

19-6574

No. 19A299

Supreme Court, U.S.
FILED
OCT 30 2019
OFFICE OF THE CLERK

**IN THE SUPREME COURT
OF THE UNITED STATES**

Marco Gonzalez - Petitioner,

vs.

Panda Restaurant Group Inc.
Respondent

On Petition for a Writ of Certiorari to the
California Supreme Court

PETITION FOR WRIT OF CERTIORARI

Marco Gonzalez
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ORIGINAL

QUESTIONS PRESENTED

- 1) Why doesn't there exist Vexatious Litigant laws or procedure that addresses Multiplicity of California's §391 Motion with Conflicting Rulings based on the exact same evidence? (Or Multiplicity of the §391 Motion, Period?)
- 2) Do the Merits of a case take precedence or does California's Vexatious Litigant Laws whereby a Plaintiff must present "sufficient evidence of a material change in the facts upon which the order was granted" in order to vacate the prefiling order and remove Plaintiff's name from the States Vexatious Litigant list?
- 3) Do Vexatious Litigant laws violate the 5th & 14th Amendments of the United States Constitution? (It did in my case!). (Double Jeopardy).
- 4) Should not there exist different "categories" of vexatious litigant code or procedure, one belonging to family and probate cases and another belonging to civil and/or criminal matters? (ex. 2nd Degree Murder)
- 5) When Multiplicity of Vexatious Litigant Motions are in effect, and conflicting rulings arose based on the exact same evidence, which ruling should take precedence, the denial or the granted motion? (Res Judicata didn't apply in my case because the tentative denial was heard first).
- 6) Should a litigant, falsely and intentionally convicted of being a Vexatious Litigant be compensated for the Indisputable and Reprehensible harm inflicted upon him?
- 7) Should attorneys or party(s) that filed false Vexatious Litigant Motions in order to harm a Plaintiff be reprimanded, fined or subjected to disciplinary action?
- 8) Do Vexatious Litigant convictions in civil matters, excluding Family Court, target Protected Classes (race, ethnicity, 40+, poverty) at a higher rate?
- 9) Did you know any Vexatious Litigant would be prevented from filing Bankruptcy in *Pro Se*? (a Federal proceeding).

LIST OF PARTIES

[X] All parties appear in the caption of the case on the cover page.
Panda Restaurant Group Inc. represented by Markson Pico LLP, 444 S. Flower
St. #2160, Los Angeles, Ca 90071

RELATED CASES

Marco Gonzalez v Panda Restaurant Group Inc. – Los Angeles Superior Court
#BC700077 Plaintiff convicted a Vexatious Litigant by temporary and retired
Judge Edward Simpson Judgment Entered – November 9, 2018

Marco Gonzalez v City of Santa Monica – Los Angeles Superior Court
#BC646733 Judge Craig Karlan **DENIED the \$391 Motion based on the
exact same evidence.** Judgment entered **January 17, 2019**

Marco Gonzalez v Panda Restaurant Group Inc. – Los Angeles Superior Court
#BC70007 Case is DISMISSED by Judge Timothy Dillon Judgment Entered
January 18, 2019

Marco Gonzalez v Superior Court of Los Angeles - #B294056 Petition for Writ
of Mandamus – Denied Review by the Second District Court of Appeal,
Judgment entered December 10, 2018

Marco Gonzalez v Panda Restaurant Group Inc. – Second District Court of
Appeal #B296038 - Appeal Denied Review by a sole Presiding Judge Lui,
Judgement entered March 13, 2019

Marco Gonzalez v. Panda Restaurant Group Inc. – California Supreme Court
#S254809 - Denied Review Judgement Entered June 12, 2019

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[X] For cases from state courts:

The opinion of the highest state court to review the merits appears at **Appendix F** to the petition and is

[X] reported at the California Supreme Court. Filed June 12, 2019 Case #S254809 Case Denied Review, Not Published

The opinion of the California's Second District Court of Appeal to review the merits appears at Appendix E to the petition and is

[X] reported at the California Second District Court of Appeal. Plaintiff's initiates the process to Appeal - Denied by judge Lui Case # B296038. Filed March 6, 2019, Not Published

