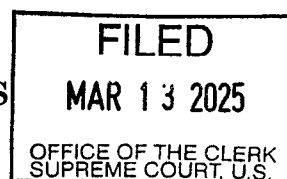


No Stay (Response Tolloed CCP §418.10)
Trial Not Yet Set

24-7099
No.

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES



IN RE JANE DOE 1 PETITIONER

ON PETITION FOR A WRIT OF MANDAMUS TO THE
APPELLATE DIVISION OF SUPERIOR COURT OF LOS ANGELES
AND THE SUPERIOR COURT OF LOS ANGELES COUNTY

PETITION FOR A WRIT OF MANDAMUS

No Stay (Response Tolloed CCP §418.10)

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QUESTIONS PRESENTED

1. Whether the Super. Ct abused its discretion when it failed to exercise its vested discretion by refusing to rule on a crucial evidentiary issue directly pertaining to the main issue raised in defendant's MTQ regarding plaintiff's fraud that rendered the summons defective on its face?
2. Whether a MTQ should be granted when a summons is defective on its face because a defendant was fraudulently named on the summons; as when a defective summons is served, the service is fatally deficient and ineffective, rendering the court no jurisdiction over defendants?

LIST OF PARTIES

All Parties do not appear in the caption of the case on the cover page. A list of all parties to the proceedings in the court whose order is the subject of this petition is as follows:

Jane Doe 2, Real Party in Interest
Rebecca Louise Hufford-Cohen, Esq.
Law Offices of Rebecca Hufford Cohen
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STATEMENT OF RELATED CASES

The following proceedings are directly related to the case in this Court.

- *Doe 1 v. The Superior Court of the State of California for The County of Los Angeles*, No. 24APC00144, Appellate Division of Superior Court. Order entered October 25, 2024.
- *Doe 2 v. Doe 1*, No. 24CMUD1380, Superior Court of Los Angeles. Order entered October 18, 2024.
- *Doe 1 v. The Superior Court of the State of California for The County of Los Angeles*, No. B342007, Court of Appeal 2nd Appellate District, Division Seven. Order November 20, 2024.
- *Doe 1 v. The Superior Court of the State of California for The County of Los Angeles* No. S288148, The Supreme Court of California. Order entered January 15, 2025.

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No opinions issued. The following orders were issued:

- Order of Appellate Division of the Superior Court Denying Defendant's Petition for Writ of Mandate, October 25, 2024.
- Order of Trial Court Denying Defendant's Motion to Quash Summons & Complaint, October 18, 2024.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. §1651. This petition herein shows that the writ will be in aid of the Court's appellate jurisdiction, that exceptional circumstances warrant the exercise of this Court's discretionary powers and adequate relief cannot be obtained in any other form or from any other court because petitioner has exhausted all remedies in the lower courts. The California Supreme Court order denying the petitioner's timely petition for discretionary review was filed on January 15, 2025. This petition was filed within 10 days of the California Supreme Court's denial of discretionary review. As the tenth day falls on a weekend, the petition is due on the next court day of Monday, January 27, 2025.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The All Writs Act, 28 U.S.C § 1651(a), provides: "The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law."

California Code of Civil Procedure §418.10 provides that a motion to quash service of summons may be filed on the grounds that the court lacks jurisdiction over defendant.

California CCP §1167.4, in conjunction with CCP §418.10, gives authority for a motion to quash in unlawful detainer proceedings. Absent proper service of a valid summons, the court has no jurisdiction over the party who does not voluntarily appear. See also CCP §§415.45, 410.50. "...[A]n unlawful detainer defendant may choose to use a motion to quash to challenge the summons as improper", "...the motion to quash remains a limited procedural tool appropriate where the court lacks personal jurisdiction because... the summons is defective. [bold and underline added] (§§ 410.50, 412.20;

Honda Motor Co., *supra*, 10 Cal.App.4th at p. 1048.)” and “Using such a motion, a defendant makes a special appearance for the narrow purpose of contesting personal jurisdiction where the summons is defective. (*Greene v. Municipal Court* (1975) 51 Cal.App.3d 446, 451 (*Greene*); 2 Witkin, *Cal. Procedure* (5th ed. 2020) Jurisdiction, § 217.)” *Stancil v. Superior Court* (2021) 11 Cal.5th 381, 396).

A motion to quash lies when the court lacks jurisdiction over the defendants due to a defective summons, and Courts have held that service was fatally deficient due to a defective summons. See *Carol Gilbert, Inc. v. Haller* (2009) 179 Cal.App.4th 852 and see *In National Union Fire Ins. Co. of Pittsburgh v. Superior Court* (1966) 247 Cal.App.2d 326.

