CORRECTED VERSION

IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

JANE DOE AND JOHN DOE, *Petitioners and Plaintiffs,*

v.

SUPERIOR COURT OF SANTA CLARA, *Respondent,*

STANFORD HEALTHCARE ("SHC"), ROY HONG MD, FREDERIC DIRBAS MD, PALO ALTO FOUNDATION MEDICAL GROUP ("PAFMG"), Defendants and *Real Parties in Interest.*

PETITION FOR WRIT OF PROHIBITION, MANDATE, OR OTHER APPROPRIATE RELIEF

EMERGENCY STAY REQUESTED -- IMMEDIATE RELIEF REQUESTED

Immediate Stay of Litigation – Trial (Scheduled for November 27, 2017 at 9:00 a.m.) would Result in Failed Due Process and Irreparable Prejudice and Economic Demise to Pro Per Doe Plaintiffs, and Court-Ordered De-anonymizing Does at Trial (Violating Prior Fictitious Name Order) Would Result in Grave Injustice and Permanent Harm to Plaintiffs

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Appeal from the Superior Court of the County of Santa Clara
Case No. 2014-CV-1-261702
The Honorable Theodore Zayner, Presiding Judge

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INTRODUCTION

This petition requests an emergency stay of this case, which is a battery, privacy invasion, and medical malpractice action. Trial is set for Monday, November 27, 2017 at 9:00 a.m. Plaintiffs were notified this afternoon by the Court Clerk that the Mandatory Settlement Conference (herein "MSC") will be going forward in the morning and that Plaintiffs will not be able to attend by telephonic or other means. The Court Register has a Motion for Summary Judgment set on November 16, 2017 at 9:00 a.m, in about 24 hours from filing of this brief. On October 18, 2017 the Court ordered a Stay in this action. (Exh. A p. 1) On October 19, 2017 the Notice of Entry of the Ruling was served on all parties, including all courts. (Exh. B p.3) Thus, based on understanding and good faith, Plaintiffs had not made *any* appearances in this action since October 18, 2017. Based on the stay order, Plaintiffs did not file any reply to motions previously calendared for November 2, 2017. Plaintiffs have made no appearances whatsoever based on the stay order. (Exh. A). However, despite the ordered stay, the Court has continued to rule on motions and hearings such that the Defendants have been the only party making *any* appearance or filing papers in the case. (Exh. C p. 9) This afternoon , the Court Clerk emailed a courtesy copy of a conflicting order also endorsed by the Court on October 18, 2017 which *denied* the stay. Thus Plaintiffs through no fault of their own are forced into a position of being absent from the MSC should the Court not grant a stay.

This petition is urgently prepared in less than 12 hours notice from the Court's service of the Order striking the recusal of Judge Zayner from this action. Thus, Petitioners may need to supplement this brief and provide augmented briefing should the Honorable Court grant this request. On

Tuesday, the trial court without explanation or advance notice of errata on its prior stay order began ruling in this case despite a written Court ordered Stay. (Exh. A p.1) Defendants had astonishingly just notified Plaintiffs that they had direct knowledge that the Judge had a "hand signed" an order which contradicted the conformed and endorsed stamped order Granting the stay as served by Plaintiffs. (Exh. D) Plaintiffs were unable to verify the "inside knowledge" of Defense counsel from any clerk in Department six. No one at the Court nor any party was able to produce the purported "handwritten" order, nor explicate defendants' explanation of how they came to assert two *contradictory court* orders existed when the Judge purportedly made those *ex parte* orders in chambers and no clerk and no party was present. On October 19, 2017 the Clerk notified Plaintiffs that she had neither a copy of the order nor any knowledge of what the Judge had ordered. (Decl. Doe ¶6) On Friday November 3, 2017 Plaintiffs served the third Code of Civil Procedure § 170.1 verified statement for judicial recusal based on actual bias Code of Civil Procedure § 170.1. (Decl. Doe ¶3) However, again the Judge and the Court Clerk both refused to accept service of the recusal papers in violation of Code of Civil Procedure §170.3(b) (Exh. D) (Decl. Doe ¶4). The process servers were forced to leave the papers with the Clerk in Department six on November 3, 2017 before noon. (Exh. E p.12) (Decl. Doe ¶4)

MEMORANDUM

Subsequent to Plaintiffs' filing of the first verified challenge statement on April 28, 2017 the Court's rulings were noticeably erratic and demonstrated partiality against Plaintiffs. For example,

on October 12, 2017 the Court without just cause summarily denied Plaintiffs' simple *ex parte* application for *clarification* of Court orders. There was no clear explanation or statutory basis why a clarification could not issue with the ex parte application. As ordered by the Court, the Motion for Summary Judgment (herein "MSJ") was set just 7 court days in advance of trial on November 27, 2017 in violation of Code of Civil Procedure § 437. Plaintiffs and their counsel (Calif. Rule of Court 3.37) were dumfounded as to the Court's intent with Plaintiffs' MSJ. As the MSJ is a very labor and cost intensive motion (filing and service fees are upwards of $800-$1000 because of fax filing at Santa Clara Court) not to mention legal fees, and the fact that Defendants had filed a Code of Civil Procedure § 128.7 motion against Plaintiffs' filing of a MSJ, Plaintiffs had simply requested *clarification* of the dates as directed by the Court. (Exh. H, p. 22). However, the Court summarily struck the ex parte without any basis or clarification.

Following Plaintiffs' filed Code of Civil Procedure 170.1 § challenge statement, more noticeable judicial bias continued, especially towards in pro persona plaintiffs.

On April 28, 2017 Plaintiffs filed the first Code of Civil Procedure § 170.1 challenge statement. Not only did the judge refuse service in violation of Code of Civil Procedure § 170.3 and judicial canons, further prejudicial actions by the Court always in favor of Defendants Stanford ensued. The Judge struck the statement on May 5, 2017 without filing any verified answer. Thus, none of the alleged factual claims in the verified statement were disputed by the judge

including his financial contributions to Defendant Stanford far, far greater than thousands of dollars.[1]

On or about May 15, 2017, the Judge denied any receipt or knowledge of Plaintiffs' moving papers which were recorded on the Register of actions. However, the judge fully acknowledged Defendants' papers which were submitted as the same time on the Register of actions (herein " ROA"). About the same time, the judge repeatedly would deny having any service of Plaintiffs' moving papers despite their registry on the ROA, while not once purporting to not have received Defendants' moving papers.

As another example, the judge granted Stanford's surreptitious demurer on a motion that was not ever served on Plaintiffs, but was also untimely in violations of Code of Civil Procedure § 430.010.

Plaintiffs filed a second recusal challenge on June 12, 2017. For example, whereas on June 16, 2017 the Court granted Defendants' motion to exchange an unredacted exhibit without comment, on June 23, 2017 the Court allowed Plaintiffs to exchange an unredacted exhibit with the hand made notation "*only because it is not opposed by Defendants*".