The opinion of the California's Second District Court of Appeal to review a Writ of Mandamus appears at Appendix D to the petition and is

[X] reported at the California Second District Court of Appeal. Writ of Mandamus – Denied Review Case #B294056, Filed Dec 10, 2018 Not Published

The opinion of the Los Angeles Superior Court, the ruling of temporary Judge Simpson, appears at Appendix A to the petition and is

[X] reported at the Los Angeles Superior Court Case #700077, Nov 9, 2018, Not Published

The opinion of the Los Angeles Superior Court, the ruling of temporary Judge Dillon, appears at Appendix B to the petition and is

[X] reported at the Los Angeles Superior Court Case #700077, Filed Jan 18, 2019 Not Published

The opinion of the Presiding Judge of the Los Angeles Superior Court to review the merits appears at Appendix I to the petition and is

[X] Judge Jessner's denial to remove name from vexatious litigant list, Not Published

The opinion of Judge Craig Karlan of the Los Angeles Superior Court appears as Appendix C to the petition and is

[X] Judge Karlan's DENIAL of the §391 Motion and thorough analysis. Jan 17, 2019 Not Published.

JURISDICTION

[X] For cases from state courts:

The date on which the highest state court decided my case was June 12, 2019. That was the California Supreme Court.

The jurisdiction of this Court is invoked under 28 U.S.C. §1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

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STATEMENT OF THE CASE

I, Marco Gonzalez was defending two Los Angeles Superior Court CCP §391 Motions. I am the Plaintiff in two meritorious state cases, one against the City of Santa Monica (BC646733) and another against Panda Restaurant Group Inc. (“Panda”) (BC700077), which has video evidence currently on YouTube that supports my allegations and exonerates me of this false conviction. Solely based on the YouTube video, this Panda case should not have been dismissed at the trial level. Video cannot be construed as hearsay and public photography is legal. See the *1st Amendment to the U.S. Constitution and ACLU v Alvarez – 7th Circuit Federal Court of Appeals*.

I, Marco Gonzalez have been frequenting Panda Express Restaurant located at the Glendale Galleria for over 30 years ordering the same meal on a consistent and frequent basis. I have been ordering three Kung Pao Chickens and steamed rice to go as the video depicts. I waited in line to order food, peacefully and legally as the video depicts. While waiting in line, I noticed some employees using unsanitary methods to serve food to the general public and I became alarmed because I had previously become ill based on similar circumstances. The employees were touching money, dollar bills, coins, mops, wipes and were exhibiting other unsanitary practices while seconds later, were serving food to the general public. The Los Angeles County-Department of Public Health issued a report that corroborates my allegations and that report is in all of my pleadings. (See Appendix J). I decided to video record. (See *ACLU v Alvarez*). To see the video on YouTube, anyone in the world may type in the search button, “Panda Manager Calls Security On Customer” by Humberto Gonzo and the video will appear. When comparing the YouTube video (Appendix H) to Panda Manager’s Declaration (Appendix G), it is clear that Panda’s employee has committed perjury because every statement in her Declaration is false. Panda’s Declaration (Appendix G) is concocted and fabricated and constitutes for perjury. Panda’s Manager is named Mrs. Gabriela Rubio. Manager Rubio stated in her Declaration that she “greeted me” and that she “asked me to stop recording” (twice) and that she was “welling or crying.” Please review the video on YouTube to verify that Manager Rubio’s Declaration is in fact, fabricated. Manager Rubio states that I was causing a “scene” and thus, had called security on me. I was in fact, “man-handled” by Glendale Galleria security forces. I was in fact, abused, harassed and man-handled by the galleria security forces. About 8-

10 security members were there to abuse me. It was planned and executed with mal intent. Panda employees became vindictive because I had complained about them in the past. The fact is that Panda's executives, owners, employees and their attorney were initially unaware of the existence of the YouTube video, that is why their Declarations are all fabricated, concocted and constitute for perjury. The video on YouTube alone should suffice to prove that this case has merit and should not have been dismissed. As a matter of fact, I should have won the case.