An abuse of discretion may be found when the trial court is vested with discretion but fails to exercise it. This occurs “(1) where the record demonstrates the trial court erroneously believed it had no discretion (see, e.g., *Riskin v. Downtown Los Angeles Property Owners Ass’n* (2022) 76 Cal.5th 438, 448-449 [trial court erroneously concluded it lacked discretion to deny attorney fees]) and (2) where a trial court decides a discretionary matter by adhering to a standard practice or policy rather than by evaluating case-specific facts and circumstances (see, e.g., *People v. Hernandez* (2011) 51 Cal.4th 733, 743.

Numerous Federal courts have found that: “To permit the fabrication of spurious corroborating evidence without the imposition of a harsh responsive sanction would constitute an open invitation to abuse of the judicial system of the most egregious kind.” *Asia Pac. Agr. & Forestry Co. v. Sester Farms*, 2013 WL 4742934, *11 (D. Or. Sept. 3, 2013); see *Valerio v. Boise Cascade Corp.*, 80 F.R.D. 626, 641 (N.D. Cal. 1978), *aff’d*, 645 F.2d 699 (9th Cir. 1981); *Pumphrey v. K.W. Thompson Tool Co.*, 62 F.3d 1128, 1132 (9th Cir.1995). [bold added]

California Evidence Code Sec. 647 “The return of a process server registered pursuant to Chapter 16 (commencing with Section 22350) of Division 8 of the Business and Professions Code upon process or notice establishes a presumption, affecting the burden of producing evidence, of the facts stated in the return.”

STATEMENT OF THE CASE

This case pertains to a wrongful unlawful detainer action (that does not involve nonpayment of rent) filed on August 22, 2024. The summons in this case is defective on its face because it fraudulently names defendant's son as a defendant on the summons. Plaintiff, herself, lives at the property and has first-hand knowledge of the fact that he has not lived there since 7/8/24, nearly two months prior to filing the action. As a motion to quash lies when the court lacks jurisdiction over the defendants due to a defective summons, courts have held that service was fatally deficient due to a defective summons. See *Carol Gilbert, Inc. v. Haller* (2009) 179 Cal.App.4th 852 and see *In National Union Fire Ins. Co. of Pittsburgh v. Superior Court* (1966) 247 Cal.App.2d 326.

On September 12, 2024, Defendant filed a Motion to Quash Service of Summons ("MTQ"). On September 16, 2024, Defendant filed a Notice of Errata.

On October 18, 2024, the MTQ was denied by the Super. Ct. Law & Motion ("L&M") Dept., the Hon. Michael Shultz. Thereafter, Defendant petitioned for writ of mandate under CCP §418.10, in this Limited Jurisdiction case to the Super. Ct. Appellate Division.

The Superior Court – Procedure and Orders

On August 22, 2024, Plaintiff filed the underlying instant case.

On September 12, 2024, Defendant e-filed a Motion to Quash Service of Summons.

On September 16, 2024, Defendant e-filed an Errata to the Motion to Quash Service of Summons.

October 8, 2024, Plaintiff filed an Ex Parte Application for an Order Advancing Hearing Date on MTQ.

On October 9, 2024, Plaintiff filed an Opposition To Defendant's Motion To Quash.

At the Ex Parte hearing on October 10, 2024, the Super. Ct. advanced the MTQ hearing to October 18, 2024.

On October 16, 2024, Defendant filed a Reply in support of Motion To Quash Service of Summons.

On October 18, 2024, the hearing on the MTQ took place. The MTQ was denied by the Super. Ct. Law & Motion ("L&M") Dept., the Hon. Michael Shultz, (App. B). However,

the trial court the trial court failed to exercise its vested discretion by refusing to address and rule on a crucial evidentiary issue regarding fraud and the defective summons, that directly pertained to the main issue raised in defendant's motion to quash. Thereafter, Defendant petitioned for Writ of Mandate under CCP §418.10, in these Limited Jurisdiction cases to the Super. Ct. Appellate Division. (App. A)

Superior Court Appellate Division – Procedure and Orders

Like the L&M MTQ, the Writ of Mandate to the Super. Ct. App. Div. pursuant to CCP §418.10 followed the sequence of having been heard in the L&M Dept. On October 25, 2024, the App. Div. rendered its Order of summarily denial. The App. Div. upheld the Super. Ct. L&M Dept. and stated that Petitioner did not provide an adequate record showing respondent abused its discretion in denying the motion to quash. (App. A)

The Second District Court of Appeals Procedure and Orders

Within the time frame provided for by statute, on November 12, 2024, Petitioner took the Petition for Writ of Mandate to the Second District Court of Appeals, Division Seven ("2 DCA"). On November 20, 2024, the 2 DCA summarily denied the Petition without opinion. (App. D)

The California Supreme Court Procedure and Orders

Within the time frame provided for by statute, on December 2, 2024, Petitioner took the Writ Petition to the California Supreme Court. On January 15, 2025, the court summarily denied the Petition without opinion. (App. C)

For the reasons herein, this Court should grant review to resolve the issues presented.