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[1] The Stanford Founding Grant Society is an elite group of about 400 Stanford alumni who have bequeathed their estate or significant portions thereof to Stanford. Judge Zayner and his wife have been members since 2009, and have undisclosed sums of money donated to the Founding Grant Society. Their contributions were publicly highlighted by Mrs Zayner on her public YouTube feed , as well as on the Stanford public release of donors. (An organic google search of " Stanford Zayner" showed as the first listing the Youtube video of Mrs. Zayner.

On August 24, 2017 the Superior Court judge granted in oral hearing a protective order precluding Defendants from de-anonymizing Doe names before trial. Plaintiffs took copious notes of the proceedings and essentially transcribed the oral hearing which *granted* the protective order. Pursuant to CRC 3.1312 Plaintiffs were ordered to give notice. (Decl. Doe ¶10). On August 28, 2017 Plaintiffs were speechless and stunned when they received by mail the superior court judge's order which reversed and denied the protective order without explanation. (Exh. G, p. 28) (Decl. Doe ¶11) Plaintiffs' attempts to obtain the court reporter's name from Defendants was met with resistance. (Decl. Doe ¶11)

On August 28, 2017 the Judge also reversed a prior Doe fictitious order filing. As of trial on November 27, 2017, this Court is allowing Defendants to de-anonymize Does (use their true names) at trial beginning on the same date. Does' Motion for Reconsideration of the prior orders was denied by the Court on October 16, 2017. Does intended, and do intend to timely appeal that order but *have not do so* believing the stay was in effect. Thus, Plaintiffs will be severely prejudiced and irreparably economically devastated should trial proceed on Monday November 27, 2017 and de-anonymize Doe names. *(Does I thru XXIII v. Advanced Textile Corp. (9th Cir.2000)*[2]

[2] In Does I thru XXIII v. Advanced Textile Corp. (9th Cir.2000) 214 F.3d 1058, at page 1067, the Ninth Circuit Court of Appeal noted that federal courts "have permitted plaintiffs to use pseudonyms in three situations: (1) when identification creates a risk of retaliatory physical or mental harm [citations];

Despite ample evidence of Defendants purposefully having violated the Doe anonymity in this case to vex and harass dual physician Plaintiffs, the Court ruled on October 12, 2017 that a protective order would not be granted to even prevent Defendants' vindictive rampage and pre-trial de-anonymizing of Does for ulterior purpose. (Exh. G p. 28) Moreover, the Court declined to uphold the Doe ruling in this case, thus ratifying Defendants' relentless conduct to de-anonymize Doe names to their co-workers, employers and employees, and cause Does economic loss and social embarrassment.

Plaintiffs believed the Stay order of October 18, 2017 (Exh. A p.1) and thus did not file any reply briefs in their motion to amend the complaint, nor their motion for sanctions. Plaintiffs did not check the ROA for any tentative rulings after October 18, 2017 (as they would have done), did not call to contest the rulings (as they would have done, nor appear for oral hearing on November 2, 2017 (all of which they had always done). (Decl. Jane Doe ¶7) (Exh. V Dec. John Doe¶¶ 6,7)

Based on good faith belief in the Court ordered stay in this action (Exh. A p.1), and notice of entry of the same (Exh. B p. 3) Plaintiffs and their trial counsel are now calendared to be out of state on another matter from November 27, 2017 through January 2, 2018. (Decl. Doe ¶8). (Exh. P Nov 13, 2017 Fax to Clerk Ms. Liz in Master Calendar Santa Clara Court).

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(2) when anonymity is necessary 'to preserve privacy in a matter of sensitive and highly personal nature,' [citations]; and (3) when the anonymous party is 'compelled to admit [his or her] intention to engage in illegal conduct, thereby risking criminal prosecution,' [citations]." (Id. at p. 1068.) The court went on to hold that "a party may preserve his or her anonymity in judicial proceedings in special circumstances when the party's need for anonymity outweighs prejudice to the opposing party and the public's interest in knowing the party's identity." (Ibid.)

An emergency and immediate stay is necessary because Doe Plaintiffs have been operating on a Stay order which was issued and the Court has failed to notify Plaintiffs at anytime that there was not a stay. Does have been irreversibly prejudiced by the stay, all the while not protecting their rights to due process in at least three motions. An emergency and immediate stay is also necessary because once the Doe names are violated at trial, and their true names are used by Defendants in the trial court and outside transmissions for ulterior purpose to harm both Does professionally and economically, the Doe fictitious name privilege and confidentiality is destroyed and cannot be recovered or repaired.

The trial court's newly reversed Doe fictitious name order attaches to previous Doe orders, now granting Defense attorneys to violate the Doe names, and subjecting Doe Plaintiffs to submit to intolerable harassment, vexatious exchange of previously fictitious name Doe court documents for ulterior and vindictive purposes, and Does to submit to Defense counsel's exchange of their federally and constitutionally protected health records and highly sensitive test records, contrary to the California Constitution, Article I, and third party medical records and the privacy rights of minor children not a part o to this action.

In essence, on August 28, 2017 the trial court reversed two prior Doe orders and empowered the Defense attorneys to violate Doe names and to do so for ulterior purpose at trial. Jane and John Doe however, objected vehemently to the violation of the Doe anonymity at trial.

To make matters worse, the trial court has issued Plaintiffs one order *granting a stay* on October 18, 2017 (Exh. A, p.1) making Plaintiffs believe that there was a stay on the entire action until at least a further motion or order by the Court, while the court has had *ex parte* communication with Defendants (Exh. K) and continued ruling in the case and proceeding to trial

without Plaintiffs' participation in *any* hearings after the October 18, 2017 ordered stay. (Exh. A).

and started either sanctioning Does large amounts at nearly every hearing.

On July 11, 2017 the Court set a trial date entirely on defendants' requested dates and without any input from Plaintiffs or consideration on Plaintiffs' scheduling conflicts in other matters and their prepaid travel and sabbatical from November 27, 2017 through January 2, 2017. The Court also set trial on November 27, 2017 knowing that the ROA showed a Plaintiff MSJ on November 16, 2017 and a second MSJ for an unrelated Defendant for January 30, 2018.

After acknowledging that its own prior orders had not contemplated an MSJ hearing set 7 court days before trial, the trial court nevertheless denied Does' October 12, 2017 *ex parte* application to simply *clarify* the Court order or intent for the MSJ dates.

On September 23, 2017 Defendants Stanford and Dirbas filed and sought exorbitant sanctions of nearly $3000 and Code of Civil Procedure § 128.7 termination sanctions simply for Plaintiffs' filing of their MSJ. Defendants claimed that the MSJ was improper and Plaintiffs were not entitled to have filed an MSJ.

Thus, Plaintiffs in good faith sought simply *clarification* through a properly noticed and filed *ex parte* from the Court on the MSJ date. The Court summarily struck the *ex parte* and declined to clarify the ruling thus forcing Plaintiffs to remain uncertain about their filed MSJ.