In California, two tiers must be satisfied in order for a Plaintiff to post security. If the §391 Motion is granted and Plaintiff doesn't post security, the case will be dismissed. **(See CCP §391.3)** The first tier governs the parameters and definition of being a Vexatious Litigant. CCP §391 reads, "The motion for an order requiring the plaintiff to furnish security shall be based upon the ground, and supported by a showing, that the plaintiff is a vexatious litigant and that there is not a reasonable probability that he or she will prevail in the litigation against the moving defendant." See CCP §391. **In the Panda case, both parameters or tiers failed, hence, I have been falsely convicted.**

I do not have the required "litigations" to satisfy the requirement for conviction of a Vexatious Litigant. At the time, I only had one "adverse litigation" and one win. *The definition of "litigation" encompasses lawsuits beyond the initial filing to include those that are maintained or pending.* See **Forrest v. Dept. of Corporations (2007) 150 Cal. App. 4th 183, 196-197.** The City of Santa Monica case is still pending. My other filings are not defined as "litigations" and therefore do not count adversely towards me.

A city attorney representing the Santa Monica case contacted and colluded with Panda's Management team, located in Rosemead, CA. Soon thereafter, Panda hired an attorney and both defendants submitted their respective §391 Motions on consecutive days based on the exact same first tier evidence. The second tiers of both cases are different since the cases are different; however the first tiers are exactly the same. The evidence submitted was a Request for Judicial Notice on my alleged "litigations." (RFJN).

Solely based on the first tier (parameters governing a Vexatious Litigant aspect), a Judge Craig Karlan from the Santa Monica Courthouse DENIED the CCP §391 Motion in his tentative ruling dated **October 4, 2018** because the numbers just didn't/doesn't exist for a Vexatious Litigant conviction. Both trial Judge Karlan and retired and

temporary Judge Simpson received the exact same evidence (RFJN) that addresses the first tier of the §391 motion. Both defense attorney's conspired and colluded with one another and submitted their §391 Motions with the RFJN (§391 evidence) one day apart. Both Judges arrived at different conclusions based on the exact same first tier evidence and a lack of uniformity arose. California's Vexatious Litigant laws are void of such scenarios. Res Judicata does not apply.

However, when Judge Simpson convicted me a Vexatious Litigant and issued a prefiling order (CCP §391.1) barring me from additional court filings, I filed a Petition for a Writ of Mandamus at the Second District Court of Appeal. See B294056. (Appendix D). The Writ was denied and the Appellate Court cited *Golin v Allenby*. I was denied my Constitutional right to be heard and due process. The legitimacy of the *Golin v Allenby* case is thus, unconstitutional and I will explain. At this point, the Second District Court of Appeal had the opportunity to address my case and the merits of my case, yet they refused citing that case. *The Golin v Allenby* case stated, "*Petitioner has an adequate remedy at law by way of an appeal.*" **(But that is a fraudulent statement).**

I attempted to file a timely appeal. However, because of my vexatious litigant conviction, I had to petition to the presiding judge of the Second District Court of Appeals. The presiding judge from the Second District Court of Appeals, a judge Lui was in fact appointed by the presiding judge of the California Supreme Court, a Judge Cantil-Sakauye.

In my attempt to appeal to the Second District, I attached as exhibits, all orders from Judge Karlan and Judge Simpson. Judge Lui DENIED my request to initiate the appeals process by checking the box "denied." The form I submitted is entitled, "Request and Order To File New Litigation by Vexatious Litigant." (See Appendix E). The fact is that my attempted appeal should not be considered "new litigation" and I should have the right to appeal as a matter of right. The right to appeal should be part of the same "litigation." I should not be "begging" to appeal to this presiding judge since it should be a Constitutional Right that a higher court hear the matter, especially since I have demonstrated my innocence. Bear in mind that Panda Restaurant Inc. is in fact owned by billionaires Mr. Cherng and Ming Ting Cherng. At the Second District Court of Appeal, it was judge Lui's job to address issues of non-uniformity and where the application of the law is uneven. Thus, once again, my Constitutional Rights were

oppressed by this justice who acted solely, without a majority or in unison of his colleagues. Judge Lui's first name is "Elwood."

So, I brought the matter to the California Supreme Court. That matter was also denied review. A justice Cantil-Sakuye is the presiding judge and she is responsible to the appointment of justice Lui in that she appointed him. She wasn't going to overrule someone she appointed for various reasons, irrespective of the *Bill of Rights*.

