

S222726
B256604
(Supr Ct. No. BV030258)

SUPREME COURT
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In the
Supreme Court
of the
State of California

S222726

Aleyamma John, Petitioner/Appellant/Defendant

v.

Los Angeles Superior Court, Los Angeles County, Respondent (Judge Patti Jo
McKay, Appellate Division)

Sylvia Chan dba STC Realty (*agent for owners Chun L. Lau, Wai HDL Wong and
Rick Lee*),

Real Party in Interest/Respondent/Plaintiff

CALIFORNIA COURT OF APPEAL – SECOND DISTRICT. B256604

SUPERIOR COURT OF LOS ANGELES, APPELLATE DIVISION. BV030258

ANSWER BRIEF ON THE MERITS

(Following Granting of Writ Petition and Reversal by Court of Appeals)

Aleyamma John
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1 All Exhibits refer to Exhibits filed in the underlying Court of Appeals case.

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I. ISSUES PRESENTED FOR REVIEW

1. Explain that a matter is not final until after the time for appeal has passed as stated in CCP 1049 and CCP 391(b)(1) & 391(b)(2), so that there is no confusion that initial appeals after judgment, should not be counted as separate actions for the purpose of determining whether a litigant should be deemed vexatious, regardless of whether the litigant was plaintiff or defendant in the underlying matter. *{The 'Plain Meaning Rule' must be followed, as explained by U.S. Supreme Court in Caminetti v. United States, 242 U.S. 470 (1917) - "[i]t is elementary that the meaning of a statute must, in the first instance, be sought in the language in which the act is framed, and if that is plain... the sole function of the courts is to enforce it according to its terms". If a statute's language is plain and clear, "the duty of interpretation does not arise, and the rules which are to aid doubtful meanings need no discussion"} {Further, law cannot be construed/applied in a vacuum; "the law must be looked at as a whole and construed with reference to the whole system of law of which it is a part, so that all may be harmonized and have effect" {San Francisco Unified School Dist. v. San Francisco Classroom Teachers Assn. (1990) 272 Cal. Rptr. 38, 222 Cal. App. 3D 146} .*
2. Explain that *"One who becomes a vexatious litigant under CCP 391(b)(1) will ultimately drop out of that status when enough time passes so that the person no longer meets the numerical requirements of years and suits filed" as explained in 1 Cal. Affirmative Def. § 13:3 (2d ed.).*
3. Explain that a different judge/justice has the authority to remove a litigant from the 'vexatious litigant list', than the judge/justice that placed said litigant on the list, and provide a clear procedure/outline for a litigant to remove themselves from the 'vexatious litigant list'.
4. Also, the issue raised by Real Party in Interest Chan is disingenuous and a non-issue, since there is no "real" split in the law where the pertinent facts in the cases cited by Chan are not the same *{not to mention the numerous other inaccuracies made by Chan}*. That is, in McColm (1998) and In re R.H. (2009), both McColm and R.H., were "plaintiffs" in the underlying proceeding *(whereas John and Mahdavi were Defendants in underlying proceedings)*, and/or the issues presented in both cases were whether said litigants should be deemed

'vexatious', and/or whether an undertaking should be required if found to be vexatious, whereas in John's and **Mahdavi's** cases the issue was whether John and Mahdavi needed to seek a pre-filing order to proceed on appeal after being named as a Defendant in the underlying case and previously being labeled "vexatious".

II. INTRODUCTION/PROCEDURAL HISTORY

As a preliminary matter, It is unclear why Chan/Real Party in Interest needed additional time from the Court to file their 'Opening Brief on the Merits', wherein their Opening Brief on the merits is almost identical to their 'Petition for Review', and does not list nor discuss the issues raised by John (*despite the Court having granted review in its entirety as to the issues raised by both parties*), which in true form again, brings into question the credibility of Real Party in Interest, as well as the reasoning they provided in their Application for Relief from Default to file an Untimely Opening Brief on the Merits.

In true form, Chan makes multiple false claims in an attempt to mislead the Courts, and simultaneously disparage John *{all of which have been refuted}*. For example, Chan claims in her Petition for Review that "*The Appellate Division dismissed John's appeal for her failure to comply with the rules of appellate practice {John's Appeal was never dismissed because of her refusal to comply with rules of appellate practice}, but then reinstated her appeal***{Writ Reply, p. 11-13}**. After briefing concluded in the Appellate Division, but before oral arguments, the Appellate Division sought a pre-filing order. After John submitted her response to the pre-filing order, the Appellate Division dismissed her appeal finding that John's appeal did not have merit and was filed for the purposes of harassment or delay"**{Petition, p.4}{Writ Reply, p.9-10}** {Appellate Division never stated John's appeal did not have merit and did not elaborate on their one sentence dismissal}, that, "*After months of litigation, including one frivolous motion after another being filed by John, a jury trial was had*" {ignoring the fact that the majority of John's

motions were granted and none were deemed to be frivolous} *{Petition, p.3}{see COA Writ Reply, p. 10-11}*, and that “Had John not fired her attorney after trial, and that attorney signed the pleadings, the issue would be moot” *{Petition, p.10}* *{John's attorney was not fired (it is unclear where Zakari obtained such information since John has never made such a claim), but was substituted out for financial reasons, despite some questionable issues that arose}*. Also, for the first time Chan/Zakari makes a false new claim, with no specificity, that John “refused to comply with the Code of Civil Procedure” *{Petition, p.4}*, while ignoring their own numerous “mistakes” throughout, even in their current Petition for Review to the California Supreme Court, inclusive of failing to include a 'word count certificate' with their Petition *{at least in copy served upon John}*, and filing their Petition early, and the Notice of Default issued by the Appellate Division after failing to file their opposition brief despite having two requests for extension for time to file said brief, granted. Had John or a pro-per non-attorney party made such “mistakes”, they would be ridiculed and/or penalized.

The trial court case was a UD, wherein Commissioner Bruce Mitchell presided over pre-trial matters. For reasons unclear, on April 2, 2012, Judge Blumenfeld, transferred the case to Pasadena to Judge Christian with trial to start 4/3/12 *{MTA, Item 11, p. 77, missing from CT}*. The trial ended in Chan's favor on 4/17/12 *{CT, p. 111-113}*, after Chan/her attorney's refused to compromise on any of the three settlement options they offered on the eve of trial *(Chan having refused all previous settlement attempts)*. On May 29, 2012, Chan filed a motion for approximately \$46,000 in attorney's fees, which was reduced to approximately \$40,000 on July 13, 2012, by Judge Christian *{CT, p. 386; 392}*, on opposition by John. John filed a Notice of Appeal re the UD Judgment on June 7, 2012 *{CT, p. 345}*, and a Notice of Appeal re the Attorney Fees Judgment on July 17, 2012 *{CT, p. 388}* *(two designations of record were also filed)*. The case was transferred to the Appellate Division on or about September 2013, and both appeals were assigned one case number *{BV030258}*. John was required to file one opening brief and limit her word

count to 6,800 words despite the two Notices of Appeal filed and despite the multiple complex issues to be discussed. Also, John had to augment/supplement the Clerk's Transcript, since the Clerk certified that several documents that John requested were missing from the court file. John had an attorney represent her at trial, who subsequently substituted out after trial. John moved to the property in December 2008, and Chan et al., took over ownership of the property in June 2010.

John filed her Opening Brief on January 23, 2014 {EXHIBIT A²}. Chan filed her brief on April 9, 2014 {EXHIBIT B}{after Notice of Default and two Requests for Extension}, and John filed her reply brief on April 29, 2014 {EXHIBIT C}. On May 1, 2014 {EXHIBIT D}, Judge McKay issued a pre-filing order (*received by John May 3, 2014*), that John explain the merits of her case *or* have an attorney substitute into the case before May 12, 2014, and that failure to do so would result in dismissal. On May 6, 2014, John filed judicial council forms, 'Request to File New Litigation by a Vexatious Litigant' {EXHIBIT E}, and 'Application to be removed from the Vexatious Litigant List' {EXHIBIT F}, in response to the Court's Orders despite John not being required to seek leave of court as a matter of law since John was the Defendant in the underlying case (*particularly since both the UD Judgment and Attorney's Fees Judgment can prevent John from obtaining and maintaining housing and employment due to the negative credit implications arising from said Judgments*){A court may not require a person who has been determined to be a vexatious litigant in prior litigation to seek leave of the court before that person may file an appeal in a case in which that person is the defendant. (Mahdavi v. Superior Court (2008)166 Cal.App.4th 32,37}. On May 12, 2014, Judge McKay issued an Order {EXHIBIT G} (*received May 15, 2014*), denying both John's 'Request to File New Litigation'/to proceed on appeal and her Application to be removed from the vexatious litigant list in two brief sentences with no elaboration. On May 19, 2014, John filed a 'Motion to Vacate the Dismissal' under CCP 473 {EXHIBIT H} (*thinking that perhaps she did not explain clearly enough due to the*

2 All Exhibits refer to Exhibits filed in the underlying Court of Appeals case.

limited time allotted to respond to the Court's order), as well as a 'Motion for Reconsideration' as to John being removed from the vexatious litigant list {EXHIBIT I}. On May 23, 2014 (*received May 27, 2014*), the Appellate Division issued an order denying both John's May 19, 2014 motions in one brief sentence with no explanation {EXHIBIT J}.

In April 2012, Court of Appeals, 2nd Appellate District, Division 3, on its own motion, labeled John a 'vexatious litigant' in case B236441 (*not because someone claimed John was filing frivolous suits or was not following proper procedures; B236441 was an appeal regarding the first UD which was reversed on appeal by the Appellate Division, wherein landlord dismissed said case after reversal on appeal, and wherein John had no other recourse after dismissal but to file an affirmative suit since tenants are not allowed to file a cross-complaint during a UD {Vella v. Hudgins (1977) 20 Cal.3d 251, 255}*) (*Trial Court dismissed said case based on a Non-Sensical Anti-Slapp motion*), despite John's objections that she does not fall under the literal meaning or spirit of 'vexatious litigant' statutes. Division 3 of the Court of Appeals seemingly had trouble justifying labeling John as a vexatious litigant, since they were aware that the underlying UD and other litigation were pending, and did not take prohibitive measures to prevent John from representing herself/defending her rights in the other litigation/underlying UD, despite the issuance of the vexatious litigant title in B236441. Further, John's case, B238659, was simultaneously pending in front of that same of Court of Appeals (2nd Appellate, Div. 3) and no prohibitive measures were placed on John regarding B238659, which was completed on July 16, 2012.

The primary issue presented in the Petition for Writ of Mandate was if the Appellate Division of the Los Angeles Superior Court had authority to require that an Appellant be required to seek 'leave of court' to proceed on appeal {EXHIBIT D}, and/or the authority to dismiss the appeal of an Appellant that was named as Defendant {EXHIBIT G}, (*in an unlawful detainer*), simply because Appellant was labeled as a 'vexatious litigant' by another court. This issue was fully discussed and

resolved in *Mahdavi v. Superior Court (2008) 166Cal.App.4th32*, wherein *Mahdavi* was named as defendant in a UD and sought Writ relief because his appeal was dismissed by the Appellate Division, after erroneously requiring *Mahdavi* to seek leave of Court to proceed on Appeal, because he was previously labeled a 'vexatious litigant'.

Further, as evidenced by John's Appellate Opening & Reply Briefs, and Chan's non-responsive 2,500 word Appellate Opposition brief *{EXHIBIT B}* (which at best discusses one of the eight issues as to the UD judgment, and none of the eight issues as to the attorney fees judgment), **denial of John's right to appeal the prejudicial errors of the underlying UD judgment and the attorney fee judgment of approximately \$40,000, would cause great harm to John in the form of preventing John from finding and/or maintaining housing, and/or from finding or maintaining gainful employment due to the negative credit implications arising from such Judgments. Clearly, the legislature has seen the importance of keeping a roof over residential renter's heads, and created CCP 1161.2(a)(6) (providing a sealed record), to provide some protection for tenants, knowing that tenants often face an uphill battle even when the facts and law are on their side, and that tenants may not even see any relief from a UD that is found in tenant's favor or after an eviction is reversed on appeal (particularly if tenant has already been required to move), other than not having negative credit implications, and not being prevented from obtaining housing in the future. That is, John realizes that even if the underlying UD is reversed on appeal, the only benefit she is likely to receive is not having an eviction on her record, and not having a "fraudulent" judgment against her for approximately \$40,000 in attorney fees.**

III. LEGAL DISCUSSION

A. "A court may not require a person who has been determined to be a vexatious litigant in prior litigation to seek leave of court before that person may file an appeal in a case in which that person is the defendant". (Mahdavi v. Superior Court(2008)), in any case, but particularly wherein, one who becomes a

vexatious litigant under CCP 391(b)(1) has dropped out of that status due to the passage of time, and no longer meets the numerical requirements of years and suits filed, as explained in 1 Cal. Affirmative Def. § 13:3 (2d ed.)

While John has discussed and cited several relevant laws as to why a 'vexatious litigant' does not need leave of Court to proceed on Appeal in an action wherein they were named as Defendant, the point is made abundantly clear in **Mahdavi v. Superior Court(2008)166Cal.App.4th32,37 (also a Defendant in a UD)**, making the necessity to discuss any other points moot {A court may not require a person who has been determined to be a vexatious litigant in prior litigation to seek leave of the court before that person may file an appeal in a case in which that person is the defendant. (Mahdavi v. Superior Court (2008) 166 Cal.App.4th 32, 37, 82 Cal.Rptr.3d 121)}. Also, applying the Plain Language Rule to CCP 391(b), indicates that John can no longer be deemed 'vexatious' since litigants who become deemed vexatious under CCP 391(b)(1) automatically drop off the list as time passes and no longer meet the literal definition of CCP 391(b)(1) {One who becomes a vexatious litigant under CCP 391(b)(1) will ultimately drop out of that status when enough time passes so that the person no longer meets the numerical requirements of years and suits filed. 1 Cal. Affirmative Def. §13:3(2d ed.)}. That is, Judge McKay's May 12 & May 23, 2014 orders dismissing John's appeal(s), should be revoked, not only because she is prohibited as a matter of law from ordering John to seek 'leave of court' to proceed on appeal wherein she was named as Defendant, but also because John does not meet the requirements of the 'vexatious litigant statutes', particularly wherein as a matter of law, initial Appeals are not to be counted as separate actions *(as more fully explained in John's Request to file New Litigation filed with the Appellate Division {EXHIBIT E, pgs 74-76} and Application for Order to Vacate Pre-filing Order {EXHIBIT F}*).

B. MERITS OF CASE: [W]hen a vexatious litigant knocks on the courthouse door with a colorable claim, he may enter." (Wolfsgram v. Wells Fargo Bank (1997)53 Cal. App.4Th43); John's claims/defense of property, are not colorable claims, whether litigant is Plaintiff or Defendant.

While John is not required to explain the merits of the case nor explain how the appeal was not sought for the purpose of harassment or delay, in an abundance of caution she will explain. The appeal was not brought for any improper purpose, harassment or delay. The appeal was brought because the eviction was retaliatory and based on Chan/her attorney discovering that John was involved in other litigation, and because John was prevented from having a fair trial due to Judge Christian's abuses of discretion and allowances of Chan's (and her attorneys) prejudicial antics at trial (i.e. prejudicial errors prevented John from having a fair trial). The UD was not based on non-payment of rent, nuisance or any other legitimate reason provided in the law. In fact, the primary focus of Chan's case at trial was to discuss John's other litigation, despite the fact Commissioner Bruce Mitchell had prohibited the mention of John's other litigation at trial, because it was purely prejudicial and not listed in the 60 day notice to vacate as a reason for eviction (*Commissioner Mitchell handled pre-trial matters; matter transferred to Judge Christian in Pasadena for trial*). Chan and her attorney(s) were in such a rush to violate John's rights and Commissioner Mitchell's order that they didn't bother to inquire to jurors if they were in any way affiliated with the opposing litigants from John's other litigation - something John has a right to know.

In addition, after trial, Chan's attorney sought fees for over \$46,000 which was reduced to approximately \$40,000 by Judge Christian on opposition (*majority of fees awarded to attorney Brian Ward who is not an employee of Zakari's office, nor attorney of record, nor has any evidence been provided that Chan agreed to pay Attorney Ward - a violation of the Rules of Professional Conduct 2-200(A)*). Chan's minimal non-responsive appellate opposition brief also proves that there is no justification for the violations committed that caused the prejudicial errors against John to occur. John was required to move because of the UD judgment, and said judgment can prevent John from obtaining and/or maintaining housing and employment, if not allowed to appeal from the 'prejudicial errors' that occurred at trial. Further, the monetary

judgment for approximately \$40,000 in attorney fees impacts John negatively, inclusive of preventing John from obtaining or maintaining gainful employment, housing, and the like because of the negative credit implications arising from such Judgments.

Further, the law is clear that even when a litigant has correctly been deemed “vexatious,” [w]hen a vexatious litigant knocks on the courthouse door with a colorable claim, he may enter.” (Wolfgram v. Wells Fargo Bank (1997)53 Cal. App.4Th43). Here John's (losing Defendant) appeal/claims (defense of property) are not “colorable”, but is based on preventing the loss of property (*inclusive of being prevented from obtaining and maintaining housing and being able to find or maintain gainful employment due to the negative credit implications*), and are valid claims/issues that should not be ignored, as clearly evidenced in John's Opening and Reply Briefs, and Chan's 2,500 word non-responsive Brief. There is no legitimate basis for requiring John to seek leave of Court to proceed on appeal nor any legitimate basis to prevent John from proceeding in pro per with said appeal, particularly wherein John was losing Defendant in a UD. In short, John should never have been required to seek leave of Court to proceed with the underlying appeal.