The Court also struck Plaintiffs' repeat pleas and pleadings filed from December 2016 through October 2017 for a more encompassing protective order because the court cited that the expansive evidence of the Doe violations was "conjecture and speculation". The Court repeatedly denied Plaintiffs' requests for clarification of the "Doe order" from December 2016 through at least March 2017, thus facilitating Defense counsel's ongoing use of the Doe anonymity as a "sword" to harass ad vex plaintiffs and their minor children, and Does' license to practice medicine. (Exh. G) The Court

purportedly failed to see the need for a "clarification" of the protective order that would compel defense counsel to restrain from the dramatically violated waiver of their doe anonymity privilege.

Within the past nine months, the trial court also refused to issue any protective order or restrain Defendants for violating the Doe anonymity through Defense counsel's repeat filings of unredacted exhibits in Court as well as purposely serving some 50-60 loose papers from the Doe case identifying Does to their co-workers at Doe's place of employment on September 7, 2017. Defendants have continued harassing Doe Plaintiffs in connection with numerous unredacted exhibits served in Defense motions that stemmed after when a disqualified judge was essentially presiding. Defendants' violation of the Doe anonymity has caused an extreme burden and emotional toll on Plaintiffs, causing their co-workers to become weary and upset and some to have left the company within days of the harassing and unlawful "service" of legal papers to Does' workplace.

Jane and John Doe previously moved to disqualify a biased and conflicted judge. (Exh. N.) Judge Theodore Zayner's strong relationship to Stanford was the subject of the Supreme Court of California case S244874, to petition the Supreme Court for Judicial Challenge of Judge Zayner and disqualification from hearing Stanford cases in Santa Clara.

It is well known upon information and widespread belief in the legal circles and among civil attorneys that no one wants to file a case against Stanford in Santa Clara Court. There is no fair adversary in

trial with Defendant Stanford in Santa Clara Courts, and certainly not with Hon. Theodore Zayner.

With the judge failing to file any verified answer after any of the three separate recusal statements in this case alone, it seemed obvious that the judge was not able to refute the claimed factual allegations of bias. Thus pursuant to Code of Civil Procedure § 170.3 (c) (4) the orders issued against the backdrop of the disqualified judge's orders, could not possibly stand.

But instead of consenting to the recusal or filing a verified answer, the judge has *circumvented the statutory requirements* of Code of Civil Procedure § 170.3(c) (4) by declining to file any verified answer or invalidating the claimed factual allegations in the recusal statements.

The judge has instead issued conflicting orders, on the one hand ordering a stay on October 18, 2017 (Exh. A) which was served by the court Clerk to Plaintiffs' court runner (Decl. John Doe ¶¶ 7-8) thus causing Plaintiffs to feel at ease to vacate the dates for this matter and causing Plaintiffs to direct attention to other pressing matters unrelated to this case, while evidently ex parte communicating with the Defendants and instructing them that there was no stay. (Exh. K) (Decl John Doe ¶¶ 4,5) .

The judge and court were served the Notice of Entry of order of the October 18, 2017 Stay order on October 19, 2017. (Exh, B. P.4) At no time did the judge or Court contact or notify Plaintiffs after the service of the Notice of Order granting the stay to issue a notice of errata or to clarify the stay. (Decl. John Doe ¶¶5,6)

During Judge Zayner's time out of office, Judge Stoelker substituted in for Judge Zayner on August 22, 2014 and August 24, 2017 for 2 motions in this case. Once Judge Zayner returned on August 28, 2017 the Court issued a changed order without explanation denying Plaintiffs' application for a protective order on the Doe fictitious name violation despite an admission in a declaration under penalty of perjury by Defense counsel admitting to filing unredacted exhibits identifying Jane Doe by true name. The Court acknowledged that the Doe anonymous names should have been upheld by Defendants (Exh. G), however the Court again declined to enter a protective order.

The Honorable Theodore Zayner was appointed as a managing judge on or about January 2016 in this case. Judge Zayner did not properly disclose that he had a reciprocal financial relationship with Defendants Stanford and their attorneys, and Stanford's chief counsel Ms. Debra Zumwalt, and her former partners Sarah Gemma Flanagan at Pillsbury Winthrop Shaw Pittman LLP. Judge Zayner did not disclose that he and his wife had bequeathed their estate to Stanford and that the couple were among a very elite group of 400 alumni who formed the Founding Grant Members at Stanford. Judge Zayner also neglected to disclose that he and his wife (Dawn Neisser Class of 1979) had made a YouTube video for Stanford in 2012 to raise support for Stanford's Founding Grant Society, or that Mrs. Zayner and her father were regular honorees and attendees at Stanford complimentary elite luncheons and special concerts held for this elite group in 2014-2016. Also, Judge Zayner declined to disclose that both the Zayners and Mrs. Zayner's father (Mr. Peter Neisser) had

bequeathed their estates to Stanford and that the couple were among a very elite group of 400 to attend the promotional events at Stanford.

Judge Zayner and Ms. Zumwalt, chief counsel at Stanford and Vice President, are both alumni of the class of 1979 Stanford, as are Lex Passaris, Dawn Neisser (Judge Zayner's wife) and their close friends pictured below at 2016-2017 alumni events posted publicly on FaceBook under Stanford donors and Founding Society Events.

Ms. Zumwalt is also a director of SHI and SUMIT (a holding company and captive insurance company that provides insurance coverage for the Stanford hospitals and physicians). Stanford operates as an alter ego for Stanford University, Stanford Hospitals, and the multiple entities all under the auspices of the "non-profit" filing. (Accessed Facebook November 12, 2017)

Judge Zayner supports Stanford by bequeathing large sums of money- in fact his estate to Stanford and Stanford supports Judge

Zayner through promotion of his book at their alumni events and other financial and partisan support.

Up until around April 28, 2017, neither John Doe or Jane Doe, their civil law attorneys Ms. Pilette and Mr. Plummer, and even their current attorneys, did not know that Judge Zayner and his family enjoyed a mutual private financial and cross promotion relationship with Stanford. Although they saw signs of Judge Zayner's and the Court's bias and lack of neutrality, they did not know what was driving it.

Long before the disqualifying conflicts were revealed on April 28, 2017 , the Does and their attorneys were extremely concerned that Judge Zayner would grant virtually any request and monetary sanctions which Defense counsel brought before him. And, that is why Does' attorneys were confronted with a Robson's choice when they were essentially forced out of the case in early March 2017, just days after Judge Zayner severely admonished Plaintiffs' counsel for filing a motion for protective order on behalf of her clients. The ongoing abuse of Does by Defense counsel was devastating to Does who were forced to hire and pay outside counsel to defend their medical license because of fabricated claims filed and facilitated by Defense counsel simply for Does having filed a medical malpractice suit as a *patient.* The loss of their medical license and contracts would almost certainly mean personal financial disaster for Does, the end of the company Ms. Doe founded in 2000 , and the loss of the Does' livelihood and privacy of their minor children.

With Judge Zayner seen as their ally, Stanford's attorneys (Stoutenburg and Northrup and Zumwalt) relentlessly bullied Plaintiffs and their attorneys with exactly 12 baseless motions to

compel taken on and off calendar at whim and caprice with demands for exorbitant monetary sanctions, and also blatantly violated Doe anonymity and Doe's rights to medical privacy using the implied threat that Stanford attorneys would simply "go to Judge Zayner" with a motion to compel and get unconscionable monetary sanctions if Does and their attorneys did not acquiesce to every defense demand.