REASONS FOR GRANTING THE PETITION

There are no current laws that addresses Multiplicity of the §391 Motion with Conflicting rulings based on the exact same evidence. There is no current law that addresses Multiplicity of the §391 Motion, Period! I am innocent of this false conviction and I have the Constitutional Right to be Heard and the Right to Due Process. The 14th Amendment declares that no state shall deny to any person the equal protections of the laws. (Also 5th Amendment-Due Process). Video evidence for the world to view on YouTube exonerates me of this false conviction. There is no doubt that temporary judge Simpson (App A) made an error in convicting me a Vexatious Litigant because I just don't have the required number of "litigations" to satisfy the required California definition. CCP §391 states, "*in the immediately preceding 7 year period has commenced, prosecuted, or maintained in propria persona at least 5 litigations other than in a small claims court that have been (i) finally determined adversely to the person or (ii) unjustifiably permitted to remain pending at least two years without having been brought to trial or hearing.*" I only lost one "litigation." See Judge Karlan's ruling. (**App C**). My filings at the federal level were not "litigations" because they were dismissed. The Panda case was dismissed by judge Dillon (**App B**), however, what is devastatingly unconstitutional is the complete obliteration of due process and the right to be heard based on California Vexatious Litigant Laws. 10+ judges refused even hear the matter based on extrinsic purposes or motives. Judge Karlan's (**App C**) ruled contrary to Judge Simpson, but that ruling pertains to another case. Also, Judge Karlan's Tentative Ruling (his first denial of the §391 Motion occurred before judge Simpsons granted ruling). The current state of California's Vexatious Litigant Laws compromise due process and inhibit a Plaintiff from attempting to correct an error. Obviously my case has merit because the YouTube video clearly shows that Panda's only defense, their Declarations, are fabricated and yet the Appellate Courts, presiding judges, superior court judges

and the California Supreme Court refused to hear the matter. Why? More than several superior court judges refused to hear the matter. Judge Simpson, Judge Dillon, Judge Gross, Judge Kin, Judge Moor, Judge Kim, Judge Seigle, Judge Lui, denied review, Judge Jessner, and Judges of California's Supreme Court all denied review and/or refused to hear the matter. I did not receive the opportunity to be heard by any of the above judges, but was rather, systematically denied review, even though I have fully and clearly explained in all of my pleadings that there exist a video currently on YouTube that exonerated me of this "fake" §391 Motion and that another judge denied the §391 Motion based on the exact same evidence on another case. The video currently on YouTube completely exonerates me of this fraudulent conviction and yet for some fantastic reason, no judge in California wanted to hear the matter?

Additionally, there are no consequences in current Vexatious Litigant Laws that address disciplinary action on an opposing party that deliberately and maliciously bring forth false Vexatious Litigant Motions. Because bringing forth an arbitrary §391 Motion automatically "stays" all litigation in a case, deliberate pigeonholing or delaying of a case, (as in my situation) adversely affected the outcome. As in my situation, both §391 Motions were filed in two consecutive days because both defense attorney's conspired and colluded with one another to do so. Furthermore, these two attorney's intentionally manipulated the "court reservation system" prolonging the case for several months due to the "stay." It functioned as an injunction on an innocent party, further obliterating Plaintiff's Constitutional Rights. An attorney or a party that brings forth false Vexatious Litigant Motions should be subject to disciplinary action, such as attorney Brett Markson from Los Angeles, CA.

There must be laws that addresses matters of multiple §391 rulings, conflicting §391 rulings, false §391 Motions, and disciplinary action against parties that deliberately and maliciously bring forth false claims, as in my situation. Excluding this Panda case, I only lost 1 "litigation" and what has occurred to me is truly a travesty and perversion of justice. As the Supreme Court of the United States has stated, "The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v Burns*, 427 U.S. 347, 373-74 (1976).