REASONS FOR GRANTING PETITION FOR WRIT OF MANDAMUS

The issue presented here is of great public importance and necessitates prompt resolution. This case presents an important question of law that has a substantial impact on the citizens of California. This Court should kindly grant review to settle these important questions of law.

- I. **Whether the Super. Ct abused its discretion when it failed to exercise its vested discretion by refusing to rule on a crucial evidentiary issue directly pertaining to the main issue raised in defendant's MTQ regarding plaintiff's fraud that rendered the summons defective on its face.**

A. A MTQ should be granted when a summons is defective on its face because a defendant was fraudulently named on the summons; as when a defective summons is served, the service is fatally deficient and ineffective, rendering the court no jurisdiction over defendants.

A Super. Ct abuses its discretion when it fails to exercise its vested discretion by refusing to rule on a crucial evidentiary issue directly pertaining to the main issue raised in defendant's MTQ regarding plaintiff's fraud that rendered the summons defective. A MTQ should be granted when a summons is defective on its face because a defendant has been fraudulently named on the summons and complaint; as when a defective summons is served, the service is fatally deficient and ineffective, rendering the court no jurisdiction over defendants.

An abuse of discretion may be found when the trial court is vested with discretion but fails to exercise it. See, e.g., *Riskin v. Downtown Los Angeles Property Owners Ass'n* (2022) 76 Cal.5th 438, 448-449, and see *People v. Hernandez* (2011) 51 Cal.4th 733, 743.

The summons in the instant case is defective on its face because it fraudulently names defendant's son as a defendant on the summons. Plaintiff, herself, lives at the property and has first-hand knowledge of the fact that he has not lived there since 7/8/24, nearly two months prior to filing the action. The fraud at issue and resulting defect is clearly on the face of the summons even without looking at any alleged facts in the complaint.

The trial court erroneously denied Defendant's motion to quash without ruling on the main issue raised in the motion to quash service of summons. The trial court abused its discretion by refusing to exercise its vested discretion and take action to address and rule on a crucial and material serious evidentiary issue in the face of the main challenge presented by Defendant's motion to quash service of summons (whether the summons is defective due to fraud): The summons that includes defendant's son was obtained through intentionally providing materially false statements and deliberate concealment of material facts.

California CCP §1167.4, in conjunction with CCP §418.10, gives authority for a motion to quash in unlawful detainer proceedings. Absent proper service of a valid summons, the court has no jurisdiction over the party who does not voluntarily appear.

See also CCP §§415.45, 410.50. "...[A]n unlawful detainer defendant may choose to use a motion to quash to challenge the summons as improper", "...the motion to quash remains a limited procedural tool appropriate where the court lacks personal jurisdiction because... the summons is defective. [bold and underline added] (§§ 410.50, 412.20; Honda Motor Co., supra, 10 Cal.App.4th at p. 1048.)" and "Using such a motion, a defendant makes a special appearance for the narrow purpose of contesting personal jurisdiction where the summons is defective. (Greene v. Municipal Court (1975) 51 Cal.App.3d 446, 451 (Greene); 2 Witkin, Cal. Procedure (5th ed. 2020) Jurisdiction, § 217.)" Stancil v. Superior Court (2021) 11 Cal.5th 381, 396).

As a motion to quash lies when the court lacks jurisdiction over the defendants due to a defective summons, courts have held that service was fatally deficient due to a defective summons. See Carol Gilbert, Inc. v. Haller (2009) 179 Cal.App.4th 852 and see In National Union Fire Ins. Co. of Pittsburgh v. Superior Court (1966) 247 Cal.App.2d 326.

In this instant case, the summons is defective because it fraudulently names defendant's son as a defendant despite plaintiff's first-hand knowledge that he had not lived at the subject property for nearly two months prior to plaintiff filing the action on 8/22/24. It is undisputed that defendant's son has not lived at the property since 7/8/24 and at no point has he ever been back. Again, plaintiff lives at the property and has first-hand knowledge of the fact that he has not lived there since 7/8/24. In addition, Plaintiff was twice informed (in writing on 7/8/24, and verbally in-person on 7/9/24) that he no longer lived there. Plaintiff has deliberately committed intrinsic fraud in the form of perjury and false documentary evidence. The summons is fatally defective due to plaintiff's fraud; which resulted in a defect that renders the summons invalid and any service deficient and inefficient. See Stancil, Id., Gilbert, Id, and In National Union, Id. Plaintiff's deliberate concealment from the court that Defendant's son does not reside at the Property also constitutes intrinsic fraud. The fraud caused the court clerk to issue a defective, invalid summons that lacks any legal effect. The summons that includes Defendant's son was obtained through intentionally providing materially false statements and deliberate concealment of material facts.

Defendant filed a motion to quash service of summons on 9/12/24. During the motion to quash hearing on 10/18/24, the Defendant also verbally argued that the summons is defective because it fraudulently named her son as a defendant on the summons. Defendant argued that Stancil provides support that the court lacks personal jurisdiction over her because the summons is defective and thus invalid. The court declined to address and rule on this crucial evidentiary issue that is the core argument in the motion to quash (plaintiff's fraud and resultant defects); stating that it was an "evidentiary issue". This was an abuse of discretion.

After presumption that the summons is valid was eliminated by the challenge presented by defendant's motion to quash, reply, and oral argument, it required additional evidence from plaintiff. Plaintiff did not provide any additional evidence. Thus, the plaintiff still has the burden of showing that a valid (non-defective) summons was served. When a defective summons is served, the service is fatally deficient and ineffective. Case law in California is clear that once a defendant files a motion to quash service, the plaintiff has the burden of proving that the alleged service was valid.

The summons in the instant case is defective on its face. Therefore, the summons is invalid and the alleged service is fatally deficient and ineffective, and the summons must be quashed. "When a defendant challenges the court's personal jurisdiction on the ground of improper service of process 'the burden is on the plaintiff to prove the existence of jurisdiction by proving ... the facts requisite to an effective service.'" *Borsuk v. Superior Court*, (2015) 238 Cal. App. 4th Supp. 1, 4 (citing *Lebel v. Mai* (2012) 210 Cal.App.4th 1154, 1163; *Summers v. McClanahan* (2006) 140 Cal.App.4th 403, 413, fns. omitted; see also *American Express Centurion Bank v. Zara* (2011) 199 Cal.App.4th 383, 387. Thus, the plaintiff has the burden of showing that a valid (non-defective) summons was served.

Evidence Code 647 states "The return of a process server registered pursuant to Chapter 16 (commencing with Section 22350) of Division 8 of the Business and Professions Code upon process or notice establishes a presumption, affecting the burden of producing evidence, of the facts stated in the return." *Palm Property Investments, LLC v. Yadegar* (2011) 194 Cal.App.4th 1419, 1428 [presumption eliminated by challenge, requires additional evidence].

Plaintiff's opposition completely ignored the core argument in the motion to quash regarding the fraud and resultant defects, instead she addressed non-applicable arguments, non-existent arguments, and non-argumentative comments.

An abuse of discretion may be found when the trial court is vested with discretion but fails to exercise it. For instance, this occurs "(1) where the record demonstrates the trial court erroneously believed it had no discretion (see, e.g., *Riskin v. Downtown Los Angeles Property Owners Ass'n* (2022) 76 Cal.5th 438, 448-449 [trial court erroneously concluded it lacked discretion to deny attorney fees]) and (2) where a trial court decides a discretionary matter by adhering to a standard practice or policy rather than by evaluating case-specific facts and circumstances (see, e.g., *People v. Hernandez* (2011) 51 Cal.4th 733, 743 [trial court erred in stationing bailiff behind defendant during latter's testimony as a matter of standard policy instead of exercising discretion on case-specific basis to evaluate need for such heightened security and potential prejudice that might result]).

Here, in this case, the trial court abused its discretion when it failed to exercise its vested discretion by refusing to address and rule on a crucial evidentiary issue regarding fraud and the defective summons, that directly pertained to the main issue raised in defendant's motion to quash. Again, the fraud at issue and resulting defect is clearly on the face of the summons even without looking alleged facts in the complaint. The defendant presented substantial evidence with the motion to quash, reply, and oral argument in support thereof that proves that the summons is defective due to fraud. The trial court has inherent discretion and authority to impose sanctions on parties to litigation who act deceitfully to undermine the integrity of the judicial process.

Therefore, as the summons is fatally defective, it is invalid and service was fatally deficient and ineffective, rendering the court no jurisdiction over the defendant.

Therefore, the Super. Ct. abused its discretion by denying the Petitioner's MTQ.

CONCLUSION

Defendant(s) respectfully request that this Court Grant Review, and reverse the Appellate Court's Orders denying relief and the Trial Court's denial Order denying relief, and require entry of an order in favor of Petitioner by granting the motion to quash.

For the foregoing reasons, the Petition for Writ of Mandamus should be granted.

Dated: January 26, 2025

Respectfully submittd.



By _____
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Specially Appearing