Even before Does uncovered the conflicts that led to filing for Judge Zayner's disqualification and a change of venue out of Santa Clara, there was not a meaningful choice in this case. Does could either continue to pay thousands of dollars in sanctions, and exorbitant attorney fees at the hands of a judge in a venue who appeared overtly biased and would later be formally filed to be disqualified, or they could give up their case by being forced to sign an unfair waiver or walk away that had been forcefully pushed upon them by fabricated criminal threats made by defense counsel to gain an upper hand in civil proceedings. Defense counsel threatened all along based on Judge Zayner's prior rulings and threats of how Judge Zayner was likely to rule for a "nonsuit" at trial.

Following the recusal filed by the Does against Judge Zayner, this "choice" was fully infected and driven by fear that emanated from a judge who appeared overtly biased, who never should have been involved in the case, and who would later need to be be formally disqualified.

Does subsequently opposed Defendant Stanford's Code of Civil Procedure § 128.7 motions for sanctions against Plaintiffs for filing their MSJ. Does filed an *ex parte* application and declarations

explaining the context of the stressful situation that created the duress with the trial date and MSJ set within 7 court days of each other. Does also filed an *ex parte* application on October 18, 2017 for a stay in the trial court permitting them time to proceed with appellate and Supreme Court petitions on judicial recusal. That stay order is the subject of the trial court's conflicted orders whereby Defendants possessed ex parte knowledge of a different order denying the stay while no one else had access to this purported order. Yet, Plaintiffs' notice of entry or the October 18, 2017 stay order was filed and served on all parties including Judge Zayner. (Exh. B) John Doe's declaration has been filed on the Stay order as served by the Court Clerk on October 18, 2017-- and these declarations would not have been necessary -- if Judge Zayner had complied with the Canons of Judicial Ethics, the California Rules of Court, and California law.

When Does' new attorneys reviewed this case in November 2017 , they discovered that Judge Zayner had not complied with California Rules of Court and pertinent Canons of Judicial Ethics which require that a Judge disclose on the record in open Court to all parties his affiliations or conflict, and thus grant parties the opportunity to consent or to timely file a Code of Civil Procedure § 170.6 motion.

On April 28, 2018 Does filed a verified recusal statement addressing the lack of proper disclosure. Judge Zayner could have used that occasion to disclose his mutual financial and social relationship with Stanford, on the record, as the applicable Canon (3E) required.

Instead, Judge Zayner decided to try to help Defendants further.

With the stay order granted on October 18, 2017 and Plaintiffs having served and filed the notice of entry of that order on October 19, 2017 Judge

Zayner could have served a notice of errata of corrected order notifying Plaintiffs as to the special information that was ex parte relayed to Defendants- namely that the Court had served 2 conflicting orders for October 18, 2017- one granting the stay and one denying the stay.

However, Defendants were clearly given a helping hand by the Court since they had insider information which they felt was reliable enough to fully ignore the served Notice of order which stayed the case. Based on the insider information, Defendants continued to appear in the matter after October 18, 2017, file their oppositions, file briefs and MSC statements, and timely prepare for trial.

On November 8, 2017 Defendants served by regular U.S. Mail Judge Zayner's "hand written" order for October 18, 2017 which denied the stay. (Exh. Z) Pursuant to Code of Civil Procedure § 1005, the effective date of delivery to Plaintiffs of the Court order *denying* a stay was plus5 days, making the date of service today, Nov. 13, 2017. That makes the non-stay notice to Plaintiffs less than 2 days before the MSC date (which Plaintiffs did not timely prepare or file a statement), 3 days to the MSJ hearing (which Plaintiffs did not file or prepare a reply brief), and 7 days to the trial date (upon which date Plaintiffs are calendared out of state on another matter.)

In brief, the Court Judge Zayner provided information directly to Defendants about a "handwritten order" for October 18, 2017 (Exh. Z) which Defendants conveniently did not serve to Plaintiffs until by regular mail today.

In the meanwhile, the Court's " oversight: in serving two conflicting orders for the same date, have created a prejudicial situation whereby the

Plaintiffs acted on belief that the order staying the case was correct, and thus proceeded to calendar other matters for that the dates for this MSC and trial.

Defendants all have already filed and fully briefed the Court *days ago* on the MSJ opposition, and the MSC hearing this week as set before the Judge Zayner.

Judge Zayner did these favors for Defendants Stanford even though Does and their attorneys had pleaded with the Court and asked him to remain neutral and review the evidence in the case of Defense's violation of the Doe order and their privacy rights.

By April 2017, Judge Zayner was still violating Canon 3E, which required on the record disclosure of his private relationship with Defendants Stanford and Ms. Zumwalt; violating Canon 2B(l) (which prohibits relationships from influencing judging activity); violating 3B(7) (which prohibits informal ex parte communications); and violating Canons 3B(5) and 3B(12) (which require judicial impartiality).

When Judge Zayner decided to repeatedly circumvent the procedural requirements of Code of Civil Procedure § 170.3 (c) (4) and file a verified answer signed under penalty of perjury of the State of California, it raised a red flag for Does' new attorneys.

Because the judge refused to accept service in at least two of the three verified Code of Civil Procedure § 170.1 statements, and entered three orders striking Does' verified Statements of recusal without once filing any verified answer refuting the verified factual allegations of his intricate and ongoing relationships with Stanford, Does asked for Judge Zayner's disclosures.

The cases cited by Stanford attorneys (Stoutenburg and Northrup) on their website referred to another medical malpractice case they had judged by Judge Zayner and had prevailed also. When on April 28, 2017 Does brought forth the relationship between the judge and Stanford, Stanford attorneys did not deny the relationship or their prior knowledge of it, but defense counsel simply justified in emails to Does that neither they(Stanford) nor the judge had to disclose anything based on the Judicial commission's report from December 2016 on Judge Aaron Persky.

However, in Judge Persky for Defendants Stanford student Brock Turner (and the litigants in that other case had perceived an unfair bias in Stanford's favor), and those issues were once removed as Stanford was not a direct Defendant. Judge Persky issued a very lenient sentence for convicted rapist Brock Turner.

In May 2017, Defense counsel for Stanford also denied in emails that they, the judge, or their clients had any part in the surreptitious and sudden (not unexpected) destruction of Judge Zayner's wife's 2012 YouTube video attestation for the Stanford Founding Grant Society. Fortuitously, the Mrs. Zayner YouTube video was backed up for this precise eventuality, prior to Plaintiffs Does' display of the website link in their first disqualification statement in April 2017. Thus the emergency backup copy of the public YouTube video was uploaded back to YouTube for this case and is available at https://www.youtube.com/watch?v=inLHxM-j7l8

Neither defendants nor the judge have filed any statement explaining the basis of why they suddenly removed the 2012 YouTube video or the Judge's wife. If the video was not a *problem* for either of the involved parties, then there should have been no reason for Stanford or the judge to suddenly destroy the 5 year old video. The fact that the Mrs. Zayner video

was destroyed and removed from all view within days of Doe's recusal statement, and the judge's circumvention of Code of Civil Procedure § 170.3 in filing a verified answer is sufficient basis to grant recusal of the judge form this case.