CONCLUSION

I am innocent of this false conviction. The petition for a Writ of Certiorari should be granted because there are no current state laws that address Multiplicity of the §391 Motion with conflicting rulings based on the exact same evidence. There are no current state laws that address Multiplicity of the 391 Motion, Period! The 14th Amendment declares that no state shall deny to any person the equal protections of the laws. Plaintiff is a Citizen of the United States via jus soli. There are no current laws that address *fraudulent* §391 filings, that are solely executed to harm an opposing party. I am innocent of this false conviction that has obliterated my Constitutional Rights. A report from the Los Angeles County Department of Public Health clearly corroborates my allegations. A YouTube video shows that Panda Managers Declaration is fabricated and that Panda's owner (billionaire Ming Ting Cherg), Panda's Executives, Panda's Managers and attorney Brett Markson have engaged on fraud. I am appealing to the United States Supreme Court to oversee that justice is rendered and to end corruption wherever it may exist. Over ten judges refused to hear the matter while my Constitutional Rights are being obliterated and I am left in this violated state for life. There are no penalties or disciplinary procedure for those unscrupulous attorney's, such as Panda's attorney Mr. Brett Markson that brought forth this unwarranted §391 Motion as in my case. I only lost one "litigation" that was adversely determined against me at the time, however, the system "bent" the laws to convict me. These unscrupulous attorneys rely on Extrinsic Fraud and Prejudice to oust innocent victims from the judicial system. Ten plus judges refused to hear the matter. On a personal note, it reminded me of a scene from Planet of the Apes where Charlton Heston is brought before Orangutans. For example, the Presiding Judge of the Los Angeles Superior Court provided a "nonsensical" ruling and I hope you read it. (Appendix I). Judge Jessner sustains temporary Judge Simpson's ruling by citing a case where a vexatious litigant filed 15 "litigations" in family court. Judge Jessner cited, "*In re Marriage of Rifkin and Carty (2015) 234 Cal. App. 4th 1339, 1347.*" This judge further wrote, "that my sole contention is that he has been falsely convicted of being a vexatious litigant..." and "...I said Judge Simpson order was incorrect because Judge Karlan denied a similar request..." (This judge completely excluded the VIDEO EVIDENCE). This judge attempts to "justify" an error with a case that doesn't apply and destroys the fundamental concept of "Did the case have merit?" Shouldn't the error be corrected first! **If, and only if, the error is not corrected, then this judge**

constructs her ruling on a corrupt and crumbling foundation. A ruling cannot exist based on corrupt foundations. Solely based on the YouTube video, that evidence alone showed that I am innocent of this groundless conviction and I should have won this case based on the merits alone. I have “check mated” Panda’s attorney Markson, but through Extrinsic Fraud and obvious Corruption, they continued to perpetuate their false conviction.

Obviously, this judge’s ruling is completely obtuse and groundless and her motives come into question. There are no penalties or disciplinary actions against unscrupulous attorneys that engage in filing fraudulent Vexatious Litigant Motions. In my case, the number of “litigations” or “re-litigations” required to satisfy the Vexatious Litigant aspect of the §391 Motion, just doesn’t exist. It never existed. Nor did I ever “re-litigate” any matter nor file unwarranted motions. However, the stigma and the associated reluctance of judges to overturn an obvious “foolish” ruling, even corrupt rulings, is so powerful, that this travesty of justice was allowed to proceed and perpetuated itself to this point. In the case of Marco Gonzalez v Panda Restaurant Group Inc., Defendants only defense were fabricated and concocted Declarations. Every statement from Panda’s Manager’s Declaration (App H) is false, as the video on YouTube demonstrates and their attorneys of Record knew it, yet they persisted with their fraudulent activity. However, the matter should have been corrected at the trial level. A judge Lui from the Second District Court of Appeals denied my application to petition for an appeal (App E) and sided with billionaires Ming Ting Cherng and Mr. Cherng, owners of Panda Restaurant Group Inc. Judge Lui was appointed by Judge Cantil-Sakayue of the California Supreme Court whom also refused to hear the matter. (App F). These people swore to uphold the United States Constitution and they are supposed to respect human rights, due process and the right to be heard. I understand that it is a “long shot” for this matter to be heard at the United States Supreme Court. However, I would like the Justices and the Clerks in Washington D.C. to realize the current state of some California judges.

The 5th Amendment also is supposed to protect the people from Double Jeopardy. (Judge Karlan ruling acquitted me of this false conviction, first).

Respectfully Submitted,

Marco Gonzalez



Date:

