have independent legal claims?

2. Whether CCP § 391.7 applies to appealing defendants?

3. Whether the Court of Appeal has constitutional or legislative authority to render a vexatious litigant order and simultaneously a pre-filing order in the first instance on appeal and without the mandatory statutory due process motion ("motion for security") particularly when such method bars the right of review of the orders?

4. Whether application of CCP § 391.7 to appeals violates rights guaranteed by Article VI, Sections 3 and 14 of the California Constitution?

5. Whether CCP § 391.8 is applicable when there is a lack of a statutory or constitutional basis for the initial vexatious litigant determination and a pre-filing condition is imposed without legislative or constitutional authority and beyond the appellate jurisdiction of the Court of Appeal?

6. Whether under the United States Constitution application of the California Vexatious Litigant Statute in the first instance in the Court Of Appeal violates petitioners'

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[1] Petitioners do not abandon or forego a federal forum and reserve all claims under federal law and the United States Constitution. The federal claims are addressed only for purpose of complying with Government Employees v. Windsor (1957) 353 U.S. 364. They petitioners reserve the right

rights guaranteed by the First Amendment to seek redress of grievances and the Fifth and Fourteenth Amendment guarantee to due process of law. Whether application of the California Vexatious Litigant Statute in the first instance in the Court of Appeal is reasonably related to retaliation for filing legitimate grievances, for efforts to institute institutional reform, and for the effort to implement a special judicial election in time for the 2016 General Election?

REASONS WHY REVIEW SHOULD BE GRANTED

This court should grant review to provide institutional guidance to the lower courts as to the constitutional and jurisdictional authority to impose an initial vexatious litigant order simultaneous with a pre-filing order in the first instance in the Court of Appeal. Such application sets up a discriminatory classification system in which targeted persons are not allowed the ordinary appellate review of the orders. Petitioners and others claim that the irregular and non-statutory method was specifically applied as a penalty against petitioners in retaliation for their efforts to pursue institutional reform in the courts of record and to implement a special judicial election in time for the 2016 General Election. (See Appellant's Response to December 5, 2016 Order "Resp." p. 22).

Despite the holding of this Court in Shalant v. Girardi (2011) 51 Cal.4th 1164 and John v. Superior Court (2016) 63 Cal.4th 91 the October 24, 2017 order applies CCP § 391.7 to represented parties and persons who are defendants. The order purports to determine the merits of an appeal when no record or appellate briefing was allowed.

Review should also be granted because the petition raises issues of first impression essential to the fair administration of justice and constitutionality of the application of California Code of Civil Procedure § 391.7 in the appellate courts. Article VI, section 3 and 14 of the California Constitution prohibits a single justice from deciding the merits of an appeal without a written decision and reasons stated. However, this is precisely the result under the October 24, 2017 orders. The Administrative Presiding Justice provides no reason for the finding that the appeal petitioners failed to demonstrate that the appeal had merit and had not been taken for purposes of harassment or delay. In fact a single justice acting alone provides no explanation why CCP ¶ 391.7 was applicable to the appeal.

Finally this court should grant review to address an issue of first impression concerning the application and legal standard to be applied under applications to vacate a vexatious litigant order and to be removed from the Judicial Council's list of vexatious litigants.

BACKGROUND

A. Procedural Facts

This appeal was filed on September 26, 2016. The notice of appeal on its face identified petitioners as defendants and that they were represented by counsel.

On December 5, 2016 the Court of Appeal issued a notice which stated:

> "It has come to the attention of the Court that **plaintiff** has previously been found to be a vexatious litigant within the meaning of Code of Civil Procedure section 391.7, subdivision (a). Pursuant to section 391.7, subdivision (c) of the Code of Civil Procedure, **all** proceedings are **hereby stayed.**
>
> Within 10 days of the date of this notice plaintiff shall show in writing 'that the litigation has merit and has not been taken for purposes of harassment or delay.' (Code Civ. Proc., sec. 391.7, subd. (b))."

Petitioners' filed a response to the December 5, 2016 order and no opposition or filing was made by the plaintiff respondents. The December 5, 2016 order improperly identified petitioners as appealing plaintiffs.

Although the matter was taken under submission on January 11, 2017 over eight months passed without any ruling by the Court of Appeal. On October 24, 2017 the Administrative Presiding Justice entered an order dismissing the appeal by indicating that a request for pre-filing order was denied. (Exhibit A).

B. General Facts

Robert Aubry and Mary Louise Aubry (the "Aubrys") are a African American and they created the Aubry Family Trust in 1987 with the specific intent to form a family trust in the control of their designated trustees and to generate an income producing trust for the benefit of designated family members and to provide for a younger generation of heirs. The trust named Ringgold, Mary Louella Saunders ("Saunders"), and Eunice Summers ("Summers") as trustees. The Aubrys had accumulated a vast investment portfolio that generated substantial income that included securities, insurance policies, oil and gas leases, and real estate including but not limited to two apartment buildings. The trust does not terminate until sixty years after the date of death of Mary Louise Aubry or twenty-one years after the death of Robert Aubry. Since the Aubrys had no children, it was their intention to transfer their wealth to family members and their children. Appellant Ringgold is expressly named as trustee and she is also named as executor in the will of Robert Aubry. The trust instrument provides a detailed plan for appointment of a successor trustee if one of the designated trustees is unable or unwilling to serve and it mandates the appointment of a corporate trustee selected by the beneficiaries (by express procedure) if a named trustee is not available. Both Sankary and Ringgold graduates of Harvard Business School and attorneys are qualified to act as trustees. Irrespective of this fact of undisputed qualification to perform the tasks of trustee Judge Kolostian had absolutely no business or authority to establish a discriminatory qualification standard in conflict with the settlors and the trust based on his personal associations. (Resp. p. 9-10).

On July 29, 1998 Robert Aubry had a massive stroke that rendered him unable to speak or write. Summers, his sister, concealed records of the trust and took possession of the wills of the Aubrys and fired their estate-planning attorney. Summers created an invalid power of attorney and caused further amendments caused further amendments to the trust. She treated the assets of the trust as her personal property, used the power of attorney to make gifts to herself and others, and used the power of attorney after the death of Robert Aubry. Summers failed to notify the co-trustees, Ringgold and Saunders, of her actions. Investigation during the proceedings preliminary indicated that Summers had misappropriated over $400,000. Id. 10-11.

Saunders and Ringgold in the capacity of trustees filed two separate and independent petitions asserting claims of breach of trust, elder abuse, removal of co-trustee, determination of ownership and title of trust property, issuance of a citation to Summers, determination of validity of trust provisions, compel information and accounting from Summers, settling accounts of Summers, instructions to co-trustees and trustee compensation. Saunders and Ringgold as required by law were represented by counsel. They did not file any action in propria persona. Id. 11.

On October 14, 2003 an order was entered confirming Ringgold and Saunders as trustees and permanently suspending Summers as trustee. Summers filed no appeal from this order. The issue of trusteeship was conclusively resolved. The doctrine of res judicata conclusively concluded this issue.

Although Summers was permanently suspended and removed as trustee, much later she filed a petition to "resign" when she had no trusteeship to resign from. Judge Richard Kolostian entered an order that indicated that Ringgold and Saunders were "interim trustees" even though they were trustees pursuant to the trust instrument and no petition to remove them had ever been filed. He appointed Sankary without bond ignoring the mandatory requirements of Probate Code § 15602 and when the existing trustees had not been removed. Probate Code § 15602 (a)(3) requires a bond when “[a]n individual who is not named as trustee in a the trust instrument is appointed as trustee by the court.”

In 2005 Sankary in propria persona and without bond initiated a new proceeding by filing a Probate Code § 11700 petition attempting to obtain approval of a partial mediated settlement. The partial settlement was not included in the petition and notice was not given to all beneficiaries and heirs of the mediation or of the petition itself (including Lockhart). Before entry of the order approving this partial settlement Summers died on November 17, 2005. Id. 13-14.

Upon the death of Summers under the express terms of the trust she no longer had any interest in the trust. The death triggered the vesting provision for other beneficiaries who had no notice of the proceedings initiated by Sankary. Id. 13-14.

Sankary initiated 6 petitions and multiple ex parte applications and other proceedings seeking attorney fees and liquidation of the trust. To preserve the right seek damages beneficiaries and heirs were required by law to file defensive objections. Id. 18. The most recent petition filed by Sankary is the May 17, 2016 petition that is the subject of the July 25, 2016 order at issue in this appeal. Although petitioners had filed a request for special notice of the proceedings they did not receive notice.

The reoccurring petitions filed by Sankary following his Probate Code § 11700 petition in propria persona and without bond violated the mandatory stay and were filed prior to issuance of remittitur of pending appeals.

If an appeal can only proceed upon entry of a final distribution order as if the trust is a proceeding to administer a decedent's estate, there exists a continuous liquidation of the private trust unabated. At the point of entry of a final judgment the actual trustees, heirs, and beneficiaries will not have an effective remedy and the perpetual discriminatory divestment of property prevents the right to inherit in violation of federal law. Id at 18-19.

Subsequent to the February 18, 2009 decision it was discovered that the former administrative presiding judge and the trial judge were involved in the Probate Task Force formed by the California Judicial Council. This was not disclosed to petitioners. The task force was formed in direct response to overwhelming number of grievances in the probate department brought to highlight by an investigative series of articles published in the Los Angeles Times. Appellants were unaware of the existence of the task force or the articles. They did not know that their constitutional rights violation petition had been filed just before the publication and report of the probate task force and that their claims were in direct conflict with the probate task force. Appellants are associated with a voting rights case that is seeking to implement mandatory disclosure and consent requirements in the courts of record pending implementation of a monitored judicial election. They claim that the vexatious litigant determinations are without legislative or constitutional authority and were retaliatory and in violation of First Amendment and other constitutional rights. Id. 19-20.

ARGUMENT

I. Review Should Be Granted To Provide Direction To The Lower Courts That CCP ¶ 391.7 Does Not Apply To Persons Acting In A Representative Capacity And Cannot Be Imputed To Clients Of A Law Office Who Have Independent Legal Claims

In 2011 this court in Shalant v. Girardi (2011) 51 Cal.4th 1164 held as follows:

> "The Legislature's express distinction between litigation filed in propria persona and that filed through an attorney, therefore, is not an absurd one that could not have been intended. Even if a broader rule, barring vexatious litigants from filing or maintaining new litigation in propria persona, would serve the statute's purposes better by ending more frivolous litigation more quickly, we have no warrant to ignore section 391.7's unambiguous language in favor of such a rule….. As the appellate court below remarked: 'We sympathize with the plight of already overburdened trial courts that are forced to contend with the abusive conduct of vexatious

> litigants. But in their efforts to deal with the problem of vexatious litigants, courts must observe the limits set by the applicable statutory scheme. If those limits are too confining, then it is the function of the Legislature, not the courts, to expand them.'

This court has directed that '[t]he vexatious litigant statutory scheme applies exclusively to self-represented litigants". John at 93. The September 26, 2016 notice of appeal specifically states that the Law Offices of Nina Ringgold represents Nina Ringgold in her capacity as named trustee of the Aubry Family Living Trust, Named Trustee of the Aubry Family Testamentary Trust, named Executor of the will of Robert Aubry; and Justin Ringgold-Lockhart as within the class of beneficiaries in the Trust Instrument Art. VI A (5)(c).

There does not exist any self-representation by Ringgold. As named trustee Ringgold can only appear in the action through counsel. See Ziegler v. Nickel (1998) 4 Cal.App.4th 545. Lockhart who has independent claims under the trust has never appeared in any case in the United States in propria persona during his lifetime. But more importantly, the trial court expressly found that he was properly represented by counsel (The Law Office of Nina Ringgold), that there was an attorney client relationship, and that §391.7 was not applicable. No appeal was filed from this finding.

(See Resp. 29). The trial court did not make any finding that an attorney was acting as a puppet for the client or client acting as a puppet for an attorney.[2] Independently, other clients of the Law Office of Nina Ringgold, just as Lockhart, have been imputed vexatious litigant status by mere association with their attorney in presenting their own independent legal claims.[3]

Once the trial court appointed Sankary by the March 10, 2005 nonappealable order, without bond and without a petition to remove the existing trustees, the named trustees could file challenges to the proceedings in their capacity as trustees named in the trust instrument and as to the final orders confirming their appointment governed under the Doctrine of Res Judicata. (Resp. 5).

In Weissman v. Quail Lodge, Inc. (1999) 179 F.3d 1194, 1194 the federal court has also determined that there is a

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[2] In Shalant this court left open the questions whether CCP § 391.7 may be applied with the record shows a vexatious litigant's attorney is acting as a mere puppet for the litigant. This court expressly noted that the trial court had made no such finding. Shalant at 1176 fn 8. In the instance case the trial court never made such finding.

[3] See USDC 12-cv-00717 JAM-JFM Dkt 72 p. 21-22 ¶43-51, now pending as USCA 9th Cir. 17-16269).

significant distinction between vexatious litigant orders against pro se litigants and attorneys.

> "A vexatious litigant order imposed against a pro se litigant, however, is distinguishable from an order that limits an attorney's right to file pleadings on behalf of a client, i.e., to practice his or her profession. Insofar as our research has uncovered, no court in this circuit has ever imposed a vexatious litigant order on an attorney. We do not believe that the vexatious litigant doctrine was ever intended to control attorney conduct and we do not propose to approve its application in this case as a means of controlling attorney conduct." Id.

This court should grant review to clarify that CCP § 391.7 and the vexatious litigant statute is not intended to be applied to persons properly acting in a representative capacity or to be imputed generally to clients of a law office without constitutional or legislative authority.

II. Review Should Be Granted To Address The Circumstances In Which An Administrative Presiding Judge May Disregard The Plain Words of A Statute and The Law Established In This Court In Applying A Pre-Filing Order To An Appealing Defendant

The notice of appeal and the October 24, 2017 order demonstrate that petitioners were appealing defendants on serial and reoccurring petitions advanced by Sankary. (See also Resp. 18-22). Disregarding this fact, the plain language of the statute that it does not apply to defendants, and the holding of this court in John *supra* the October 24, 2017 improperly presumes that CCP § 391.7 is applicable.

The plain meaning of a statute's words are the most reliable indicator of legislative intent. John at 95. “We interpret relevant terms in light of their ordinary meaning, while also taking account of any related provisions and the overall structure of the statutory scheme to determine what interpretation best advances the Legislature's underlying purpose.” Los Angeles County Bd. Of Supervisors v. Superior Court (2016) 2 Cal.5th 282, 293. In John this court held clearly held that CCP § 391.7 does not apply to a defendant seeking to appeal an adverse judgment. (See John at 93 “We conclude that section 391.7's prefiling requirements do not apply to a self-represented litigant previously declared a vexatious litigant seeking to appeal an adverse judgment or interlocutory order in an action where he or she was the defendant. A different interpretation would impede his or her right of access to the appellate courts without advancing the underlying purpose of the vexatious litigant statutes. We therefore affirm the Court of Appeal's judgment allowing defendant's appeal in this case to proceed.”

III. This Court Should Grant Review To Determine Whether The Courts Of Appeal Have Appellate Jurisdiction, Constitutional Or Legislative Authority, To Render A Vexatious Litigant Order And Simultaneously A Pre-Filing Order In The First Instance On Appeal And Without The Mandatory Statutory Due Process Motion ("Motion For Security") Particularly When There Would Be No Right Of Review Of The Orders?

Regardless of which version of the California Vexatious Litigant statute was in effect there does not exist appellate or original jurisdiction to make a an initial vexatious litigant determination and simultaneously a pre-filing order in the Court of Appeal and to do so when the mandatory statutory due process motion has never been filed in the trial court with a right of review.

Courts of Appeal have appellate jurisdiction when superior courts have original jurisdiction, and in certain other cases prescribed by statute. Like the Supreme Court, they have original jurisdiction in habeas corpus, mandamus, certiorari, and prohibition proceedings. (Cal. Const. Art. VI §10). The superior court does not have jurisdiction to make an initial vexatious litigant determination without the mandatory statutory due process motion – a motion for security filed by *a defendant* and the defendant has the burden of proof and the plaintiff has a statutory right to seek review of an order. A motion for security is not a determination of the merits of the pending litigation. The plaintiff has a right to present evidence and to call witnesses and a right to appeal the decision.

The superior court does not have original jurisdiction when a motion for security is not filed or a superior court judge has not acted on his/her own motion. Therefore, there never existed appellate jurisdiction to enter the vexatious litigant orders and pre-filing orders in the Court of Appeal.[4]

Only rarely should an appellate court be engaged in taking evidence since it is not equipped to handle the process. CCP § 909, In re Georgiana K. (2005) 125 Cal.App.4th 1443, 1450. In the cases in which an appellate court takes evidence it is generally by motion of the parties. CRC 8.522 (b). Although raised in the trial court the case of Bravo v. Imam (2002) 99 Cal.App.4th 211 extensively explores the rationale for affording a person the protection of a noticed motion and hearing prior to being subjected to a pre-filing order. CCP § 391.7 presumes a vexatious determination has already been made. Id. at 223-224. Bravo correctly points out that "[i]f the plaintiff… has never been declared vexatious in a California court, section 391.7's assumption that the plaintiff has already

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[4] The Court of Appeal erroneously used a caption to imply that an original proceeding had been filed when this was not the case. (See Resp. p. 7-8 & fn).

been declared vexatious creates a procedural vacuum." Id. 224. CCP § 391.7 presumes a trial court has been engaged with the proper procedural ability to take evidence, receive witness testimony, and leave a plaintiff with a right of appellate review.[5]

The Courts of Appeal does not have appellate jurisdiction to make an initial vexatious litigant decision and simultaneously enter a pre-filing order when where has not first been the mandatory due process motion. Additionally, the Court of Appeal lacked constitutional and legislative authority in the manner applied to Ringgold and Lockhart. Even if this is not the case, a Court of Appeal must follow the mandatory due process procedure. This was not done in any proceeding involving petitioners. (Resp. p. 28-29).

It is well established that a reviewing court may have jurisdiction over the parties and the claims, but it is fundamental that it exercise its jurisdiction in the proper manner. Fortenbury v. Superior Court (1940) 16 Cal.2d 405. It cannot act as a trial court or court of first instance when there

[5] In re R.H (2009) 170 Cal. 678 disapproved in part in John v. Superior Court (2016) 63 Cal.4th 91 relies in part on In re Whitaker (1992) 6 Cal.App.4th 54 to support the contention that an appellate court could make an initial determination of vexatious litigant status. In re R.H. at 659-660. However, In re Whitaker expressly indicated that there was a prior order in the trial court that had declared the appellant to be a vexatious litigant. See In re Whitaker at 55.

does not exist original jurisdiction. Sanborn v. Pacific Mut. Life Ins. Co. (1940) 42 Cal.App.2d 99. Its jurisdiction is generally confined to the correction of errors committed in the trial court and it has no authority to extend its power beyond that conferred by the Constitution. Pacific Telephone, etc., Co. v. Eshelman (1913) 166 Cal. 640.

There only existed appellate jurisdiction, not original jurisdiction, in the proceedings that determined appellants to be vexatious litigants. Since, no motion for security or any motion had been filed in the trial court, there was no basis for an initial determination simultaneously with a pre-filing order without a mandatory due process motion that allowed a right of appellate review.

CCP § 391.7 is unconstitutional to the extent conflicts with California Constitution Art VI § 3, 10, 14. First, there must have been an independent statutory due process motion filed in the trial court making the initial determination with a right of review. Second, if independently a justice of the appellate court or panel makes such determination *as to the appellate court*, following such determination in the trial court, the mandatory statutory due process procedures should be followed. Third, a single justice cannot determine the merits of an appeal without the appellate record and appropriate briefing because this directly conflicts with California

Constitution Art. VI § 3, 14. Although John indicates that "the appellate court" may declare an appellant or writ petitioner a vexatious litigant it does not indicate that a single justice may make the determination of the merits of an appeal or that the statutory due process motion procedure is to be disregarded. (i.e. an order to show cause identifying the cases, and grounds that CCP § 391 vexatious litigant is believed to exist, procedure to take evidence under CCP § 909).

If there is any additional pre-filing order under CCP § 391.7 (a) it is not within the context of the same appeal in which the vexatious litigant order is determined. The pre-filing requirement does not apply to defendants or to represented parties. This Court has rejected the argument that a pre-filing requirement applied to all vexatious litigant appellants and writ petitioners. John at 100 fn 2.

CCP § 391.7 is unconstitutional in that it allows a single justice to determine the merits of an appeal cause without a record, without a constitutionally constructed court, and without a written decision. Additionally as applied in this case it bars access to the court without the statutory right of review.

IV. Review Should Be Granted To Determine If CCP § 391.7 Violates Section 3 And 14 Of Article IV Of The California Constitution

Section CCP § 391.7 permits the presiding justice to prohibit the filing of "litigation" unless it appears to the presiding justice "that the litigation has merit and has not been filed for the purposes of harassment or delay."[6] Application of this statutory provision in the appellate court violates both sections 3 and 14 of Article VI of the California Constitution.

Article VI, section 3 states:

> "The Legislature shall divide the State into districts each containing a court of appeal with one or more divisions. Each division consists of a presiding justice and 2 or more associate justices. It has the power of a court of appeal and shall conduct itself as a 3-judge court. Concurrence of 2 judges present at the argument is necessary for a judgment."

Two qualified justices are necessary to render a decision on the merits in the Court of Appeal. People v. Castellano (1978) 79 Cal.App.3d 844, 862. Permitting the merits of an appeal to be resolved directly or indirectly by a presiding

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[6] At the point if the entry of a pre-filing order against Ringgold in the first instance in the court of appeal the statute only pertained to a "presiding judge". The modification of the statute effective in 2012 was not determined to be retroactive.

justice alone violates or impairs this constitutional requirement.

Article VI, section 14 of the California Constitution requires that "[d]ecisions of the Supreme Court and courts of appeal that determine causes shall be in writing with reasons stated." The presiding justice under CCP § 391.7 cannot act to determine the merits of a cause or directly impact the determination of the merits of the cause without a constitutionally constructed court. A written opinion with reasons stated is required. (Cal.Const. Art VI § 14).

CCP § 391.7 (a) indicates that "the court" may on its own motion enter prefiling order. CCP § 391.7 (b) states that a presiding justice may condition the filing of the litigation upon the furnishing of security for the benefit of the *defendants* as provided in Section 391.3. CCP § 391.3 is expressly based upon a noticed hearing by a *defendant* with an opportunity to present evidence, written or oral, by witnesses or affidavit.

Only in rare circumstances does an appellate court take evidence. (CCP § 909, CRC 8.252 (c)(1)). The term "the court" in CCP 391.7 (a) should be determined to mean a trial court and not an appellate court.

CCP § 391.7 does not indicate that the presiding justice is to state the reason for prohibiting a party from filing an appeal. The public interest in fair and neutral administration of justice requires some indication of the reason the presiding justice dismisses of an appeal. Article VI, section 14 of the California Constitution requires a written decision concerning the merits. Therefore, application of CCP § 391.7 without a decision with reasons stated or a prior due process motion in the proceedings making the initial vexatious determination is unconstitutional.

Although cases have held that vexatious litigant statutes are applicable to appeals or writs, none of the cases have addressed this application within the constraints of the California Constitution. See McColm v. Westwood Park Assn. (1998) 62 Cal.App.4th 1211, 1219-1217, In re Luckett (1991) 232 Cal.App.3d 107, 108-109. Dismissal of a notice of appeal prohibits the filing of the appeal, therefore the presiding justice acting alone in the appeal effectively bars pursuit of a legitimate issues when the method of entry of the initial vexatious litigant order and the pre-filing order effectively bars independently review. This targeted application is different from the standard apply to the general pool of alleged vexatious litigants.

The Court of Appeal barred submission of the record and appellate briefing. The October 24, 2017 indicates that the administrative presiding justice reviewed petitioners' unopposed response to the court's notice and "the available record". There is no 'available record because the December 5, 2016 order stayed all proceedings. (Resp. p. 2). The merits of an appeal cannot be determined without any appellate record and CCP § 391.7 and briefing from the record. Section CCP § 391.7 violates sections 3 and 14 of Article VI of the California Constitution.

A fundamental issue is that the verified petition filed by Sankary on May 17, 2016 initiating litigation conceded under penalty of perjury that he was appointed as a trustee without the mandatorily required bond. The appointment of a trustee against the express and unambiguous terms provisions of a private trust instrument *and* based on an erroneous and discriminatory qualification that the trustee of a private trust had to be a trustee he personally knew. This qualification requirement and appointment of Sankary without bond was in excess of the court's jurisdiction and therefore void. Texas Co. v. Bank of America Nat. Trust & Savings (1935) 5 Cal.2d 35, In re Schwartz' Estate (1948) 87 Cal.App.2d 569, 573. The administrative presiding justice acting alone without allowing a record and briefing, including the significant admission of Sankary, is not consistent with sections 3 and 14 of Article VI of the California Constitution and not a proper basis for determination of the merits of an appeal.

The October 24, 2017 order provides no reasons for the determination that petitioners failed to show that the appeal had merit and was not taken for purposes of harassment or delay or even why Section 391.7 was applicable to the appeal. Such action under the vexatious litigant statute violates the California Constitution, and is, therefore, prohibited. See Carter v. Seaboard Finance Co. (1949) 33 Cal.2d 564, 579 ("In determining its objectives the language of the amendment must be applied by the courts as it is written"); Hotel Employees & Restaurant Employees Internat. Union v. Davis (1999) 21 Cal.4th 585, 602 ("A statute inconsistent with the California Constitution is, of course, void.").

This court should grant review to settle an important question of law concerning the constitutionality of application of CCP § 391.7 to appellate proceedings or to specify the procedures which are consistent with sections 3 and 14 of Article VI of the California Constitution. (CRC 8.500 (b)(1)). Additionally this court should grant review based on lack the concurrence of sufficient qualified justices. (CRC 8.500 (b)(3)). Finally this court should grant review as to whether the decision of a single justice after an eight month delay in entry of the October 24, 2017 order following submission violated California Constitution Art VI, Section 19.

V. This Court Should Grant Review To Determine The Applicable Standard To Be Applied To Vacate A Pre-Filing Order And To Remove A Name From The Judicial Council's List Of Vexatious Litigant Under CCP § 391.8? And When It Can Be Reasonable Be Shown That The Subject Orders Were Entered Without Legislative Or Constitutional Authority And Beyond The Appellate Jurisdiction Of The Court Of Appeal Whether CCP § 391.8 Is Applicable?

In 2011 CCP § 391.8 was enacted and for the first time specified a procedure to vacate a pre-filing order and to remove one's name from the Judicial Council's vexatious litigant list. This court should grant review to identify the applicable standard and whether the statute should be applied when it can be shown that, as in this case, there lacked legislative and constitutional basis for the initial vexatious litigant determination and pre-filing condition in the first instance in the Court of Appeal and that the orders were entered beyond the beyond the appellate and original jurisdiction of the Court of Appeal. CCP § 391.8 (c) specifies that

No was there a legal basis to require represented appealing defendants "disprove they were not vexatious litigants", to dismiss appeals in a proceeding to determine vexatious litigant status (because a initial vexatious litigant determination is not a determination on the merits), to impose a pre-filing condition as to defendants, to fail comply with the mandatory due process motion requirement, to fail to identify cases or factors in CCP § 391, and to make a declaration of vexatious litigant status and impose a pre-filing requirement in a manner that is unreviewable (and at the same time dismissing the underlying appeal).

In 2009 CCP § 391.7 (a) and (b) did not provide authority to a justice of the court of appeal to make an initial vexatious litigant determination or enter a pre-filing order. California Senate Bill 731 amended CCP § 391.7 to add the term "justice" and this amendment was not made retroactive. It became effective on January 1, 2012. The pre-filing requirement of CCP § 391.7 never applied to represented plaintiffs or defendants or to Ringgold when the pre-filing order was entered. The issue is not whether there exists a material change of facts or if the ends of justice would be served but rather if there ever existed a jurisdictional basis for the orders.

This court should grant review to secure uniformity of decision and decide important questions of law. (CRC 8.500 (b)(1)).

VI. Review Should Be Granted To Determine If The Application of CCP § 391.7 Violates Rights Guaranteed By The United States Constitution

Application of CCP § 391.7 violates petitioners' right to petition the government for redress of grievances and the right to due process guaranteed by the First, Fifth, and Fourteenth Amendments of the United States Constitution. The October 24, 2017 order is not formed to advance a compelling governmental interest and is, therefore, invalid.

The First Amendment right to "petition the Government for redress of grievances" which includes the right to review by appeal is "one of the most precious of liberties safeguarded by the Bill of Rights." BE & K Constr. Co. v. NLRB (2002) 536 U.S. 516, 524 (quoting United Mine Workers v. Illinois Bar Assn. (1967) 389 U.S. 217, 222. The First Amendment to the United States Constitution states:

> "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.*"

This prohibition is applicable to the states through the Fourteenth Amendment. Meyer v. Grant (1988) 486 U.S. 414, 419. The constitutional right to petition may only be impaired if that impairment is narrowly-tailored to protect a compelling governmental interest. There is no compelling interest in barring an individual acting defensively or in a representative capacity from an appeal involving constitutional and jurisdictional claims and to prevent filing of a record and submission of briefing allowing for the merits of the appeal to be determined.

Petitioners contend that by challenging the discriminatory policies of the probate department in the Los Angeles Superior Court for the County of Los Angeles, seeking institutional reform, and a special judicial election in time for the 2016 General Election, that the irregular application of the California Vexatious Litigant Statute is retaliatory and intended suppress legitimate grievances. As a direct consequence of seeking redress for their grievances penalties were exacted by denying access to trust property. The defensive litigation was the only avenue to redress the grievances and to obtain access to property and to obtain determination of the constitutionality of the appointment of Sankary as trustee. See N.A.A.C.P v. Button (1963) 371 U.S. 415, 430. The application of CCP § 391.7 in the first instance in an Court of Appeal sets up an unconstitutional classification system which bars access to a segment of targeted persons who are barred use of the mandatory statutory due process procedures and barred the statutory right of appellate review. See Smith v. Bennett (1961) 365 U.S. 708.

Since a prefiling order restricts access to the court system it is an extraordinary remedy that should be rarely used. Moy v. United States (9th Cir. 1990) 906 F.2d 467, 470 Petitioners contend that the labeling and application of the prefiling order was intended to operate to *chill* the pursuit of legitimate constitutional claims asserted *before* entry of a prefiling order and it was then used to effectuate a premature liquidation of a private income producing trust when the mandatory bonding requirement had not been satisfied so trust beneficiaries would be left without an effective remedy. Because the right to one's own property and to access to the court are fundamental rights strict scrutiny is required.

CONCLUSION

For the foregoing reasons, petitioners respectfully request that this court grant the instant Petition for Review.

Date: December 1, 2017

Respectfully Submitted

Nina Ringgold

By: /s/ Nina R. Ringgold
NINA RINGGOLD, Esq.
Attorney for Petitioners

EXHIBIT A TO PETITION FOR REVIEW

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

MYER SANKARY, as Trustee, etc. et al., Plaintiffs and Respondents, v. NINA RINGGOLD et al., Defendants and Appellants.	Case No.: B279276 (Superior Ct. No.: PP005201) Los Angeles County ORDER

COURT OF APPEAL – SECOND DIST.
FILED
Oct 24, 2017
JOSEPH A. LANE, Clerk
CHon Deputy Clerk

Appellant Nina Ringgold filed a Notice of Appeal in the above-entitled matter on behalf of herself and Appellant Justin Ringgold-Lockhart on September 26. 2016. The appeal seeks review of an Order Approving Sixth and Final Account and Report of Successor Trustee, etc., entered on July 25, 2016 by the Los Angeles Superior Court.

Appellants have been previously declared vexatious litigants and made subject to a prefiling order requiring them to obtain permission from the Presiding Judge before filing new litigation in any court of the State of California. The record indicates that Appellants did not have the permission of the Administrative Presiding Justice of this Court before filing this appeal. A Notice to Parties was issued on December 5, 2016 directing that Appellant Ringgold show in writing that this appeal has merit and has not been taken for purposes of harassment or delay. Appellant Ringgold's Response was received and filed on January 11, 2017. No Opposition was received from Respondents.

The Court has read and considered the Appellant Ringgold's Response to the Court's Notice to Parties and the available record in this case and hereby rules as follows:

Appellant has failed to meet the burden of showing that this appeal has merit and has not been taken for purposes of harassment or delay. Therefore, the request for a prefiling order allowing this appeal to proceed is denied.

The request for a prefiling order having been denied, the Notice of Appeal filed on September 26, 2016 is hereby dismissed pursuant to Code of Civil Procedure § 391.7(c).

Perluss, Acting Administrative Presiding Justice

CERTIFICATE OF WORD COUNT

The text of this petition consists of 6,532 as counted by the Corel Word Perfect version 8 word-processing program used to generate the petition.

Dated: December 1, 2017

Nina Ringgold

By: /s/ Nina R. Ringgold
NINA RINGGOLD, Esq.
Attorney for Petitioners

PROOF OF SERVICE

I hereby declare and state:

I am over the age of eighteen years, employed in the County of Los Angeles, and not a party to the within action. On December 1, 2017 I served a true and correct copy of the following:

PETITION FOR REVIEW

On the persons or entities on the attached service list as specified therein

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed in Los Angeles on December 1, 2017.

/s/ Matthew Melaragno

Service List

Clerk of California Court of Appeal
(Electronic Service)
Administrative Justice
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Los Angeles, CA 90013

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EXHIBIT 3

9th Cir. Civ. Case No. 17-16269
USDC Case No. CV12-00717-JAM-JFM

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

NINA RINGGOLD, ESQ. as named Trustee of the Aubry Family Trust and named Executor under the will of Robert Aubry on behalf of the trust and estate and all similarly situated entities and/or persons; JUSTIN RINGGOLD-LOCKHART on his own behalf and all similarly situated persons; THE LAW OFFICES OF NINA RINGGOLD AND ALL CURRENT CLIENTS THEREOF on their own behalves and all similarly situated persons,
Appellants,

v.

JERRY BROWN in his Individual and Official Capacity as Governor of the State of California and in his Individual and Official Capacity as Former Attorney General of the State of California; KAMALA HARRIS in her Individual and Official Capacity as Current Attorney General of the State of California; COMMISSION ON JUDICIAL PERFORMANCE OF THE STATE OF CALIFORNIA as a state agency and constitutional entity, ELAINE HOWLE in her Individual and Official Capacity as California State Auditor and DOES 1-10.
Appellees.

From the United States District Court for the Central District
The Honorable John A. Mendez

APPELLANTS' OPENING BRIEF

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I. INTRODUCTION

This voting rights case seeks special judicial elections in local municipal districts as they existed prior to trial court unification throughout in the State of California starting with the County of Los Angeles. Plaintiffs requested appointment of a three judge court under 28 U.S.C. § 2284. Trial court unification in 1997 changed judicial elections from municipal district based voting to countywide voting. It was intended to and did severely diminish the voting rights of racial and language minority voters. (ER5.962-963).[1]

Plaintiffs contend that constitutional vacancies of judicial office mandated by the state constitution have occurred. The California Legislature secretly enacted an uncodified immunity provision concerning an existing unconstitutional condition, which has not been disclosed to the general public. (Section 5 of Senate Bill x211 ("Section 5 of SBX2 11")(See Addendum p. 13). Section 5 of SBX2 11 litigants in pending proceedings to, involuntarily and without notice, waive rights guaranteed under the United States Constitution and federal law. Plaintiffs do not and will not

[1] The citation method is "volume number" . "bates stamp number" of the

consent to such waiver of their federal rights. (ER5.958-967). Based on claims of immunity under section 5 of SBX2 11 and claims of Eleventh Amendment immunity plaintiffs have demonstrated irreparable harm. California Pharmacists Ass'n v. Maxwell-Jolly, 563 F.3d 847 (9th Cir. 2009).

Although the United States Supreme Court recently in Shelby County v. Holder, 133 S. Ct 2612 (2013) held that section 4 of the Voting Rights Act was unconstitutional and its formula can no longer be used as a basis for preclearance, the County of Los Angeles is covered under the bail in mechanism under section 3 (c). Through the case of Garza v. County of Los Angeles, 918 F.2d (9th Cir 1991) the County of Los Angeles was determined to have engaged in intentional discrimination and vote dilution methods in violation of the Fourteenth Amendment, Fifteenth Amendment, and the Voting Rights Act.

Based on their viewpoint and effort to freely speak about government accountability, plaintiffs have encountered extraordinary blacklisting, retaliation, and voter intimidation in violation of the Voting Rights Act, Fifteenth Amendment, and First Amendment including by use of the California Vexatious Litigant Statute against persons and/or entities never determined to be vexatious litigants or when the mandatory statutory due process motion has never been filed in a state trial court. (ER5.968-973, 5.1118-1119, 6.1273, 1334-1345).

After plaintiffs requested appointment of a three-judge court by their complaint and formal separate written request, Judge Mendez struck their request finding that a motion had to be filed. This is in direct contradiction to the mandatory procedures of 28 U.S.C. § 2284. The judge failed to disclose that he had a direct financial and general interest in the case subjecting him to mandatory disqualification. In particular as a former judge of a state court he is subject to the statutory fines and penalties sought by the prospective class under the California Political Reform Act. He has a direct interest in the outcome of the constitutional challenges to Section 5 of SBX2 11. By this appeal plaintiffs challenge the orders and judgment entered by Judge Mendez.

II. STATEMENT OF JURISDICTION

The District Court had initial jurisdiction over this action pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 1343 (a), but that jurisdiction was limited under 28 U.S.C.§ 2284. 28 U.S.C. § 2284 (b)(3) allows a single judge to granting a temporary restraining order but it prohibits a single judge from entering a judgment on the merits. See Shapiro v. McManus, 136 S.Ct. 450,455 (2015). This court has jurisdiction pursuant to 28 U.S.C. § 1291[2] and 28 U.S.C. § 1292 (a)(1). Alternatively, or as an exception to 28 U.S.C. § 1291, this court has jurisdiction under the collateral order doctrine or as treating the appeal as a writ of mandamus under 28 U.S.C. 1651. This court has broad powers and jurisdiction in the disposition of appeals under 28 U.S.C. § 2106 and with respect to the relief sought by the plaintiffs in this appeal.

III. STATEMENT OF THE ISSUES

A. Whether the District Court lacked authority and jurisdiction to adopt procedures for appointment of a 3-judge court that conflicted with the mandatory procedures of 28 U.S.C. § 2284,

B. Whether disqualification was required in this case and whether members of the public may request issuance of a certificate of necessity for appointment of an out of state three-judge court,

C. Whether there was an abuse of discretion and legal error by the denial of plaintiffs' motion to vacate and for other relief,

---

[2] Within the orders appeal the May 19, 2017 order denying plaintiffs' motion to vacate under FRCP 60 (b) are appealable as final orders under 28 U.S.C. § 1291. See Stone v. INS, 514 U.S. 366, 401 (1995).

D. Whether there was legal error in the District Court's determination as to a segment of plaintiffs that subject matter jurisdiction would not be based on Article III § 2 or the Congressional enabling statutes of 28 U.S.C. § 1330-1369 and 28 U.S.C. § 1441-1452. And, whether there was legal error in defining subject matter jurisdiction:

1. As a function of an administrative order of a judge of a different district;

2. As a function of the Local Rules the Central District rather that the Local Rules that exist in the Eastern District where the case is pending, and

3. In a manner that impairs plaintiffs' First Amendment rights, unduly limits access to the court, and as a procedural method to deny urgent injunctive relief needed.

E. Whether there is an abuse of discretion and legal error in the District Court's January 23, 2013 order granting defendants' request for judicial notice.

F. Whether there was legal error in the District Court's January 23, 2013 order which imposed an injunction against a segment of plaintiffs and denied an injunction as to the remainder of the plaintiffs. Also whether this court under 28 U.S.C. § 2106 should direct temporary injunctive relief pending the appointment of a three-judge court and also determine that the merits of any motion to dismiss should be assigned to the three-judge court assigned.

G. Whether The District Court abused its discretion in denying plaintiffs' request for sanctions and imposing sanctions under the January 23, 2013 and February 8, 2013 orders against a segment of the plaintiffs.

IV. CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Pertinent constitutional provisions and statutory authorities are set forth verbatim in the addendum attached to this brief. (Circuit Rule 28-2.7)

V. STATEMENT OF CASE AND STATEMENT OF FACTS

A. Procedural Facts

Hoping to implement a special judicial election in time for the 2016 General Election, on March 21, 2012 plaintiffs filed a complaint under the Voting Rights Act with class-based allegations in the District Court for the Eastern District of California. (ER15.3792-3888). On the same day the Executive Committee of the Superior Court of the County of Los Angeles entered an emergency order suspending its local rules. The state court system in Los Angeles County and other counties substantially relies on federal funding.[3]

[3] California as a whole receives about $330 billion from the federal government and about one-quarter of these federal funds flow through California's state budget. See Legislative Analyst's Office, California

On July 9, 2012 plaintiffs filed a first amended complaint. ("FAC"). (ER5.3669-3791). The FAC named the plaintiffs as Nina Ringgold, Esq. in her capacity as named trustee of the Aubry Family Trust and executor of the will of Robert Aubry; Justin Ringgold-Lockhart on his own behalf and all similarly situated persons; the Law Office of Nina Ringgold and all current clients thereof on their own behalves and all similarly situated persons. The FAC named defendants as Jerry Brown in his individual and official capacity as Governor of the State of California and as former Attorney General ("Brown"); Kamala Harris in her individual and official capacity as the then current Attorney General ("Harris"); the Commission of Judicial Performance of the State of California ("Commission"); and Elaine Howle in her capacity as California State Auditor ("Howle"). Id.

On July 24, 2012 plaintiffs filed an ex parte application for temporary restraining order, protective order, for appointment of special counsel from the Office of the Inspector General to act as public trustee. They requested issuance of an order to show cause. Their application was denied by text entry minute order on July 25, 2012. (ER14.3361-15.3668).

Economy, Cal Facts: 2013 p. 6, http://www.lao.ca.gov/reports/ 2013/ calfacts/calfacts_ 010213.pdf

On July 27, 2012 and July 30, 2012 defendants filed motions to dismiss. (ER13.3170-14.3360). On August 17, 2012 defendants Brown, Harris, and Commission filed a motion for sanctions against Nina Ringgold and Justin Ringgold-Lockhart. (ER13.3136-3169). They claimed that all plaintiffs needed permission of Judge Manuel Real of the Central District before filing a voting rights case in the Eastern District. They falsely claimed that they had previously been sued in the state court and made other erroneous contentions. (See ER13.3140:19-20, 7.1466-1471). They did not file a motion before Judge Real in the Central District. All plaintiffs filed opposition and countered with a request for sanctions in the amount of $35,770. (ER7.1457-1458, 1477-1479, 1529-1532; ER5.1093-1095, 1100-1101, 1111).

On August 7, 2012 plaintiffs filed a petition for writ of mandamus which was denied on September 11, 2012. (ER13.3122-3124, USCA 9th Cir. 12-72500). On August 17, 2012 plaintiffs filed an appeal from the order denying the TRO and protective order. (ER13.3127-3135). The appeal was dismissed for lack of jurisdiction on October 18, 2012. (ER13.3121, USCA 9th Cir. 12-16828).

On October 27, 2012 plaintiffs filed a motion for preliminary injunction. (ER12.2828-13.3110). Judge Mendez denied the application to hear the motion on shortened time. (ER12.2786-2787, 12.2797-2827).

Plaintiffs filed oppositions to the motions to dismiss and requests for judicial notice filed by defendants. (ER7.1576-1611 Howle), 7.1612-1662 (Brown, Harris, Commission), ER8.1670-10.2386 (plt request for judicial notice and motion to strike defendants' request for judicial notice). They filed opposition to the motion for sanctions. (ER7.1455-1575).

Defendants filed opposition to the motion for preliminary injunction. (ER7.1663-1669, ER10.2387-2408). Brown, Harris, and Commission in part argued that *all* clients of the Law Office had violated a pre-filing order dated December 6, 2011 of Judge Manuel because Nina Ringgold and Justin Ringgold-Lockhart were vexatious litigants. Or put another way, that clients associated with these persons or the Law Office should be barred immediate injunctive relief. (ER7.1665, ER10. "The request for preliminary injunction should be denied because *Plaintiffs* failed to comply with Judge Real's pre-filing order…."). The Office of the Attorney General at all times was acutely aware of the serious harm to the Law Office clients by delay.

(ER5.1088:16-26 ER5.111:8-19, ER.1271-1273, ER12.2879-2881, 2882:19-2883:4, 2884:9-13, 2885:17-24, 2887:12-2891:19).

Plaintiffs filed reply to opposition to the motion for preliminary injunction. (ER6.1362-1410). Defendants filed replies to the opposition to the motions to dismiss. (ER7.1413-1431, ER1442-1454). Brown, Harris, and Commission filed reply to the plaintiffs' motion for sanctions. (ER7.1431-1441).

On January 15, 2013 unable to obtain injunctive relief plaintiff client ASAP Copy and Print and Ali Tazhibi filed a petition for writ of certiorari in the United States Supreme Court from orders in the proceedings in the state court. (No 12-962 *ASAP Copy and Print et al v. Canon Business Solutions et al)*. These clients, like others, have never been determined to be a vexatious litigant or appeared in any proceedings in propria persona. They were subjected to a pre-filing injunction and sealing of evidence dispositive to their case in the middle of pending state court litigation based on its association with the Law Office. (ER6.1138-1188, ER12.2886-2891).

On January 16, 2013 the remaining client plaintiffs filed a petition for writ of certiorari in the United States Supreme Court as to the October 18, 2012 order of this court which dismissed the appeal from Judge Mendez' order of July 25, 2012 order denying the temporary restraining order and protective order. (ER.1189-1230). (No. 12-*905 Nina Ringgold et al. v. Edmund G. Brown Jr. et al*).

On January 23, 2013 Judge Mendez without a hearing granted the defendants' motions to dismiss solely as to plaintiffs Nina Ringgold and Justin Ringgold-Lockhart. Although the order noted that all plaintiffs had filed the motion for preliminary injunction, it made no finding and by implication denied the motion as to all plaintiffs without making any legal or factual finding on the motion filed. Judge Mendez ordered that the court lacked subject matter jurisdiction.

Although Judge Mendez grounded his decision based on lacking subject matter jurisdiction he granted leave to file a Second Amended Complaint. In contradiction with lack of subject matter jurisdiction, Judge Mendez entertained "hypothetical jurisdiction." See Steel Co. v. Citizens for a Better Environment, 523 U.S. 83 (1998) (without proper jurisdiction a court cannot proceed at all but can only note the jurisdictional defect and dismiss the case). Judge Mendez entered a judgment on January 23, 2013 but he did not specify that it was a partial judgment. (ER6.1346-1361).[4] He granted sanctions in the amount of $9,520.00 against Ringgold and Ringgold-Lockhart and did not rule on the plaintiffs' cross-motion for sanctions. (ER5.901:27-902:13, ER7.1455-1575).

On January 31, 2013 plaintiffs filed an ex parte application in part seeking a stay pending disposition or petition for writ of certiorari or other review and for reconsideration and/or to vacate the January 23, 2013 order and judgment. Without waiving any objection, plaintiffs requested that the first amended complaint be referred to the Chief Judge of the Eastern District to determine if a pre-filing requirement had been satisfied or needed in the Eastern District under its Local Rules. Plaintiffs requested that they be provided with notice of the procedure and standard applicable

[4] This caused targeted prejudice as to proceedings in the Supreme Court because it provided the inference there could be further review on a more detailed record and the inference that there did not exist jurisdiction for a voting rights case in the federal court. Judge Mendez referred to the claims under the Voting Rights Act as an "existential challenge". He also erroneously indicated by reference to a hearsay statement in an unpublished decision that Ringgold had been removed as trustee of the Aubry Family Trust. (ER31:14-22, ER5.1087-1088, ER6.1322-1333, ER7.1464-1465, ER8.1690).

to the Eastern District. They also requested a ruling on *their* request for sanctions. (ER5.1069-6.1247).

On February 8, 2013 Judge Mendez denied the ex parte application. He indicated that he was denying plaintiffs' cross-motions for sanctions in the amount of $35,770 because a separate motion had to be filed. He imposed sanctions of $1,000.00 against plaintiffs' counsel. (ER5.1063-1068).

On February 13, 2013 plaintiffs filed a second amended class action complaint. (ER5.946-1062). The SAC expressly requested appointment of a three-judge court. (ER5.979 ¶78).

All plaintiffs filed an appeal on February 22, 2013 from the January 2013 order and judgment and the February 8, 2013 order. This court determined that the orders were not yet appealable, including the denial of the requested stay and injunction. (ER5.888-894). The mandate was entered on February 4, 2014. (ER5.889). The District Court took no action on the plaintiffs' request for appointment of a three-judge court.

On August 4, 2014 this court reversed the pre-filing order made by Judge Real of the Central District district which did not and still does not have anything to do with this case. See Ringgold-Lockhart v. County of

Los Angeles, 761 F.3d 1057 (2014). (USCA 9th Cir 11-57231 panel Pregerson, Berzon, Christen). After a substantial period of time had passed, without notice or even a minimal opportunity to be heard or case pending before him, Judge Real entered a revised pre-filing order in the Central District. This of course would prevent any of the plaintiffs from opposing the order or submitting evidence. (See Writ Petition and Affidavit in USCA 9th Cir. 15-70989 (ER3.389-526).[5]

On September 7, 2016 Brown, Harris, and Commission filed a motion to dismiss the SAC and to deny class certification. (ER4.820-823).

On October 18, 2016 plaintiffs filed another request for appointment of a three-judge court and sent this request by certified mail to Brown and Harris. (ER4.814-819). On the same day Howle filed a motion to dismiss the SAC. (ER4.779-813).

[5] Without assignment to the panel that rendered the published opinion of Ringgold-Lockhart v. County of Los Angeles , or an order directing that the impacted parties be allowed to have input and present argument and evidence in the district court, on March 23, 2016 a new panel of judges of the Ninth Circuit affirmed the new order of Judge Real signed on December 17, 2014 and entered on December 23, 2014. (USCA 9th Cir. 15-55045 panel Reinhardt, Murguia, Owens). Again the order has no has no relevance to this Voting Rights Case or to plaintiff Ringgold as an attorney.

In disregard of the Supreme Court's December 8, 2015 decision in Shapiro, on October 20, 2016 Judge Mendez struck plaintiffs' request for a three-judge court stating that a motion had to be filed. (ER4.777).

On November 18, 2016 the clerk of court entered an unsigned text minute order granting the motions to dismiss filed by defendants with prejudice. (ER4.773-774). On the same day the clerk of court entered a judgment as to the November 18, 2016 order. (ER4.771-772).

On December 16, 2016 plaintiffs filed a motion to vacate, for disqualification of Judge Mendez, for intercircuit assignment, and for other relief. (ER4.624-770). Judge Mendez did not disclose that he was a former state court judge with a pecuniary interest in the case and interest in the penalties and fines sought in the complaint. Plaintiffs resubmitted declarations which had a filing error. (ER3.539-548). Defendants filed opposition. (ER3.549-3.608). Plaintiffs filed a request for judicial notice, opposition to defendants' request for judicial notice, and reply to the oppositions filed. (ER2.55-536).

On May 2, 2017 the California Supreme Court Committee on Judicial Ethics Opinions issued CFEO Formal Opinion 2017-011 which directly supports plaintiffs' arguments regarding when constitutional resignation of a state court judge arises. (ER8.90-105).

On May 19, 2017 Judge Mendez denied plaintiffs' motion to vacate, for disqualification, and other relief.

This appeal was timely filed on June 19, 2017. (ER2.40-43).

B. General Background

1. Historical Review Of The Development Of Public Employment In The Courts Of Record In The State Of California

In 1988 Hispanics in the County of Los Angeles filed a voting rights action seeking to redraw the district for the Los Angeles County Board of Supervisors. They claimed that the boundaries were gerrymandered to dilute Hispanic voting strength.

In the same year, California voters overwhelmingly passed proposition 97, a legislative constitutional amendment, to permit judges of the courts of record to accept part-time teaching positions. The November 8, 1988 ballot pamphlet informed voters that public employment of a judge of the courts of record was prohibited and a constitutional amendment was needed to allow this limited exception for part time teaching. A member of the Legislature, President of the California Judges Association, and the

President of the State Bar informed voters in the November 8, 1988 ballot pamphlet for the General Election to the general public that acceptance of public employment was prohibited under the state constitution. (ER4.735-747).

Two days after the election, on November 10, 1988, county counsel provided a legal opinion that judges of courts of record could remain county employees and officials or quasi officials in conflict with the state constitution, the representations in the ballot pamphlet, and the constitutional amendment just passed. (ER4.749-755). See also Alex v. County of Los Angeles, 35 Cal. App.3d 994 (Cal. 1973), Abbott v. McNutt, 218 Cal. 225 (Cal. 1933), Cal. Attorney General Opn 83-607, 66 Cal. Attorney General 440.

Article VI sec. 17 expressly prohibits public employment or office other than judicial office. Failure to comply with this requirement mandates automatic constitutional resignation. (Addendum p. 3-4). California Constitution Article VI Sect 21 mandates that there must be a stipulation among the parties to proceed before a temporary judge who is a member of the State Bar. (Addendum p. 4).

County counsel went on to advise that even if the public employment was not authorized by statute, that the county could act "so long as the Board of Supervisors finds that there is a benefit to the County in doing so." It claimed that "[i]t may be necessary for the Board of Supervisors to provide additional benefits for judges in the *future in order to maintain a high level of judicial competence and performance in this County*." (ER4.735-747). However, it was the voters, not the Board of Supervisors which elected the judges to office. Two years later Garza was decided. Those in power feared that the judicial branch *would reflect* the population of the state. So, there began a push to unify the trial courts which would change voting in judicial elections from municipal districts to countywide elections. The California Law Revision Commission warned *prior to trial court unification* that there could be serious violations of the Voting Rights Act particularly in large Counties such as Los Angeles.[6] The county then offered its unconstitutional financial "incentive" to have judges of the municipal court

[6] California Law Revision Commission, Staff Memorandum 95-79 (Study J-1200), *Trial Court Unification: Voting Rights Act (*December 4, 1995*)*.

vote in favor of unification which would increase their personal compensation.

In 2008 California Government Code § 53200.3, which allowed the dual compensation to persist, was repealed in 2008. Thereafter section 5 of SBX was enacted. The California Commission on Judicial Performance has provided two opinions that section 5 of SBX2 11 is unconstitutional. (ER4.713-735, 756-762).

C. General Background On The Vexatious Litigant Issue And Its Impact On Clients Of The Law Office

1. Challenged Vexatious Litigant Determination In State Court.

Solely in their capacity as trustees, Ringgold and a co-trustee filed separate petitions in the state court with respect to a private family inter vivos trust. Their petitions successfully removed another co-trustee who had misappropriated funds. To avoid any future misappropriation they obtained a final order confirming their appointment as specified in the trust instrument as trustees which is now governed by the doctrine of res judicata. No challenge or attack was made of these orders dated October 14, 2003. (ER6.1322-1328, 1332, ER8.1702-17-3, ER9.1998-2003). There has never been a petition filed to remove Ringgold as trustee and the co-trustee is now deceased. Without a petition to remove any trustee, and although the trust is not subject to court supervision, the state court appointed an additional trustee through an order which specifies that he is not required to have the mandatory statutory bond. This person has filed reoccurring petitions to liquidate the trust without notice to heirs and beneficiaries to primarily pay his fees.

2. Non-Existent Writ Proceeding In The State Court And Its Impact On Clients Of The Law Office

Completely unaware of an existing controversy in the probate department, in 2007 Ringgold as trustee filed a verified constitutional rights violation petition. In part she claimed that the state procedures used were divesting African American families of property without notice and without satisfaction of the mandatory bonding requirement. When she filed an appeal, an order was issued under a caption as if there was an original proceeding or writ proceeding involving the Superior Court of the County of Los Angeles in progress. No such proceeding existed. The order required Ringgold to show cause why she should not be deemed a vexatious litigant and she responded accordingly. (ER8.1699-1701, 1706-

1707). The order to show cause provided no listing of cases, or explanation of what was at issue. The statute required a noticed motion filed in the trial court by a defendant. (ER9.1700-1701). When a vexatious litigant issue is raised in such a manner and in the first instance in the state appellate court there is no right of appellate review similar to persons where the mandatory statutory due process procedures are engaged. See Griffin v. Illinois, 351 U.S. 12 (1956) (state procedures which adversely impact appellate review).

The California Vexatious Litigant Statute does not apply to persons represented by counsel. As required by state law Nina Ringgold in the capacity as trustee was required by law to appear through her Law Office in a legal proceeding. See Ziegler v. Nickel, 64 Cal.App.4th 545 (Cal. 1998)(a trustee may not appear in a court proceeding unless represented by an attorney), Weissman v. Quail Lodge, Inc., 179 F.3d 1194, 1164 (9th Cir. 1999) (vexatious litigant order does not apply to attorneys).[7]

3. Discovery Of The Probate Task Force

7 On May 1, 2011 the California Legislature rejected Senate Bill 603 which attempted to expand the California Vexatious Litigant Statute to encompass attorneys.

It was later discovered that both trial judge and an appellate justice involved in the Aubry Family Trust were also involved in a Probate Task Force formed by the California Judicial Council specifically to address the large number of grievances in the probate department and formed in response to a highly critical investigative series of articles in the Los Angeles Times entitled *Guardians for Profit*.[8] It is now understood that the timing of the constitutional rights violation petition filed in 2007 conflicted with the timing of the release of the recommendations of the Probate Task Force and the petition of the Law Office raising federal constitutional claims was not consistent with the recommendations. Thereafter, clients of the Law Office were deemed or treated as vexatious litigants whether or not a statutory due process motion had been filed to determine such status. (ER5.969-970). This treatment was based on the client's association with

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8 Los Angeles Times investigative series *Guardians for Profit*, November 13-16, 2005, December 27, 2005; See also In re Estate of Claeyssen, 161 Cal.App.4th 465 (Cal. 2008) (holding that probate department graduated filing fees as a percentage of the estate were unconstitutional). Some grievances concerned the fact that the graduated filing fees were used to pay for the public employment that had been determined to be unconstitutional.

the Law Office and was brought to bear irrespective of whether the client's case was pending in the probate department. [9]

4. Differences In The Local Rules Of The Central And Eastern District

The Local Rules of the Eastern District adopted by the Judges of that court, after the notice and comment period provided by 28 U.S.C. § 2071 (b), do not have a provision dealing with alleged vexatious litigation and follow the applicable law of this Circuit. The local rules of the Eastern District do not adopt or incorporate by reference Local Rule 83-8.1 to 83-8.4 of the Central District. The Central District is the only district court in this Circuit which proceeds by reference to the California Vexatious Litigant Statute. See Weissman *supra* at 1197. This Circuit in Molski v. Evergreen Dynasty, 500 F.3d 1047, 1056 (9th Cir. 2007) recognized that currently each District Court makes its own vexatious litigation determination in accord with its Local Rules.[10] There is considerable controversy concerning the

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9 i.e. See Client ASAP Copy and Print ER7.1645-1649, Client Cornelius Turner (ER12.2886-2891), Client Nathalee Evans (Id. at ER12.2885:17-25), filing under protest by Client Justin Ringgold- Lockhart who on April 21, 2011 had not been deemed a vexatious litigant. (ER9.1704-1705 (RJN# 8-10); ER12.2884:9-14).

10 "Two district courts in our circuit disagree about whether Molski's frequent litigation is vexatious. In this case, the Central District of

Local Rules of the Central District. See Molski v. Evergreen Dynasty Corp., 521 F.3d 1215 (9th Cir. 2008) (dissent Kozinski, Chief Judge) discussing the state of the local rules of Central District regarding vexatious litigant determinations).[11]

California deemed Molski a vexatious litigant. See Mandarin Touch I, 347 F.Supp.2d at 868. However, the Northern District of California has denied a motion to declare Molski a vexatious litigant in that district. See Molski v. Rapazzini Winery, 400 F.Supp.2d 1208, 1212 (N.D.Cal.2005)."

11 "…The lawyers and judges of the Central District don't have to put up with this kind of tyranny by one judge acting entirely on his own. A member of a multi-judge court should not be able to single-handedly cut off one party or law firm's access to all the other judges of the court. The Central District judges can and should adopt a local rule or general order that any judge wishing to bar a litigant or a law firm from accessing the court must obtain the concurrence of a committee of his colleagues. Enforcement of the order, too, should not be entrusted to the judge who entered it, as he may take an unduly broad view as to its scope. Far wiser, and fairer, to have other judges, drawn at random, enforce the order in future cases." (Compare plaintiffs' request at ER5.1075 ¶4, ER5.1091:13-28).

VI. LEGAL ARGUMENT

October 20, 2016, November 18, 2016, and May 19, 2017 Orders

A. Judge Mendez Lacked Authority To Strike the Request For A Three-Judge Court And To Enter The Orders Thereafter

The district court's interpretation and construction of a federal statute such as 28 U.S.C. § 2284 is a question of law reviewed de novo. ASARCO, LLC v. Celanese Chem. Co., 792 F.3d 1203, 1208 (9th Cir. 2015).

The complaint seeks to end the procedures of vote dilution caused by trial court unification and the resulting countywide judicial elections caused by unification.[12] The preclearance requirement applies to judicial elections. See Clark v. Roemer, 500 U.S. 646 (1991). The complaint involves both counties that are subject to preclearance under Section 5 of the Voting Rights Act and counties that are subject to the bail in mechanism based on

[12] In Lopez v. Monterey County, Cal., 519 U.S. 9 (1996) the Supreme Court found that the County had not discharged its obligation to submit its voting changes for approval. Id. at 24. The district court rejected the County's argument that implementing consolidating ordinances did not require preclearance.

the retention jurisdiction after Garza. The complaint seeks declaratory and injunctive relief and private citizens may request a three-judge court. [13]

Under 22 U.S.C. § 2284 (a) a district court of three judges is to be convened when required by an Act of Congress. Judge Mendez did not rule that a three-judge court was not required. Also, neither the Governor or the state attorney general made any argument that a three-judge court was not required. The state failed to form non-discriminatory judicial voting districts. The County and courts have claimed to have lost or misplaced the original maps of the judicial districts after Garza was decided. The ballots in judicial elections are false because there exist judicial vacancies of office and the names of "alleged incumbents" are not listed on the ballot. Judge Mendez also did not find that the allegations of the complaint were deficient, or that subject matter was lacking. He simply specified that a motion had to be filed to request a three judge court when 28 U.S.C. § 2284 does not require a motion.

Although the Supreme Court in Shapiro dealt with the apportionment of congressional district its holding and decision is based

[13] See Allen v. Board of Elections, 393 U.S. 544, 561-563 (1969), Reaves v. U.S. Dep't of Justice, 355 F. Supp.2d 510, 514 (D.D.C. 2005).

on interpretation of 28 U.S.C. § 2284. Judge Mendez did not have discretion to disregard the plain language of the Shapiro decision for it is the sole prerogative of the Supreme Court to overrule its precedents. See Bosse v. Oklahoma, 137 S.Ct. 1, 2 (2016). In Shapiro the plaintiffs alleged that a redistricting plan burdened First Amendment rights of political association and they requested that a three-judge court be convened to hear the case. The district court did not notify the chief judge of the circuit but rather dismissed the case by concluding the allegations failed to state a claim for relief on the merits. The Supreme Court held that the district court judge did not have such authority and that there was a right to present the case to a three-judge court. The court further indicated that plaintiffs' challenges were along the lines of the Justice Kennedy's concurrence in Vieth v. Jubelirer, 541 U.S. 267 (2004) and based on a theory of First Amendment associational rights. See Shapiro at 456 citing Justice Kennedy's concurrence (Vieth at 325 (if the "State did impose burdens and restrictions on groups or person by reason of their views, there would likely be a First Amendment violation, unless the State shows some compelling interest….”). Here plaintiffs have presented substantial First Amendment claims.

Judge Mendez had no authority to set up an administrative obstacle by requiring a motion to be filed. He had no authority to strike the request for appointment of a three-judge court or to enter the subsequent November 18, 2016 and May 19, 2017 orders. Shapiro determined that the district court lacked authority to dismiss the case and was “*required* to refer the case to a three-judge court, for § 2284 (a) admits of no exception, and ‘the mandatory ‘shall’…normally creates an obligation impervious to judicial discretion’” Id. at 454. Here, plaintiffs’ requests identified the basis the case was covered by 28 U.S.C. § 2284 (a). Additionally the complaint included information that the State of California, the county, and judges were aware of the risks of failing to obtain preclearance by a detailed study of the issue. (See 5.1055-1062).

Judge Mendez’s indication that plaintiffs’ request was filed after defendant Brown, Howle, and Commission had filed a new motion on September 7, 2016 is irrelevant because plaintiffs had filed their request on February 13, 2013. Plaintiffs did contest the merits of the motions to dismiss and to deny certification because they firmly believe these matters must be heard by a three-judge court and that they have a right to such appointment.

Failing to comply with the mandatory statutory requirements the October 20, 2016, November 18, 2016, and May 19, 2017 orders should be reversed.

B. Reversal Is Required As To The May 20, 2016 Order On Plaintiffs' Motion To Vacate, For Disqualification And Intercircuit Assignment, And Other Relief

1. Disqualification And Intercircuit Assignment

When the mandatory statutory basis for disqualification is violated and disclosure is not given to the parties, the judge's rulings on appeal are to be vacated. William Cramp and Sons Ship and Engine Building Co. v. International Curtis-Marine Turbine Co., 228 U.S. 645 (1913). ("[O]ur duty is not to hold the case upon the docket, for ultimate decision upon the merits, but to at once reverse and remand to the court below, so that the case may be heard by a competent court, conformably to the requirements of the statute"). Judge Mendez had undisclosed financial and general interest in the case and refused to comply with the mandatory procedures to appoint a three-judge court providing the inference of attempting to maintain jurisdiction to protect is own interests.[14] Under the circumstances of this case the question of whether recusal was required under 28 U.S.C. § 455 or the Fourteenth Amendment is reviewed by this court de novo. See William Cramp at 650. There is a valid interest in full disclosure, discovery, and a developed record. See In re Kensington Intern. Ltd., 353 F.3d 211, 223 (3rd 2003).

Plaintiffs sought disqualification under 28 U.S.C. § 455 (a), (b)(1), (b)(4), (b)(5)(iii) and the Fourteenth Amendment. They requested an evidentiary hearing before a three-judge court and argued that the three-judge court convened should be outside the State of California. They specified this was required "in light of the controversial issues, the high number of recusals, irregularities, methods used to attempt to intimidate and coerce both attorneys and their clients who in good faith are attempting to exercise rights under the Voting Rights Act, the Civil Rights Act of 1866; the First, Thirteenth, Fourteenth, and Fifteenth Amendment,

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[14] See also Liljeberg v. Health Services Acquisition Corp., 486 U.S. 847, 865 (1988) (A full disclosure …would have completely removed any basis for questioning the judge's impartiality).

and other claims in the SAC. Also intercircuit assignment is required because the overall proceedings were conducted in a manner to intentionally frustrate the effort to implement a special judicial election in time for the 2016 General Election and to frustrate the urgently needed reform and grievance procedures in the courts of record. (ER3.545-6). Plaintiffs provided a sampling of the many recusals already made by district court judges. (ER4.698-707).

a. Disqualification Should Have Been Determined After An Evidentiary Hearing

Disqualification was also required under 28 U.S.C. §455 (a) based on the appearance of partiality. In the circumstances of this case an evidentiary hearing was required by a disinterested decision maker to make factual findings. See Liljeberg at 851. The idea that Judge Mendez could be objective about his own financial interest was lost when he failed to make forthright disclosures on the record to the parties. Plaintiffs do not have to conduct an investigation of a judge. Am. Textile Mfrs. Inst., Inc. v. Limited, Inc., 190 F.3d 729, 742 (6^{th} Cir. 1999). Plaintiffs filed their motion upon discovery.

Judge Mendez's statements in the May 19, 2017 order do not obviate the need for an evidentiary hearing. He indicates that he nor his family has an interest, financial or otherwise, in the outcome of the litigation. They do. He concedes that he was a judge of the Sacramento County Superior Court through 2008. The Judicial Council has reported to the State Legislature that judges of that county were receiving both county and court funded benefits. (ER 5.1021). The statutory penalties sought by plaintiffs under the California Political Reform Act cover the judges within that timeframe. (ER5.980-982, 5.1017-18). Judge Mendez also has an interest in the requested determination that Section 5 of SBX2 11 be deemed unconstitutional. That provision gives Judge Mendez immunity not only from any potential civil and criminal penalties but also from any discipline. The Commission has given two opinions objecting to the super immunity provision. (ER 5.985-986, 963-967, 977, 997, 1017-18). Judge Mendez and his family have an interest in the subject matter of the controversy and an interest in its outcome.

Judge Mendez states that he is no longer receiving benefits from the Superior Court of California and/or Sacramento County. However the fact that after this case was filed in 2012 that the judges have changed the vehicle by which the benefits from past acceptance of public employment or office does not avoid mandatory disqualification of Judge Mendez in this case.

Judge Mendez states that he is unaware of disputed evidentiary facts concerning the case. However, this is an impossibility given that he is within the class of former state court judges that would be subject to statutory fines and he is aware of the personal disclosures he made to comply with the requirements under the Political Reform Act. Judge Mendez was not a former judge of a Superior Court that received no County funded benefits. (See ER5.1021).

b. 28 U.S.C. § 455 (a)

Recusal under 28 U.S.C. §455 (a) has stricter grounds for disqualification than the Due Process Clause. Judge Mendez's alleged bias stems from extra judicial sources outside the case. See Liteky v. United States, 510 U.S. 540 (1994), United States v. Grinnell Corp., 384 U.S. 563, 583 (1966).

An objective observer would believe that a federal judge that was former state court judge directly or indirectly impacted by the allegations of the complaint has an interest warranting disqualification. The record demonstrates the reasonable basis for this view. Judge Mendez's January 23, 2013 order referred to the plaintiffs has making an "existential" claim, he delayed obtaining a protective order and temporary restraining order, entered a judgment not specifying it was "partial" after petitions for writ of certiorari were filed in the Supreme Court, disregarded that a motion was not required for a request for appointment of a three judge court. Under 28 U.S.C. § 455 (a) his impartiality might reasonably be questioned.

c. 28 U.S.C. § 455 (b)

Disqualification under 28 U.S.C. §455 (b) does not depend on whether or not the judge actually knows of the facts creating the appearance of impropriety, so long as the public might believe that he knew. Liljeberg at 860. Also a disqualifying interest can be a noneconomic interest. See Potashnick v. Port City Const. Co., 609 F.2d 1101, 1113 (5th Cir. 1980), In re Kansas Pub. Employees Retirement Sys, 85 F.3d 1353, 1359 (8th Cir. 1996). Disqualification under 28 U.S.C. § 455 (b) was mandatory as specified above.

d. Fourteenth Amendment

Under the Due Process Clause the Supreme Court held that "what degree or kind of interest is sufficient to disqualify a judge from sitting 'cannot be defined with precision.'" Aetna Life Ins. Co. v. Lavoie, 475 U.S. 813 (1986). The determination is based on an inquiry of whether the "situation is one 'which would offer a possible temptation to the average ... judge to ... lead him not to hold the balance nice, clear and true.'" Aetna at 822. Also, well-established authority of the Supreme Court holds a due process violation exists when the judge has a personal or financial interest in reaching a conclusion against a party in the case. See Tumey v. Ohio, 273 U.S. 510, 523 (1927), Gibson v. Berryhill, 411 U.S. 564, 579 (1973), Caperton v. A.T. Massey Coal Co., Inc. 556 U.S. 868, 884 (2009). Under the Fourteenth Amendment Judge Mendez had both direct and general and financial interests that would cause him not to hold the balance nice, clear, and true.

e. Intercircuit Assignment

If a self interested judge does not make the mandatory statutory referral for a three-judge court or for an intercircuit assignment there can never be an order rendered by the statutory judicial officer on whether to issue a certificate of necessity. Judges do not have a superior right greater than the public to submit information on the grounds for issuance of a certificate of necessity.

There is no limitation under 28 U.S. C. § 292 (d) or § 294 (d) which bars a party or the general public from acting as the source of information and identification of necessity or the public interest served by an out of state designation and judicial assignment. The "'strong presumption' that the plain language of the statute expresses congressional intent is rebutted only in 'rare and exceptional circumstances.'" Ardestani v. INS, 502 U.S. 129, 135 (1991). The procedure should provide an impartial and objective legal analysis that promotes and inspires public confidence and includes public input. An open and transparent procedure is what was required. See Williams –Yulee v. Florida Bar, 135 S.Ct. 1656, 1666 (2015) ("justice must satisfy the appearance of justice").

Even if this court determines that Judge Mendez should not be disqualified, and that an referral of the issue of intercircuit assignment is not appropriate, the record on appeal demonstrates that the standard outlined in Living Designs, Inc., v. E.I. Dupont d Nemours & Co., 431 F.3d 353 (9th Cir. 2005) has been met for this court to exercise is supervisory powers under 28 U.S.C. § 2106 to reassign the case to a different judge.

2. Motions Under Rules 52 (b), 54 (b), 59 (e), and 60 (b)

A decision whether to vacate a judgment pursuant to Rule 60(b) or to alter or amend a judgment under 59 (e) is reviewable for an abuse of discretion. Jeff D. v. Kempthorne, 365 F.3d 844, 850 (9th Cir. 2004), McQuillion v. Duncan, 342 F.3d 1012, 1014 (9th Cir. 2003). The denial of a FRCP 60(b)(4) motion to set aside a judgment as void is reviewed de novo. United States v. $277,000 U.S. Currency, 69 F.3d 1491, 1493 (9th Cir. 1995). Acting plainly outside the statutory authority conferred upon the court under 28 U.S.C. § 2284 renders a judgment void.

FRCP 52 (a) requires that when a matter is tried without a jury or an advisory jury that the court must find facts specially and state its conclusions of law separately and the judgment must be entered under Rule 58. This does not apply to motions to dismiss. FRCP 52 (a)(3). However, it does apply to other motions such as a motion denying class certification. First, the November 18, 2016 text only minute order is not a separate document, was not signed or mailed, and is not a final order or judgment. Neither the unsigned text minute order nor the document identified as a judgment dated November 18, 2016 met the requirements of FRCP 58 or 79 and cannot be considered final judgments. See Carter v. Beverly Hills Sav. And Loan Ass'n, 884 F.2d 1186, 1189 (9^{th} Cir. 2001). Second, because Judge Mendez could not reach the merits of the case as a single judge he could not enter a dismissal order . Third, the denial of class certification required findings of fact and conclusions of law under FRCP 52 (a)(1). Findings of fact and conclusions of law are non-existent precluding application of a clearly erroneous standard and reversal and remand are required. Compare Harris Truck Lines, Inc. v. Cherry Meat Packers, Inc., 313 F.2d 864 (7^{th} Cir. 1963)(failure to make any findings of fact or state its conclusions of law required reversal), Brennan v. J.M Fields, Inc., 448 F.2d 443 (5^{th} Cir. 1973)(when the findings are entirely conclusory even a clearly erroneous standard does not apply and remand is required).

Because Judge Mendez improperly determined that he had authority to disregard the mandatory provisions of 22 U.S.C. § 2284, he could not proceed to adjudicate the motions to dismiss and to preemptively deny class certification. Plaintiffs properly requested findings under FRCP 52 (b) as to November 18, 2016 order and the alleged judgment that did not comply with FRCP 58 and 79. Plaintiffs were not using FRCP 52 (b) as a vehicle to vacate a final judgment. (Compare ER 1.5). Plaintiffs properly sought compliance with FRCP 52 and additionally requested to vacate the order and judgment under Rule FRCP 60 (b).

The procedurally defective November 18, 2016 order and judgment did not dispose of all the parties. Instead it left two judgments rather than a single final judgment: (1) one dated January 23, 2013 that dismissed the entire case for lack of federal subject matter jurisdiction, and (2) one dated November 18, 2016 that dismissed the case through an unsigned order entered when there was a requirement of appointment of a three-judge court. The court had jurisdiction to vacate the orders and judgment under FRCO 54 (b) and it was an abuse of discretion and error of law not to do so.

As to the relief sought by plaintiffs' under FRCP 59 (e) the district court relied on Allstate Ins. Co. v. Herron, 634 F.3d 1101, 1111 (9th Cir. Cir. 2011). (ER1.6). However Allstate involved a final judgment which does not exist here. Even adopting the Allstate standard, plaintiffs satisfied the requirements. They established that relief was warranted: (1) to correct manifest errors of law or fact upon which the alleged order of judgment rests, (2) to present newly discovered evidence, (3) as necessary to prevent a manifest injustice, (3) and due to a change in controlling law. Under FRCP 60(b) plaintiffs established that relief was warranted: (1) due to newly discovered evidence, (2) that the alleged judgment was void, (3) that applying the alleged judgment prospectively was no longer equitable, and (4) that based on other reasons justifying relief (i.e. that the mandatory requirements of 28 U.S.C. § 2284 and for a single judgment were not satisfied, that disqualification was required, and that the procedural requirements for entry had not been satisfied).

The legal issues pertaining to the relief based on compliance with 28 U.S.C. § 2284, mandatory disqualification, and the procedural defects of the order and alleged judgment are discussed above. The change in law or newly discovered evidence was applicable based on the May 2, 2017 publication of the California Supreme Court's Ethics Opinion 2017-001. Plaintiffs' motion was filed on December 16, 2016. (ER4.624). Ethics

Opinion 2017-001 was issued on May 2, 2017. (ER2.90-105). Upon discovery and understanding the significance of the discussion of judicial constitutional resignations under California Constitution Art VI § 17 counsel diligently presented a reply which included this opinion and the pertinent documents which would highlight this fact. The court abused its discretion by refusing to consider this opinion and the reply filed by plaintiffs. Under these extraordinary circumstances equitable relief for the minor late filing should have been afforded.

July 25, 2012 Order, January 23, 2013 Order/Judgment, And February 8, 2013 Order

C. There Is Legal Error And An Abuse Of Discretion In The District Court's January 23, 2013 Order On The Requests For Judicial Notice

1. Legal Standard

A court may only take notice of a fact that is not subject to reasonable dispute in that it is either generally known within the territorial jurisdiction of the court or capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned. FRE 201 (b)., United States v. Jones, 29 F.3d 1549, 1553 (11th Cir. 1994), Lee v. City of Los Angeles, 250 F.3d 668, 690-691 (9th Cir. 2001). A court may judicially notice another federal court's order, but it may not accept that court's findings of fact as true. Wyatt v. Terhune, 315 F.3d 1108, 1114 (9^{th} Cir. 2003), United States v. Jones *supra* at 1553.

On a motion to dismiss all factual allegations set forth in the complaint "are taken as true and construed in the light most favorable to the [p]laintiffs." Epstein v. Washington Energy Co., 83 F.3d 1136, 1140 (9^{th} Cir. 1996). Factual challenges to the complaint have no bearing on the legal sufficiency of the allegations under a Rule 12 (b)(6) motion to dismiss. Lee at 688.

If a Rule 12 (b)(1) motion based on lack of subject matter jurisdiction is dependent on the resolution of factual issues, the court is not to resolve genuinely disputed facts. Roberts v. Corrothers, 812 F.2d 1173, 1177 (9^{th} Cir. 1987). Unless the court holds an evidentiary hearing, it is required to accept as true the factual allegations of the complaint. McLachlan v. Bell, 261 F.3d 908, 909 (9^{th} Cir. 2001), Augustine v. United States, 704 F.2d 1074, 1077 (9^{th} Cir. 1983), Greene v. United States, 207 F.Supp.2d 1113, 1119, fn 4 (E.D. Cal. 2002).

The parties submitted extensive requests for judicial notice. (vER8.1670-10.2386, ER10.2433-12.2785, ER13.3220-14.3360. Defendants Brown, Harris, and Commission did not identify a motion linked to their request. (ER13.3222). Unlike the plaintiffs, defendants did not authenticate the documents, identify the relevance, or set forth any adjudicative fact. (ER8.1688-16.97, ER8.1698-1715). Plaintiffs filed opposition and a motion to strike all requests for judicial notice of defendants. (ER8.1688-1697). Defendants did not file opposition to plaintiffs' request for judicial notice.

On defendants' request for judicial notice the District Court abused its discretion by not identifying the document, purpose, or motion for which it was granting judicial notice and it applied an improper legal standard. (ER4.684-657). On plaintiffs' request for judicial notice the court abused its discretion by denying judicial notice of generally known facts known in the local jurisdiction which are indisputable and capable of accurate and ready determination – that there are widespread grievances in the Superior Court of the County of Los Angeles.

It was error for the court to consider defendants' request for judicial notice or to consider the issue of December 6, 2011 order in the context of defendants' Rule 12 (b)(1) motion. Instead, the court should have granted plaintiffs' motion to strike the defendants' request for judicial notice and reference thereto in the accompanying motions. Defendants never authenticated or identified relevance or a proposed adjudicative fact. Plaintiffs identified each reference in the motions filed, objected, and moved to strike. (ER8.1690-1697).[15]

2. Defendants' Request For Judicial Notice

The district court abused its discretion in not specifying the items for which notice is taken or the applicable motion . It applied an erroneous legal standard by claiming it could accept as true disputed matters specified in orders issued by other federal courts. (ER4.684). Compare Wyatt at 1114 and fn 5.

The December 6, 2011 order was not relevant to the court's subject matter jurisdiction or the sufficiency of the allegations in the complaint. FRE 401. Even if the order could be considered as relevant to Article III jurisdiction, an evidentiary hearing was required as to disputed issues. Although the District Court indicated it was not considering the truth of

[15] See also ER7.1464-1467, 1470, 1473-1174, 1477-1479.

the matters specified in defendants' requests for judicial notice, the January 23, 2013 indicates exactly the opposite. For example, it took judicial notice of a disputed hearsay statement in a unpublished state court decision. The January 23, 2013 order states: "[p]laintiff Ringgold's argument that she is named only in a representative capacity for the Aubry Family Trust fails because she was removed as trustee by the California Probate Court." (ER4.687:20-22). See Lee at 690 (improper to take judicial notice of disputed facts in a public record). There has never been a petition to remove Ringgold as trustee and the judicially noticed document has nothing to do with trusteeship. The District Court disregarded that defendants provided incomplete copies of documents (to intentionally omit copies of the unchallenged orders confirming the appointment of Ringgold as trustee governed under the doctrine of res judicata). (See ER8.1687:1-3, 1687:19-22, ER8.1690:13-25, ER8.1702-1703 (RJN No 6); ER9.1983, ER9.1997-1140).

3. Plaintiffs' Request For Judicial Notice

On plaintiffs' request for judicial notice, the court erred in denying notice of the widespread grievances arising in the Superior Court of the County of Los Angeles . The grievances are widely known in the local area and were reported in an investigative series of articles of the Los Angeles Time entitled *Guardians for Profit*. (ER8.1698, ER8.1719-1774). In response to the investigative articles and media reports of the grievances, the California Judicial Council responded by creating a probate task force. A final report of the designated task force refers to the same articles for which plaintiffs' requested notice. [16] The court abused its discretion in denying the request for judicial notice for the limited purposes specified in the identified relevant adjudicative facts. (i.e., (1) that there were widespread grievances reported, (2) that the grievances occurred after a certain date, and (3) that the report of grievances corroborates the plaintiffs' claims in their motion for injunctive relief. (ER8.1698). See Ritter v. Hughes Aircraft Co., 58 F.3d 454, 458-459 (9th Cir. 1995)(judicial notice of widespread layoffs at Hughes Aircraft). Here, the grievances are common knowledge in the local area which cannot reasonably be disputed and are acknowledged to exist by the California Judicial Council. Plaintiffs demonstrated relevance because they are claiming retaliation, blacklisting, and viewpoint

[16] See Final Report of the Probate Conservatorship Task Force and Statement of Chairperson, Justice Roger Boren on September 18, 2007.

discrimination because of their association with a Law Office that had lodged grievances unaware of other similar grievances, the existence of the probate task force, or of the intended report of the probate task force. (See ER5.1096:9-26, ER6.1405:8-28; ER12.2852-2853, ER12.2859:-2860:18, 2861:7-17).

The district court abused its discretion in the denial of plaintiffs' unopposed motion to strike which was directly relevant to all motions filed by defendants. (ER7.1455-1483,7.1588, ER7.1624:610. ER7.1636:1-20, ER8.1685-1697). There was no legal basis for the court to take judicial notice of indiscriminate items which were not authenticated, in some cases incomplete (and intentionally incomplete to omit references or orders favorable to plaintiffs), disputed and hearsay factual contentions, and matters which were not supported by an identification of a relevant adjudicative fact that supported either defendants' motions to dismiss or motion for sanctions.

D. There Is Prejudicial Reversible Legal Error By In The District Court's Determination That It Lacked Subject Matter Jurisdiction

Subject matter jurisdiction is a legal issue reviewed de novo. Stovall v. City of Cocoa, 117 F.3d 1238, 1240 (11th Cir. 1997). Dismissal for lack of subject matter jurisdiction is reviewed de novo. Whisnant v. U.S., 400 F.3d 1177, 1180. (9th Cir. 2005).

The motions to dismiss filed by the defendants did not provide notice or make any argument or claim that the complaint should be dismissed under Rule 12 (b) (1) for lack of subject matter jurisdiction based on the December 6, 2011 order of Judge Real of the Central District. The notice of motion of Brown, Harris, and Commission stated: "First, Plaintiffs Nina Ringgold and Justin Ringgold-Lockhart are vexatious litigants subject to a prefiling order. Second, the Court lacks subject matter jurisdiction. Next, Plaintiffs fail to state a cognizable claim …." (ER13.3199). The arguments on subject matter jurisdiction were distinctly separate from the December 6, 2011 order. (ER.3206-3208). Defendant Howle did the same. (ER10.2411, ER10.2425:11-2429:166).)

The January 23, 2013 order improperly indicates that defendants filed motions under Rule 12 (b)(1) on the grounds that plaintiff**s** (plural) did not seek and receive pre-filing approval from Judge Real. (ER4.686:12-17).

1. The December 6, 2011 Order Of A Single Judge Of The Central District Does Not Define The Subject Matter Jurisdiction Of The United States District Courts

Only Congress can confer or divest the district courts of subject-matter jurisdiction. Subject matter jurisdiction is defined by Article III § 2 or the Congressional enabling statutes of 28 U.S.C. § 1330-1369 and 28 U.S.C. § 1441-1452. The administrative procedures and local rules of a district court do not define subject matter jurisdiction. Rules prescribed by a particular district under the Rules Enabling Act, 28 U.S.C. §§ 2071-2077 cannot abridge, enlarge, or modify any substantive right or expand or diminish the jurisdiction conferred by Congress. See Venner v. Great N. Ry. Co., 209 U.S. 24, 35 (1908); Standish v. Gold Creek Mining Co., 92 F.2d 662, 663 (9th Cir. 1937). Judge Mendez failed to distinguish between the court's jurisdiction (authority and duty to adjudicate a case) as compared to an entirely different district court's rules and procedures that may be adopted to conduct the business in *that* particular district under its local rules. As to the later, the local rules of the Central District do not apply in the Eastern District. The December 6, 2011 administrative order of Judge Manuel Real in the Central District was not applicable to clients of the Law Office or this case in the Eastern District. The plaintiff Law Office clients did not require permission from a specific judge in the Central District to pursue valid legal claims.

Once Judge Mendez determined there was a lack of subject matter jurisdiction he was powerless to reach the merits based on Article III of the Constitution and would have had to dismiss the entire case *without prejudice*. See Adarand Constructors, Inc. v. Mineta, 534 U.S. 103, 110 (2001), Fleck and Associates, Inc. v. Phoenix, City of, an Arizona Municipal Corporation, 471 F.3d 1100 (9th Cir. 2006), Brereton v. Bountiful City Corp., 434 F.3d 1213, 1216-20 (10th Cir. 2006). However, since subject matter jurisdiction was never lacking, he granted leave to file the Second Amended Complaint without identifying any insufficiently pled cause of action. Functioning on an erroneous legal premise and thereby under a form of "hypothetical jurisdiction," Judge Mendez's ruling caused substantial prejudice. First, it procedurally left all clients of the Law Office in the same position of continuing irreparable harm without written disposition of their properly filed and fully briefed motion for preliminary injunction. Second, it continued the impairment of the First Amendment associational interests without a hearing or even requiring an evidentiary showing on defendants' baseless claim the actual clients of the law office were "window dressings". Third, plaintiffs' evidentiary showing that the Office of the Attorney General had received a declaration from adversely impacted clients, plaintiffs' request for sanctions should have been granted. (ER5.1072:23-1074:7; ER6.1271-1272).

2. Pre-Filing Orders Formed Under Local Procedures And Local Rules Of Court Of A Particular District Are Applicable In That District

Administrative orders made under local rules of a particular district labeling a person or entity as a vexatious litigant apply only to that district as referenced in Molski 500 F.3d 1047, 1056.[17] If there is some other standard, attorneys and the public need notification. The December 6, 2011 order does not bar Ringgold as an attorney from filing a case in other districts of the United States or require the attorney to obtain the

[17] (See fn 10 herein).

permission of a judge in a different district to file a case on behalf of clients of the Law Office.

Local Rules of a particular district court must be made after public notice and comment and by majority vote of the judges of that court. 28 U.S.C. § 2071, Fed. Rule of Civ. Proc, Rule 83. The Eastern District has not deemed any plaintiff to be a vexatious litigant and its rules do not adopt by reference the local rules of the Central District. A local rule must be consistent with Acts of Congress and the rules of practice and procedure prescribed by the Supreme Court under 28 U.S.C. § 2072. See 28 U.S.C. § 2071 (a), Fed. Rule of Civ. Proc, Rule 83.

The rule and procedure devised by Judge Mendez and couched as a function of subject matter jurisdiction conflicts with Rule 1, 17, 54, and 83 of the Federal Rules of Civil Procedure.[18] At its core the procedure devised is

[18] Rule 1 requires a just, speedy, and inexpensive determination of the action. (Here there was delay in written disposition of the motion for injunctive relief is not consistent with a just, speedy, and inexpensive determination). Rule 17 (a)(1)(e) specifies that an action must be prosecuted in the name of the real party in interest. The capacity to sue is determined by the law of the forum state. (Ringgold in the fiduciary capacity as a named trustee and executor is a proper party and represented by counsel in accord with Ziegler *supra*.) Rule 54 addresses the method for entry of a judgment. (The court entered a final judgment and imposed

a prior restraint applied in a vastly overbroad manner as to plaintiffs' protected activities under the First Amendment. The procedure violates 28 U.S.C. 2071 (a) and 28 U.S.C. § 2072 (b) by abridging substantive rights and diminishing the jurisdiction conferred by Congress. See United States v. Jacobo Castillo, 496 F.3d 947, 954 (9th Cir. 2007).

There is no legal authority which justifies expansion of the Central District's local rule to other district courts in the United States either directly or indirectly when the judges of the those district courts (1) did not review and approve the rule and practice, and (2) public notice and comment has not taken place.

E. Since Subject Matter Jurisdiction Was Not Lacking The District Court Abused Its Discretion In Imposing An Injunction Against A Segment Of The Plaintiffs And Denying The Urgently Needed Injunction As To The Remainder Of The Plaintiffs

The District Court imposed an injunction prohibiting plaintiffs Lockhart and Ringgold from proceeding as parties in the action. The injunction applied to Lockhart although he was represented by counsel and

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sanctions for plaintiffs seeking certification). Rule 83 which prohibits the adoption of a local rule or practice that is inconsistent with the Federal Rules or that is enforced in a way that causes a loss of any right because of a nonwillful failure to comply.

based on an erroneous indication that Ringgold was appearing in propria persona. The complaint expressly indicated that she was appearing as a named trustee of the Aubry Family Trust and named executor under the will of Robert Aubry. The court abused its discretion because it failed to give notice and to apply the legal standard of this Circuit.

This Circuit has directed that orders which restrict access to the courts must be made with caution and based on an adequate justification supported in the record and narrowly tailored to address the abuse perceived. De Long v. Hennessey, 912 F.2d 1144, 1149 (9th Cir. 1990). "…[S]uch care is demanded in order to protect access to the courts, which serves as the final safeguard for constitutional rights." Id. This Circuit has also held that the vexatious litigant doctrine does not apply and was never intended to apply to attorneys. Weissman at 1194.

Plaintiffs did not have a fair opportunity to oppose the injunction because the defendants' motion did not raise the December 6, 2011 order as a form of subject matter jurisdiction and the Eastern District local rules gave no indication that it adopted pre-filing orders formed by a different district. Lockhart to the present date has never filed an case in the United

States in propria persona.[19] Ringgold also had not filed any case in the United states in propria persona in well over 7 years. The indication that allegations in the complaint referred to Ringgold in a personal capacity were erroneous. The complaint pled relief on behalf of the trust and estate through a named fiduciary and any recovery is governed under the terms of the trust and the allegations were representative of other Law Office clients named as trustee and/or executors. (See vER5.1107:3-1707:26). Long ago defendants conceded that a named trustee must appear in a legal proceeding through counsel. (See ER8.1706:17-1707 (RJN #13).

F. Because The Case Is Subject To The Jurisdiction Of A Three Judge Court, And As A Matter Of Law There Always Existed Subject Matter Jurisdiction, The Merits Of Any Motion To Dismiss Must Be Heard By The Assigned Three Judge Court.

The January 23, 2013 order of Judge Mendez is reviewed *de novo*. Manzarek v. St. Paul Fire & Marine Ins. Co., 519 F.3d 1025, 1030 (9th Cir. 2008); See Leatherman v. Tarrant County Narcotics Intelligence and Coordination Unit, 507 U.S. 163, 168 (1993). As discussed above there always existed subject matter jurisdiction *and* the true merits of the

[19] In the state and federal court persons represented by counsel are not vexatious litigants. See Stewart v California Department of Education, 2012 WL 4133160 *, No. 10-55282 (9th Cir. Sept. 20, 2012)(unpublished), Shalant v. Girardi, 51 Cal.4th 1164, 1173 (Cal. 2011).

defendants leading to the January 23, 2013 order were never adjudicated on the merits. This court should reverse the dismissal order and order that the case with all plaintiffs will be referred to the proper three-judge court. To the extent this court determines that a three-judge court was not required and that Judge Mendez was not disqualified the case should be remanded for proper adjudication of the motions on the merits.

G. Under 28 U.S.C. § 2106 And In Light Of The Fact That Judge Mendez Was Required To Comply With The Procedures To Appoint A Three Judge Court This Court Should Grant Temporary Injunctive Relief And Protective Orders Until An Out Of State Three Judge Court Is Convened.

Without reaching the merits of whether a preliminary injunction should be imposed, this court review the fully briefed motion for preliminary injunction as the basis for ordering temporary relief pending further administrative orders to appoint a out of state three judge court.

Plaintiffs demonstrated they satisfied the applicable factors: (1) that they are likely to succeed on the merits of their substantive claim; (2) that they are likely to suffer irreparable harm in the absence of preliminary relief; (3) that the balance of equities tips in their favor; and (4) that an injunction is in the public interest. See Winter v. Natural Res. Def. Council, Inc., 129 S. Ct. 365, 274 (2008). Judge Mendez abused his discretion by not referring the matter within the confines of 28 U.S.C. § 2284.

Particularly in light of the recent ethics opinion of the California Supreme Court, plaintiffs demonstrated a likelihood of success on the merits. The opinion acknowledges similar circumstances as to when a constitution resignation of a judge arises under California Constitution Art. VI § 17. Constitutional resignation is the basis to declare a vacancy of judicial office and to determine the number of vacancies to be filled by special judicial election in the properly formed judicial districts. The complaint contains causes of action in which Congress expressly authorized injunctive relief. See Mitchum v. Foster, 407 U.S. 225, 237 (1972)[42 U.S.C. § 1983], Tennessee v. Lane, 541 U.S. 509 (2004) (Title II of ADA), Gonzalez v. Arizona, 677 F.3d 383 (9th Cir. 2012) [former 42 U.S.C. § 1973].

Plaintiffs provided sufficient authority indicating a strong likelihood of succeeding on the merits on the legal theory of the complaint. See Alex *supra*, Abbott *supra*, Cal. Attorney General Opn 83-607, 66 Cal. Attorney General 440 (ER9.2017-2047, ER13.3046-3052). Section 5 of SBX2 11 is a recognition that at the point of the constitutional vacancy of judicial office that the person is not acting in a judicial capacity. Compare Forrester v. White, 484 U.S. 219 (1988). Otherwise there would not be a need for the hidden immunity provision as to civil liability, criminal prosecution, disciplinary action notwithstanding of the nature of the claim, federal law, and the United States Constitution.

The treatment of the clients of the Law Office as de facto vexatious litigants based on their association is directly related to their grievances for institutional and political reform. The application of CCP § 391.7 to persons or entities represented by attorneys and when no statutory due process motion has been filed in the trial court is a form of viewpoint discrimination, and method of retaliation, and method of voter intimidation. Defendants presented no evidence which contradicted plaintiffs' claims of denial of reasonable requests for accommodation for disability and continuing barriers to access to the court.

The irreparable harm to plaintiffs and the public interest is clearly apparent because section 5 of SBX2 11 forces an involuntary waiver of rights under the United States Constitution and federal law, provides retroactive immunity, and defendants are claiming Eleventh Amendment immunity. See California Pharmacists *supra* at 852.

In addition to the claims of immunity and super-immunity, plaintiffs demonstrated constitutional injury. See 1st, 14th, 15th Amendment, Elrod v. Burns, 427 U.S. 347, 373 (1976), Brewer v. West Irondequoit Cent. School Dist., 212 F.3d 738, 744-745 (2nd Cir. 2000) (when a violation of constitutionally protected right is shown there is no further showing of irreparable injury required). Plaintiffs' legal rights and interests are further irreparably harmed by being barred access to the court through their legal representative in violation of Title II of the ADA and 504 of the Rehabilitation Act. Irreparable harm is presumed where defendants have engaged in practices prohibited by civil rights statutes. See Silver Sage Partners, Ltd. v. City of Desert Hot Springs, 251 F.3d 814, 827 (9th Cir. 2001), Gresham v. Windrush Partners, Ltd. 730 F.2d 1417, 1423 (11th Cir. 1984).

The balancing of potential harms is decidedly in plaintiffs' favor. There is no harm to Brown and Harris particularly when the published opinions of the attorney general support plaintiff's claims. (See Cal. Attorney General Opn 83-607, 66 Cal. Attorney General 440, Cal Attorney

General Opn 12-602). There is no harm to the Commission because injunctive relief is entirely consistent with its written opinions. There is no harm to Howle because she is only required to conduct an investigation and she is the enforcement agent for protection under the California Whistleblowing Protection Act. On the other hand plaintiffs are being stripped of their property, subjected to loss of property (even with the state actors do not have the mandatorily required statutory bond), subjected to extraordinary forms of retaliation and violation their First Amendment rights, deprived access to the court, and being forced to waive rights without disclosure and consent. Injunctive relief maintains the parties in their last uncontested status. See GoTo.com v. Walt Disney, 202 F.3d 1199, 1210 (9th Cir. 2000).

Judge Mendez failed to consider the public interest and to identify a harm to the government in denying a temporary restraining order and protective order. See Caribbean Marine Services Company, Inc. v. Baldrige, 844 F.2d 668 (9th Cir. 1988). It is in the public interest to enforce the Voting Rights Act of 1965 because it is vital to protecting the right of racial and language minorities to participate on in the government where they reside.

H. The January 23, 2013 Order Imposing Sanctions Against Ringgold And Lockhart And Denying Plaintiffs' Cross-Motion For Sanctions Was An Abuse Of Discretion

Rule 11 sanctions are reviewed for an abuse of discretion. See Cooter & Gell v. Hartmarx Corp., 496 U.S. 384, 405 (1990).

1. Defendants' Request for Sanctions ($ 9,520)

The January 23, 2013 order specifies that the primary focus of the Rule 11 sanction was based on the complaint and it did not reach the merits of the complaint. (ER4.691-692).[20] When the focus is the complaint there is a two-prong inquiry to determine (1) whether the complaint is legally or factually baseless from an objective perspective, and (2) if the attorney has conducted a reasonable and competent inquiry before signing and filing it. Christain v. Mattel, Inc. 286 F.3d 1118, 1127 (9th Cir. 2002). Rule 11 sanctions do not involve conduct that occurs outside the pleadings. Id. at 1121. The word frivolous is taken to mean *a filing* that is *both* baseless and made without a reasonable and competent inquiry. Townsend v. Holman Consulting Corp., 929 F.2d 1358, 1362 (9th Cir. 1990). Complaints are not

[20] ER4.692:22-24 ("…[t]he Court has not reached the underlying merits of this litigation.").

filed for an improper purpose if they are non-frivolous. Zaldivar v. City of Los Angeles, 780 F.2d 823, 832 (9^{th} Cir. 1986). An attorney cannot be sanctioned for a complaint that is in fact well founded solely because the attorney's prefiling inquiry is viewed as inadequate. See In re Keegan Management Co., Secur. Litig, 78 F.3d 431, 435 (9^{th} Cir. 1996).

Judge Mendez ruled that although he lacked subject matter jurisdiction he could still impose sanctions under the authority of Willy v. Coastal Corp., 503 U.S. 131, 137-38 (1992). The court's interpretation of Willy is in error. The case does not hold that a district court can simultaneously order sanctions and disregard its own finding that it lacks Article III authority. Willy involved a circumstance where it was *later determined* that there was a lack of subject matter jurisdiction. The determination of lack of subject matter jurisdiction was the anchor by which Judge Mendez determined he *could not* consider the merits of the complaint signed and filed. Therefore, the Rule 11 sanction is premised on matters extrinsic to the pleadings and this is an erroneous legal standard.

Rule 11 sanctions are solely based on the assertions in papers filed with or submitted to the court. (ER4.691:10-12, "Because the filing of the

FAC was barred by the December 6, 2011 Order, it had no chance of success and choosing to file it was plainly frivolous."). The indication of no chance of success is not based on reference to the pleading filed but rather by reference to matters in a different case and district – the December 6, 2011 order which plaintiffs Ringgold and Lockhart did not sign and file. Counsel could only attempt to interpret it. The complaint signed and filed could not be considered objectively baseless if the court had applied a proper standard. (See ER7.1457-1477).

As to the question of whether a reasonable and competent inquiry was made before signing and filing the complaint, again, the point of reference should have been the signed and filed complaint and not matters extrinsic to the complaint. In Keegan this court question whether an attorney could be sanctioned for "a complaint which *is* well-founded, solely because [the attorney] failed to conduct a reasonable inquiry?" And it concluded "that the answer is no." Keegan at 434. The District Court disregarded the complaint and required a subjective inquiry into the meaning of another judge's order. Even if the inquiry standard under Rule 11 is beyond the document signed and filed by counsel or the party, under an objective standard, the published authority of this court and review of the local rules of court of the Eastern District, an attorney would reasonably believe there was no pre-filing requirement. If such requirement was needed the January 31, 2013 ex parte application made a proper and reasonable request that the Chief judge of the Eastern District provide notice of the applicable rule or make any required assessment of the complaint. Because the complaint cannot be viewed as baseless and a reasonable and competent inquiry was made as to the complaint signed and filed and as to matters extrinsic thereto, the complaint could not be considered frivolous. Townsend at 1362, Keegan at 435. The January 23, 2013 order indicates that an improper purpose could be inferred. (ER4,691:12-14 "[f]iling a pleading in violation of a direct order not to do so allows this Court to *infer* that the filing was made for an improper purpose, i.e. to circumvent the vexatious litigant order issued in the Central District of California."). First, there is no order directing that a complaint not be filed or an effort to circumvent any order. Second, an improper purpose cannot be *inferred* if the complaint filed is not frivolous. Townsend. 1362-1365. It is only when there is solid evidence that the pleading signed and filed is frivolous can any inference arise with respect to an alleged improper purpose. Id. at 1365. The court erred in imposing sanctions against Lockhart because these decisions were solely based on counsel's assessment, not the client. (ER5.1119¶13).

Ringgold as counsel also made a reasonable assessment that she did not need to seek leave from a judge in a different district to file a complaint on behalf of all Law Office clients in the proper venue and that to do so would not violate the December 6, 2011 order. (ER13.3235:9-21). In addition to considering the authorities of this Circuit and the local rules of court of the Eastern District, the order only applies to Ringgold if she is appearing in propria persona and not in her capacity as an attorney or as a fiduciary.

Ringgold as counsel also made a reasonable assessment that leave was not required from a judge in a different district as to plaintiff client Lockhart again based on the authorities of this Circuit and the local rules of the Eastern District. The statute does not apply to persons represented by counsel or to persons deemed vexatious litigants who are represented by counsel. See Shalant *supra* at 1175-1176. Ringgold could not represent

Lockhart in propria persona or as a trustee in propria persona. Counsel reasonably construed the order in a manner that is not constitutionally overbroad and would not impair substantial legal rights would and enable a complaint to be timely filed within the shortened statute of limitations after rejection of a government claim for the benefit of all plaintiff Law Office clients. FRCP, Rule 23 (a)(2) & (b). The fundamental focus of the complaint is the Voting Rights Act of 1965 and implementation of a monitored special judicial election and this does not involve administration of a court.

The sanction is not reasonable in amount because the court awarded 56 hours for work which was unrelated to the sanctions motion and for motions which the court never conducted a hearing. Defendants' sanction motion was merely a cut and paste of their motion to dismiss. The court abused its discretion in failing to consider the inability to pay (or non-monetary alternatives). See Haynes v. City & County of San Francisco, 688 F.3d 984 (9th Cir. 2012). The District Court made no ruling on the issue. (See ER5.926-945, 5.1110:27-1111:20, 1117:18-21, 1119 ¶ 13 & ¶ 14). It also abused its discretion in failing to consider plaintiffs' motion for sanctions as an offset.

2. Plaintiffs' Counter claim for Rule 11 Sanctions ($35,770)

The court's ruling on the plaintiffs' motion for sanctions is clearly erroneous and an abuse of discretion. It incorrectly specified that plaintiffs were required to file a separate motion and provide safe-harbor notice. But see Patelco Credit Union v. Sahni, 262 F.3d 897, 913 (9th Cir. 2001), Rule 11 Adv. Comm. Note to 1993 Amendment. Plaintiffs' counter request for sanctions was under Rule 11 (b)1, (b)(2), and (b)(3) and court abused its discretion in failing to exercise discretion to properly evaluate the motion. Plaintiffs' claims include but are not limited to omission of authorities which would render defendants' arguments frivolous, failing to provide complete copies of items in the request for judicial notice including the final order governing trusteeship governed by res judicata, referring to matters dismissed for lack of subject matter jurisdiction as having res judicata effect, falsely claiming that Brown and Harris had been sued by plaintiffs in the state court, falsely claiming that an action had been dismissed against Brown and Harris with prejudice, and claiming (when there was evidence to the contrary) that clients of the Law Office were not involved in the action. (ER5.1100-1101, 1119 ¶14; ER7,1458:18-1471:6 1477-1479, 1529-1575).

I. The February 8, 2013 Order Denying The Motion To Reconsider And To Vacate And Imposing Sanctions Against Ringgold Was An Abuse Of Discretion.

An order denying a motion to vacate, for new trial and to alter or amend the judgment for relief from judgment and for reconsideration is governed by an abuse of discretion standard. A district court abuses discretion if it does not apply the correct law or it rests its decision on a clearly erroneous findings of material fact. See Lemoge v. United States, 587 F.3d 1188, 1198 (9th Cir. 2009). Imposition of sanctions pursuant to inherent power is reviewed for an abuse of discretion. Chambers v. NASCO, Inc. , 501 U.S. 32, 55 (1991).

The court abused its discretion in denying plaintiffs' motion for reconsideration and to vacate under Rule 60 (b) and for stay and injunction pending disposition of the petitions for writs of certiorari filed in the United States Supreme Court. After all client Law Office plaintiffs had incurred the expense to file petitions for writs of certiorari and their cases were docketed in United States Supreme Court, the District Court entered the January 23, 2013 judgment. (ER6.1138-1245). The court abused its discretion in refusing to stay the judgment or to vacate the judgment since on its face it did not specify it was a partial judgment. It was not sanctionable to attempt to make sense of the entry of a final judgment which was erroneously stating that a decision had been rendered *after a trial or hearing* and to request certification of that judgment. The judgment substantially impaired an accurate and true reflection of the procedural posture of the case and the court abused its discretion in its ruling. Moreover, to request a stay in the Supreme Court required plaintiffs to first file a request in the lower court.

As discussed above since defendants had not argued that the December 6, 2011 order formed the subject matter jurisdiction of the district courts and the order had nothing to do with the majority of the plaintiffs, on reconsideration and motion to vacate, the court abused its discretion in not conforming to the published local rules of court or referring the complaint to the Chief Justice to make a pre-filing assessment. They also reasonably argued that the January 23, 2013 order did adequately identify a deficiency in any *cause of action* in order to file an amended complaint. (ER5.1091:5-9, 1092:12-24). See Karim-Panahi v. Los Angeles Police Department, 839 F.2d 621 (1988). The court abused its discretion in denying these requests and the motion seeking the relief was not a basis for sanctions given the severity of the irreparable and continuing harm to the plaintiffs.

Plaintiffs also provided new evidence which demonstrated clear misrepresentation and misconduct by the defendants. They presented the declaration of client plaintiffs Ali Tazhibi and ASAP Copy and Print previously served on the Office of the Attorney General on August 29, 2011 and an updated declaration of the same plaintiffs dated January 24, 2013. These plaintiffs like others were being deemed vexatious by association and the Office of the Attorney General had known of these facts since 2011 yet falsely pursued a claim that clients were "window dressings". (ER5.1118-1119, ER6.1156, 1179-1183, 1214-1215, 1271,1334-1345). So while plaintiffs were seeking relief in the Supreme Court and had been deemed vexatious by association, the defendants were falsely arguing the client plaintiffs had not been harmed and were "window dressings". Plaintiffs also provided a final order regarding trusteeship in the Aubry Family Trust which was intentionally omitted from requests for judicial notice filed by defendants. (ER6.1322-1333). The January 23, 2013 order stated that "[a]s Defendants meritoriously argue, the inclusion of Plaintiff Ringgold's clients as additional plaintiffs appears to be an attempt to avoid the consequences of the December 6, 2011 order." (ER4.688:14-17). The court abused its discretion in denying the motion. Also, inherent power sanctions ware not warranted because the opposing parties were guilty of unclean hands. Compare <u>Fayemi v. Hambrecht & Quist, Inc.</u>, 174 F.R.D 319, 326 (S.D.N.Y. 1997).

Ringgold and Lockhart properly requested that the court consider their inability to pay the sanction awarded under the January 23, 2013 order and that the court provide a ruling on all plaintiffs' cross-motion for sanctions. (ER5.1100:22-1101:21, 1110-1111). The court abused its discretion by failing to consider the financial circumstances. It was legal error by the ruling that a separate cross-motion for sanctions was required.

The court abused its discretion in imposing sanctions of $1,000 for filing the motion because there was no bad faith or willful disobedience of court order. See Chambers at 43, Roadway Express, Inc. v. Piper, 447 U.S. 72, 764-766 (1980). Negligent conduct is not sufficient and neither is recklessness without more. See Zambrano v. City of Tustin, 885 F.2d 1473 (9th Cir. 1989), Keegan *supra*. The court determined that the motion was "recklessly raised frivolous arguments for an improper purpose". (ER4.677). However, the arguments were neither frivolous nor for an improper purpose or an attempt to circumvent a prior order.

J. To The Extent Necessary For Review This Court Should Consider The January 23, 2013 Order And Judgment, And The February 8, 2013 Order Under The Collateral Order Doctrine Or Treat The Appeal As A Petition For Writ Of Mandamus

To the extent it is unclear whether the orders on appeal are appealable, plaintiffs contend that the collateral doctrine applies, or that this court should treat the appeal as a petition for writ of mandamus. See Cohen v. Beneficial Indus. Loan Corp., 337 U.S. 541, 546 (1949), Bauman v. United States District Court, 557 F.2d 650 (9th Cir. 1977).

VII. CONCLUSION

For the foregoing reasons appellants respectfully request that this court grant the relief sought by this appeal.

Dated: April 4, 2018 LAW OFFICE OF NINA R. RINGGOLD

By: s/ Nina R. Ringgold____________
Nina R. Ringgold, Esq.
Attorney for the Appellants

STATEMENT OF RELATED CASES
(Circuit Rule 28-2.6)

Appellants submit that there are no known related cases pending in this court.

Dated: April 4, 2018

LAW OFFICE OF NINA R. RINGGOLD

By: s/ Nina R. Ringgold____________
Nina R. Ringgold, Esq.
Attorney for the Appellants

CERTIFICATE OF SERVICE

I hereby certify that on April 4, 2018, I electronically filed the following documents with the Clerk of Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system:

APPELLANTS' OPENING BRIEF (With addendum)

Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and this declaration was executed on April 4, 2018 at Los Angeles, California.

s/ Matthew Melaragno____________

Form 8. Certificate of Compliance Pursuant to 9th Circuit Rules 28.1-1(f), 29-2(c)(2) and (3), 32-1, 32-2 or 32-4 for Case Number 17-16269

Note: This form must be signed by the attorney or unrepresented litigant *and attached to the end of the brief.*

I certify that (*check appropriate option*):

☐ This brief complies with the length limits permitted by Ninth Circuit Rule 28.1-1. The brief is [ ] words or [ ] pages, excluding the portions exempted by Fed. R. App. P. 32(f), if applicable. The brief's type size and type face comply with Fed. R. App. P. 32(a)(5) and (6).

☐ This brief complies with the length limits permitted by Ninth Circuit Rule 32-1. The brief is [ ] words or [ ] pages, excluding the portions exempted by Fed. R. App. P. 32(f), if applicable. The brief's type size and type face comply with Fed. R. App. P. 32(a)(5) and (6).

☐ This brief complies with the length limits permitted by Ninth Circuit Rule 32-2(b). The brief is [ ] words or [ ] pages, excluding the portions exempted by Fed. R. App. P. 32(f), if applicable, and is filed by (1) ☐ separately represented parties; (2) ☐ a party or parties filing a single brief in response to multiple briefs; or (3) ☐ a party or parties filing a single brief in response to a longer joint brief filed under Rule 32-2(b). The brief's type size and type face comply with Fed. R. App. P. 32(a)(5) and (6).

☐ This brief complies with the longer length limit authorized by court order dated [ ] The brief's type size and type face comply with Fed. R. App. P. 32(a)(5) and (6). The brief is [ ] words or [ ] pages, excluding the portions exempted by Fed. R. App. P. 32(f), if applicable.

☒ This brief is accompanied by a motion for leave to file a longer brief pursuant to Ninth Circuit Rule 32-2 (a) and is [14374] words or [73] pages, excluding the portions exempted by Fed. R. App. P. 32 (f), if applicable. The brief's type size and type face comply with Fed. R .App. P. 32(a)(5) and (6).

☐ This brief is accompanied by a motion for leave to file a longer brief pursuant to Ninth Circuit Rule 29-2 (c)(2) or (3) and is [ ] words or [ ] pages, excluding the portions exempted by Fed. R. App. P. 32(f), if applicable. The brief's type size and type face comply with Fed. R. App. P. 32(a)(5) and (6).

☐ This brief complies with the length limits set forth at Ninth Circuit Rule 32-4. The brief is [ ] words or [ ] pages, excluding the portions exempted by Fed. R. App. P. 32(f), if applicable. The brief's type size and type face comply with Fed. R. App. P. 32(a)(5) and (6).

Signature of Attorney or Unrepresented Litigant: s/ Nina R. Ringgold

Date: 4.4.18

("s/" plus typed name is acceptable for electronically-filed documents)

(Rev.12/1/16)