A review of Judge Zayner's most recent order striking the recusal (Exh. O) on November 13, 2017 reveals that he had never previously made the required, on the record, disclosures. Judge Zayner has never mentioned his mutually beneficial financial and promotional relationship with Stanford.

On November 13, 2017 Does again moved to disqualify Judge Zayner (Exh. Y). Judge Zayner did not file a verified answer. Instead, he wrote a scathing attack order against Does. The striking order disclosed that Judge Zayner had similarly struck two prior orders, also circumventing the requirements of Code of Civil Procedure § 170.3 (c)(4) and refusing to file a verified answer under penalty of perjury as statutorily required.

Because the interaction between Judge Zayner and Does had become so strained after June 2017 whereby the judge was unable to restrain his emotion and summarily struck everything filed by Plaintiffs, even a simple 5 page applications requesting a "clarification" of dates (Exh. H), this was another reason for Judge Zayner's disqualification. Does had spent thousands of dollars on some motions and were threatened that nothing they would bring before the court would receive any consideration. *In Re Nettles,* 394 F.3d 1001, 1002 (7th Cir. 2005) ("The cases . . . that have addressed the issue of recusal based on threats have held that a threat to a judge that appears to be genuine and not just motivated by a desire to recuse the judge requires recusal.").

For reasons that now seem obvious, Judge Zayner did not at anytime disclose his relationships to Defendants nor did he seek to remove himself from his judicial role, not even after the video of his wife attesting his estate donation to Stanford came to light, nor after Does filed three motions to disqualify.

On November 13, 2017 Plaintiffs filed a notice of consent to recusal and served on all parties and the Court based on Judge Zayner not timely answering the recusal with a verified statement. Should the Court accept the Notice of Consent, Judge Zayner would be officially disqualified however the date of disqualification would be indeterminate based on case law.

On November 14, 2017, Does filed their request to set aside all orders issued by consented disqualified Judge Zayner. *Urias v. Harris Farms,* 234 Cal.App.3d 415, 423-24 (1991) (orders issued by judges who are subject to disqualification are void or voidable).

If the trial goes forward on November 27, 2017 and the disqualification of Judge Zayner is not heard and orders reversed, then Plaintiffs shall be severely prejudiced by being deprived of preparing and filing the mandatory settlement conference, a motion to amend the complaint, and pre-trial issues including defense counsel violating the Doe anonymity at trial would be possibly moot -- including the issues raised in this writ.

The trial is set for November 27, 2017and MSC for November 15, 2017. The trial setting conference was set for July 11, 2017 and two Plaintiff filed MSJ's in this case set for November 16, 2017 and January 30, 2018. However, the trial court, at Defense counsel for Stanford's intense urging, set the trial in 2017 rather than 2018 as requested. Why should Plaintiffs have been deprived on having their MSJ heard on its merits? Why should Plaintiffs have spent tens of thousands of dollars of preparing and filing an

MSJ which is essentially fatally timed per Code of Civil Procedure § 437, as around 7 court days before trial? Why should Plaintiffs be prejudiced from having a Motion for Summary Judgment (MSJ/ MSA)adjudicated on its merits when the judge has essentially stated in his ruling on October 26, 2017 *reassuring Defendant Stanford* that he will surely strike and summarily deny Plaintiffs' MSJ. (Exh. Q)

If the trial court ruled on Does' motion to set aside the disqualified judge's orders, and granted that motion, Does and their attorneys apologize for this emergency petition -- they did not anticipate filing a writ petition on less than two days notice while simultaneously trying to prepare for possible trial in this matter while calendared to be out of state on an unrelated matter at the same time.

They are willing to file any supplemental or additional briefs, or to expand the record, if requested.

While Judge Zayner improperly presided over this case, Does were forced to incur or pay over $200,000 in costs and attorney fees. It is time to stop forcing Does to pay for litigation and discovery abuses that resulted from Judge Zayner's failure to disclose (and concealment of) inappropriate, reciprocal relationship with Defendant Stanford and its' attorneys, including Ms. Debra Zumwalt, Chief Counsel and Vice President of Stanford.

For these reasons, the issues of law that require this Honorable Court's attention include:

1) Whether the trial court again erred on November 13, 2017 in not timely filing a verified answer or consenting to recusal;

2) Whether the trial court circumventing the statutory requirements of Code of Civil Procedure § 170.3(c) (4) requires the Clerk to be ordered to file the new Notice of Consent of Disqualification;

3) Whether the trial court's reversal of the prior Court ordered Doe anonymity in this action expanding defense attorney's abuse of Doe Plaintiffs by violating their true names at trial was proper;

4) Whether the judge and his clerk's refusal to accept personal service of two separate challenge statements on May 1, 2017 and again on November 3, 2017 in violation of Code of Civil Procedure § 170.3 and applicable Judicial Canons raise establish bias and partiality;

5) Whether the trial court erred in failing to responsibly correct *inter alia a* timely notice of errata its contradictory orders both granting staying the case (Exh. A) on October 18, 2017 (Served by email and mail by Plaintiffs on October 19, 2017) and new order denying staying the case (Exh. Z- served by mail Defendants on Nov. 8, 2017) , where it can issue immediate corrective rulings; and

6) Whether the 3 week stay exercised by Plaintiffs per Court order justifies advancing the Nov. 15th MSC and Nov. 27th , 2017 trial date and all hearing dates respectively to avoid prejudicing misinformed parties.

7) Whether due process and judicial economy require the trial court to reach the legal issue of whether to set aside Judge Zayner's prior orders before ordering a new trial date;

8) Whether the judge is now required to disclose its relationships to Does so that Does may determine the extent of the conflict

PETITION

Jane And John Doe petition this Honorable Court for a writ of prohibition and/or mandate, or other appropriate relief, directing respondent Santa Clara County Superior Court to determine certain legal issues and to vacate its orders violating the Doe anonymity, and orders including on Plaintiffs' motions for November 2, 2017, and for failing to issue protective order for Does to restrain the egregious scorched earth conduct of Defendants and violation of the Doe anonymity.

Does allege the following:

Beneficial Interest of Petitioner; Capacities of Respondent and Real Party in Interest

1. Petitioners Jane and John Doe are the petitioner in the action titled *" Doe vs. Hong et. al,"* Santa Clara County Superior Court Case No. 14-Cv-261702.

2. Respondent is the Santa Clara County Superior Court, the court that entered the orders challenged in this petition.

3. Real Parties in Interest are Stanford Hospitals and Clinics (now Stanford HealthCare), Frederick Dirbas, M.D, Roy Hong, M.D., and Palo Alto Medical Foundation, the respondent in *" Doe vs. Hong et. al."*

Authenticity of Exhibits

4. The exhibits accompanying this petition are true and correct copies of original documents filed with respondent Santa Clara County Superior Court.

5. Also, because of the voluminous pages of certain exhibits (over 150 pages per document), for judicial economy and the Court's convenience, only the relevant pages of some exhibits are included. The exhibits are paginated consecutively from page 1 to the last page. Page references in this petition are to the consecutive pagination.

Timeliness of the Petition

6. This afternoon, on November 13, 2017, Judge Zayner's Order Striking the Verified Statement of Recusal was email served as a courtesy copy by the Clerk.

7. On November 13, 2017 Does filed and served on all parties a Notice of Consent to Disqualification per Code of Civil Procedure § 170.3 (c) (4) for the Judge not timely filing a verified answer.

8. On November 13, 2017 Does prepared and requested an emergency stay of this action pending this Court's review of the Does' petition.

9. On October 18, 2017 the Court granted a stay in this case and the Clerk served the conformed, stamp signed order. (Exh. A). On October 19, 2017 Plaintiffs filed and served the notice of entry of that stay order on the judge, the court clerk, and all parties. (Exh. B)

10. On November 8, 2017 Defendants Stanford filed and served by mail a new copy of the order of October 18, 2017 which now denied the stay. As of the date this petition was filed, the trial court had not filed or served any notice of errata or clarification on the 2 contradictory orders.

Summary of Relevant Facts and Procedure

11. On or about January 2016 Judge Zayner was appointed to act as the managing judge in this action. On April 28, 2017, Plaintiffs filed the first verified recusal statement.

12. Judge Zayner's partiality became apparent soon after Does' attorney, Ms. Pillette was substituted into this case. Ms. Pilette and Does noticed that Judge Zayner and Defendants were close such that Judge Zayner would always look at Ms. Stoutenburg and ask her what she would like to do. Upon Defense counsel for Stanford's opposition, Judge Zayner denied Ms. Pilettes' motion to withdraw from the case for her medical and personal family issues in March 2017. In April 2017, based upon Defense Counsel for Stanford's support and non- opposition filed to her motion, Judge Zayner granted Ms. Pilettes' same motion to withdraw as counsel.

13. Defense counsel for Stanford knew about Judge Zayner's strong Stanford ties. They were not at all surprised by the video and information when confronted by Plaintiffs. Defense counsel had highly relevant information on Judge Zayner that neither Does nor any of Does' attorneys had.

14. Stanford counsel and Ms. Zumwalt (Chief counsel for Stanford) were managing this case and all notified in April 2017 of the YouTube Link to Mrs. Zayner's Stanford posted video of the Zayner's estate donation to Stanford

15. Stanford counsel bragged that "so what" about the Judge Zayner Stanford relationships and that they had no obligation to disclose that information to Plaintiffs. Further, they proclaimed there was no foul and no obligation of any disclosure and even forwarded

Plaintiffs a copy of the Dec. 2016 Judge Persky ruling by the Commission to have Plaintiffs back off of their stance on disqualification.

16. The tension between Judge Zayner and Does was sometimes glaring. At a October 12, 2017 ex parte application for a simple *clarification of dates,* the judge issued an almost non-sensical denial order summarily denying the ex parte with no explanation of the MSJ dates. On many dates from April through October 2017, the Judge would deny receipt of Plaintiffs' moving papers despite them being served a courtesy copy in addition to being lodged on the ROA. At the same, time, the judge would always acknowledge receipts of Defendants' papers.

17. On July 11, 2017 the judge ordered a trial setting conference. All parties appeared but the judge singularly took the dates urged by Defendants and completely disregarded the scheduling conflicts by Plaintiffs. Judge Zayner unilaterally decided that trial would be set within 7-9 court days of Plaintiffs' MSJ, without regard for statutory Conformity with Code of Civil Procedure § 437. While trial setting takes into account prepaid travel, other appearances, or events for each party, the judge entirely disregarded Plaintiffs in the date setting.

While Plaintiffs had requested and anticipated an early 2018 trial date, the judge unilaterally set trial the day after Thanksgiving and before Christmas for a 8 day trial.

18. Plaintiffs objected to this unilateral approach and after lodging a final objection, Does remarked that trial date would preclude them

from a properly noticed MSJ. Judge Zayner disregarded Does' objections and set the matter per Defense's preference and urging.

19. Judge Zayner was also observed routinely simply disregarding Plaintiffs' filed pleadings and issuing rulings with only Defendant making an appearance.

20. Judge Zayner's outward disdain and disregard for Doe Plaintiffs has rattled Does to the point that they have remarked on the record that there is no point to even bringing forth motions because they get summarily stricken based on procedural grounds, grounds which Defendants never get cited for. For example, Judge Zayner entirely disregarded that Def. Stanford failed to comply with the personal meet and confer requirements for a demurrer in June 2017 (which Stanford admittedly failed to do) , or that Defendant failed to comply with Code of Civil Procedure § 430.01 on demurrers by failing to timely file an answer within 30 days or at maximum plus 15 days by stipulation, or Defendants' gamesmanship in reserving one motion and telling Plaintiff about one motion but surreptitiously filing a second motion without service to Plaintiffs- the Court then granted the unopposed Defendant motion despite objections.

21. Judge Zayner was also overtly dismissive of Does at the *ex parte* hearings, routinely denying Plaintiffs' motion for the same subject matter as Defendants. Judge Zayner strikes out " For good cause and showing from Plaintiffs' ex parte and writes in that he was only granting Plaintiffs' ex parte " because Defendant did not object to it". (June 23, 2017order) Even Judge Zayner admitted that he only granted Plaintiffs' motion in a one-sided nature of the proceedings because Defendants did not object or oppose.

22. This all has caused Does to lose trust in the fundamental fairness of the proceedings. On or about September 7, 2017 the judge denied Plaintiffs' motion for a protective order so Defense counsel would comply with Code of Civil Procedure § 1011 and serve Does at their designated residential address. The judge refused to order defense to refrain from purposefully serving motions in a manner and place known to vex and harass Ms. Doe, at her medical place of employment with co-workers. Despite Defendants' admission and declarations of serving Ms. Doe highly embarrassing legal papers without any envelope with her medical records and notes and photos about her physically deformed breasts to the random receptionist at her place of employment, the judge declined to intervene.

23. Again in September and October 2017, with Does' request for a protective order or injunctive relief so Defendants would not purposely list her full address of employment and co-worker names in legal pleadings in this Doe case, the judge disregarded the Court ordered Doe anonymity and declined to restrain Defendants from purposefully vexing and harassing Plaintiffs.

24. Under significant duress, Plaintiffs pleaded with the Court that Defendants' conduct of willful service of legal papers without purpose to Doe's co-workers was harassing the workers and causing financial distress and ruin to Plaintiffs, the judge declined to intervene citing "conjecture and speculation."

25. Does were afraid that Defense counsel's conduct would continue to escalate pre-trial and the violation of the Doe anonymity could ruin Does financially, putting them out of contracts they had performing work with the Department of Justice (herein "DOJ") as medical experts as well as their

medical licenses, however the Court despite voluminous in camera exhibits (under seal) with emails and communications between Does and the DOJ on their consulting jobs, declined to restrain Defendants from purposefully harassing Plaintiffs and causing them intentional financial ruin with their business and livelihood. In fact, the Court granted Defendants' motion to refer to Plaintiffs by true names at trial despite the clear vindictive intent by which Defense made that vexatious motion. There was no good basis to violate the Doe names as all depositions and discovery had been conducted in the Doe names. Thus Defense's purpose to obtain a court order reversing the past 2 orders now asked to violate the Doe names only for ulterior purpose.

26. Defendants constantly place in motions their intent to file a non0suit with Judge Zayner who will undoubtedly be upset and angry with Plaintiffs for having filed these recusal motions, such that he will try to acquiesce to Defendants and grant the same despite the fact that a battery and invasion of privacy case requires no experts.

27. Does discovered the Judge Zayner/Stanford mutual financial and cross promotion relationship in April 2017. Soon after, they immediately filed a motion to disqualify Judge Zayner (less than 10 days later in April 2017.

28. On May 5, 2017 Judge Zayner declined to either consent to recusal nor to file a verified statement.

29. In June 2017, however, Does were still battling the aftermath of Judge Zayner's illicit appointment. Defense counsel were issuing surreptitious subpoenas for Does' records and violating the Court protective order endorsed on November 21, 2015 but the Court found the evidence of the violation "speculation and conjecture".

30. Does were ironically sanctioned over $3600 in connection with an abusive 11 hour deposition in violation of Code of Civil Procedure § 2025.290 whereby Defense counsel badgered and berated Ms. Doe with fabricated claims of purposeless forgery of a lab order slip and they showed Ms. Doe staged documents whereby counsel suppressed 4 of 5 pages of orders that clearly would have showed that Ms. Doe was the ordering doctor. The Court not only granted Plaintiffs' counsel motion to untimely withdraw with pending motions and depositions, but also ratified Defendants' misconduct by awarding Stanford exorbitant fees and an order granting them to re-depose Ms. Doe beyond 11 hours. All of Defendants' scorched earth defense efforts arose out of their attempt to threaten Does with criminal and administrative actions if Plaintiffs persisted in their civil action against Stanford.

31. The trial court's decisions (particularly its sanctions awards to Defendants and refusal to award any sanctions in favor of Plaintiffs despite good cause and showing), and refusal to enforce the court ordered protective orders further emboldened Defense counsel and Defendants.

Basis for Relief

32. This Court "may entertain a petition for extraordinary relief when a litigant's right to due process is severely compromised and when judicial impartiality is at significant issue. Moreover, where there will be serious injustice as in this case, this Court may consider a writ for extraordinary relief.

33. By the judge failing to properly disclose its relationships to Plaintiffs at case inception with the new judge, the trial court deprived Does from the right to timely file a mandatory judicial recusal. A judicial officer who

declines to disclose his potential party conflicts at case inception, thereby presents litigants with a sense of being deprived from the statutory opportunity to timely file a Code of Civil Procedure § 170.6 motion.

34. CCP § 170.3(C) (1) requires that a statement of disqualification to be personally served on the judge to be disqualified or upon his or her clerk provided the judge is present in the courthouse or chambers. Here the Statement of Disqualification was first served on the Court on Friday April 28, 2017 (AOBE p.89 POS, p.61 Decl. Sotto¶¶¶4-6), however, inexplicably when servers attempted to serve the remainder of the filed documents (Exhibits and Declaration) on May 1, 2017, the next business day on the Judge and/or Court Clerk, the Clerk and judicial officer refused service, estopping service and frustrating purpose. (AOBE p. 56 Decl. Sotto ¶¶¶4,5,6; p. 61 Decl. Lloyd ¶¶2-5).

35. The California Judges Benchguide is correspondingly on point. [§2.29] To contest disqualification, the judge must file an answer within the ten-day period prescribed in CCP §170.3(c)(3) (i.e., within ten days of the filing or service of the statement), denying the allegations contained in the statement. Urias v Harris Farms, Inc. (1991) 234 CA3d 415, 421, 285 CR 659. Although the statute refers to an "answer" by the challenged judge, a judge's written declaration under penalty of perjury satisfies the statutory requirement. People v Mayfield (1997) 14 C4th 668, 811, 60 CR2d

36. In this case, the Judge failed to file a written declaration under penalty of perjury. Moreover, the judge neglected to deny the allegations or submit a verified response attesting to the true relationship between the judge and Stanford.

37. Whereas a statement of disqualification cannot be based on belief, hearsay, or other inadmissible evidence; accordingly a judicial answer to a petition for Code of Civil Procedure § 170.1 can also not build its foundation on a bed of sand. The challenged judicial officer must submit a verified answer, even in the alternative, to the order striking the recusal, with a declaration of facts, under oath. Here the Judicial Order striking the Verified Recusal Statement lacks any foundation with a declaration of facts and disclosure of the judicial relationships. *United Farm Workers of America v Superior Court* (1985, 4th Dist) 170 Cal App 3d 97, 216 Cal Rptr 4.

38. The trial court also applied the wrong standard when it improperly reversed the Doe anonymity in this case. It ruled that Defendants could violate Doe names at trial and overlooked the extreme financial and career damage intentionally intended to be inflicted by Defendants through such a vindictive motion three years into a Doe litigation, and just 3 moths before trial. There simply was no good cause or basis for Defendants to violate the Doe names at trial since the entire action and all discovery including treating doctors' depositions were all recorded as Does. The Court in essence bought Defense's malicious tactics and ratified the same.

39. The trial court's October 18, 2017 contradictory orders and its failure to timely correct those orders were also improper, because the Court knew or should have known that it issued two contradictory orders at a critical time in a case, just 5 weeks shy of trial as set on November 27, 2017. Plaintiffs operated on a stay issued on October 18, 2017. Plaintiffs made multiple good faith attempts to confirm the stay order and did so with the Clerks of the Court. (Decl John Doe ¶¶4, 5) (Exh. A, K, P)

40. On November 13, 2017 which is nearly a full 4 weeks later, Plaintiffs were served a new copy of the October 18, 2017 order denying the stay. How can Plaintiffs be on a level playing field when they have been operating on a stay order for nearly a month, and are only served an fully contradictory order *2 weeks before trial* purporting than there has been no stay? Plaintiffs have made not a single appearance in this action since serving the Notice of Entry of Order granting the Stay on October 18, 2017. Defendants have been busy making appearances and arguing motions in a case which was purportedly stayed.

Absence of Other Remedies and Irreparable Harm

41. Does has no plain, speedy, and adequate remedy, in the ordinary course of law, other than writ relief. (Code of Civil Procedure sections 1086 and 1103.) If an emergency stay is not granted, the Does will be irreparably harmed by the start of trial during an ordered stay, by prejudicial rulings by the court, and execution of court orders violating their Doe anonymity at trial, that is scheduled to start within days.

42. Unless an immediate stay is ordered, Does will be out of order by not being able to appear at a MSC in 1 day which by the order of the Court was understood to have been stayed.

43. Does are now suddenly ordered to be in trial on November 27, 2017 and have no relief through the trial court to consider the stay order that the Court issued on October 18, 2017. Since Does filed a disqualification challenge against Judge Zayner, the Court is overtly biased to Does and has denied even simple "clarification" applications.

Does have no remedy or hope that the trial court will consider any motion on their behalf.

44. Since the Court ordered stay was entered, and filed and served on all parties on October 19, 2017 and no contradictory orders or notices were sent by the Court since that filing, Does had altered their calendars and will be out of state on another matter on November 27, 2017.

45. Writ relief is also necessary because the trial court's October 18, 2017 stay order caused a ricochet of errors whereby the Does have made no appearances in this action since the stay. The October 18, 2017 order also impacted the trial court's MSC date order for tomorrow. Prior to the court's say order issued on October 18, 2017, Plaintiffs were in process of preparing and filing reply papers and pre-trial motions. However, the Does believed the Court stay order and upon information and belief and the stay would require a new trial setting conference, planned that trial would be calendared in January 2018 thus calendared other matters accordingly. The trial court's error in issuing 2 conflicting orders was not known to Plaintiffs who in good faith contacted multiple clerks in the court to clarify the order. Upon information and a stamp signed copy of the endorsed court order granting a stay, now makes the resumption of the previously understood to be vacated trial calendar an insurmountable challenge.

46. All of these trial date matters and vacated recusal questions, however, could be avoided if this Court orders the trial court to first rule on Does' motion to recuse Judge Zayner and set aside the disqualified Judge Zayner's orders. Once that motion is determined, and once Judge Zayner’s orders are set aside, the stay at that point may no longer be at

issue. Once Judge Zayner and his prior orders are removed from this case, the parties can start anew and resolve this case on a level playing field.

CONCLUSION

An immediate stay order is necessary to prevent irreparable harm to Plaintiffs Jane and John Doe in this Court. The trial court applied the wrong standard when it circumvented the statutory requirement of Code of Civil Procedure § 170.3 (c) (4) and did not timely file a verified statement in response to any of the 3 recusal statements filed by Plaintiffs. The Court also dramatically prejudiced Plaintiffs by serving to Plaintiffs an order staying the case on October 18, 2017, but through purported *ex parte* communications with Defendants notifying them that the judge had issued a second hand written order denying a stay caused Defendants to continue appearing in this case while knowingly allowing Plaintiffs to make no appearances.

The trial court compounded the problem by not timely notifying all parties of the error, and issuing a notice of errata or corrected order regarding the stay. Since the Court continued to rule ordering attorney- client privilege documents submitted for *in camera* review on multiple occasions, violating California Evidence Code section 915. And the trial court compounded that error again by appointing a discovery referee under a general reference over Does' objections.

A judge subject to disqualification per Code of Civil Procedure § 170.1 presided over this case from January 2016 through November of

2017. That infected every part of this case, and the most obvious remnant of Judge Zayner's involvement is recent erroneous stay order issued on October 18, 2 017. Defendants Stanford's attorneys have continually postured by frequently threatening that a "non-suit" will be issued by Judge Zayner regardless of Plaintiffs' preparation and merits of the case in this case.

After the filed judicial recusal "motions" in this case, should the Defendants force Plaintiffs to remain in this court and venue, there will be much worse consequences than threatened by Defendants if Does dare to place their fate in Judge Zayner's hands.

An immediate emergency stay should be issued; the trial court's recent orders should be reversed; and the trial court should be ordered to address the invalidity of Judge Zayner's orders, and contradictory stay orders.

PRAYER

John and Jane Doe respectfully ask the Court for:

) An immediate, emergency stay of the action in this case; An order reversing the trial court's August 28, 2017 order,

allowing defense counsel to violate the Doe anonymity in this case at trial

3) An order reversing the trial court's November 2, 2017 rulings on the 2 motions and permitting Plaintiffs to file a reply brief in those matters;

4) An order directing the trial court to accept the notice of recusal and to assign a change of venue to this action; and

5) An order directing the trial court to first rule on the invalidity of Hon. Zayner's orders following the first recusal on April 28, 2017 and the invalidity of the orders that were made when Hon. Zayner presided;

6) For costs of suit; and

7) For such other and further relief as the court may deem necessary and proper.

Dated: November 13, 2017

Respectfully submitted,

John Doe Jane Doe

For Plaintiffs In Limited Scope Representation Pursuant to C.R.C. 3.37

VERIFICATION

We are the petitioners in this matter. We have read the foregoing Petition for Writ of Prohibition, Mandate, or Other Appropriate Relief and know it contents. The facts alleged in this petition are within our own personal knowledge, and we know these facts to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this verification was Executed on November 13, 2017 at Orange , California.

Respectfully Submitted,

Jane Doe

John Doe

DECLARATION

1. I am an adult over the age of 18 and a party to this action.
2. If called upon, I would testify competently and truthfully to the following facts.
3. At 11:35 a.m. on Nov. 3, 2017 I fax filed the C.C.P. § 170.1 recusal challenge with County Process Service with specific instructions that they must personally serve the judge in the Courtroom Dept. 6. ¶3
4. On November 3, 2017 before noon, Process server Scott and Joe advised Does that the Judge and the Court Clerk in Department Six both refused to accept service of the recusal papers. (Exh. D) (Decl. Doe ¶4).
5. On November 13, 2017 I received by email from Judge Zayner's department clerk a courtesy copy of the order striking the verified statement. Nowhere attached to the 3 pages jude order was there any verified answer nor any statement signed under the penalty of perjury.
6. On October 19, 2017 Madame Clerk notified Plaintiffs that she had neither a copy of the order, nor any knowledge of what the Judge had ordered the day before. (Decl. Doe ¶6
7. Plaintiffs believed the Stay (Exh. A p.1) and thus did not file any reply briefs in their motion to amend the complaint, nor their motion for sanctions. Plaintiffs did not check the tentative rulings (as they would have done), did not call to contest the rulings, nor appear for oral hearing on November 2, 2017 (all of which they had always done). (Decl. Doe ¶7)
8. Based on the Court orders stay in this action, Plaintiffs and their trial counsel are now calendared to be out of state on another matter from November 27, 2017 through January 2, 2018. (Decl. Doe ¶8)

9. On August 24, 2017 Plaintiffs took copious notes of the proceedings and essentially transcribed the oral hearing which *granted* the sought protective order.
10. On August 24, 2017 The Superior Court judge granted in oral hearing a protective order precluding Defendants from de-anonymizing Doe names before trial. Plaintiffs were ordered to give notice. (Decl. Doe ¶10)
11. Plaintiffs' efforts to obtain a transcript of the proceedings was denied, as just weeks before the Court discontinued its reporters. ¶11

I declare under the penalty of the State of California that the aforementioned are true and correct.

Executed on November 13, 2017 Orange, California

Jane Doe

CERTIFICATE OF WORD COUNT

The undersigned certifies that the text of the preceding Petition, exclusive of the tables, any attachment, and this certificate, contains 9949 words, based upon the computerized word count function of Microsoft Word 2016.

Executed on November 13, 2017 , at Orange , California.

Respectfully Submitted,

Jane Doe