Also, it was Chan/her attorneys that refused all attempts at peaceful resolution until the eve of trial {*Chan's three settlement options on the eve of trial ranged from \$5000-\$7500, 14-30 days to move, and having the record sealed or not {CT,p.393,1-10; p.395,18-28}*, which would result in a default judgment if John faltered on any aspect of the settlement option chosen}. Contemplating the possibility of default judgment, the fact that John needed to maintain a roof over her head, the fact that John's family doesn't live locally, the burden of moving, and that the eviction was retaliatory and *not* based on non-payment of rent, nuisance or some other legitimate reason, John was unable to come to terms with Chan's settlement options offered on the eve of trial, which Chan/her attorneys refused to show any flexibility on.

C. VEXATIOUS LITIGANT STATUTES DO NOT APPLY TO INITIAL APPEALS WHETHER PLAINTIFF OR DEFENDANT; {CCP 1049, CCP 391(b)(1) & CCP 391 (b)(2)}; Plain Meaning Rule' must be followed - Caminetti v. United States, 242 U.S. 470 (1917); Law cannot be construed/applied in a vacuum; "The law must be looked at as a whole and construed with reference to the whole system of law of which it is a part, so that all may be harmonized and have effect" {San Francisco Unified School Dist. v. San Francisco Classroom Teachers Assn. (1990)}. RIGHT TO APPEAL CAN NOT BE ELIMNATED; Main purpose of vexatious litigant statutes is to restrain litigants who violate the doctrines of res judicata or collateral stoppel. Muller v. Tanner (1969)}; John does not meet requirements nor spirit of vexatious litigant statutes .

The vexatious litigant statutes applies to litigation that has been "finally determined" against a litigant who continues to "repeatedly re-litigate" an issue *after final determination*, and hence is not applicable to initial appeals, particularly where litigant was losing Defendant and had no choice in whether or not to participate in said litigation. That is, logic and the law dictate that initial appeals immediately following judgment should NOT be counted as "litigation" for the purposes of deeming a litigant "vexatious", when the law is clear that a case is not finally determined until the right to appeal has passed, as stated in *CCP 1049, CCP 391(b)(1)* and *CCP 391(b)(2)* {particularly when such appeals were not deemed frivolous, unintelligible, etc.}. Further, the Plain Language Rule must be applied to these statutes as stated in *Caminetti v. United States, 242 U.S. 470 (1917)*, "*It is elementary that the meaning of a statute must, in the first instance, be sought in the language in which the act is framed, and if that is plain... the sole function of the courts is to enforce it according to its terms". If a statute's language is plain and clear, "the duty of interpretation does not arise, and the rules which are to aid doubtful meanings need no discussion."*

CCP 1049: An action is deemed to be pending from the time of its commencement *until its final determination upon appeal, or until the time for appeal has passed*, unless the judgment is sooner satisfied.

CCP 391(b)(1): (b)"Vexatious litigant" means a person who does any of the following: In the immediately preceding seven-year period has commenced, prosecuted, or maintained in propria persona at least five litigations other than in a

small claims court that have been (i) finally determined adversely to the person;"

CCP 391(b)(2): *After a litigation has been finally determined against the person, repeatedly relitigates or attempts to relitigate, in propria persona, either (i) the validity of the determination against the same defendant or defendants as to whom the litigation was finally determined or (ii) the cause of action, claim, controversy, or any of the issues of fact or law, determined or concluded by the final determination against the same defendant or defendants as to whom the litigation was finally determined.*

A cause of action, claim, controversy, or issue of fact or law is finally determined WHEN THE RIGHT OF APPEAL of that cause of action, claim, controversy, or issue of fact or law IS FINAL. - First Western Dev. Corp. v. Superior Court (1989) 212 CA3d 860, 869-870];

The law is very clear as to when the vexatious litigant statutes should be applied {when the 'Plain Language Rule' is applied and creative license is not taken}, as further clarified in Holcomb v. U.S. Bank Nat. Assn.(2005) 129 Cal. App. 4th 1494, which states: "Unlike section 391(b)(1), which employs specific numerical benchmarks, such as "five cases," "seven years," and "two years," the Legislature chose to employ the term "repeatedly" in subdivision (b)(2). Given the specificity in subdivision (b)(1), we may safely presume if the Legislature intended the term "repeatedly" to simply mean "more than one time," the Legislature would have said so. Understanding the statutory scheme as seeking to prevent future harm based on a litigant's past behavior, we view the Legislature's use of the adverb "repeatedly," as referring to a past pattern or practice on the part of the litigant that carries the risk of repetition in the case at hand". Further, the law is clear, that the law cannot be construed/applied in a vacuum, and that "the law must be looked at as a whole and construed with reference to the whole system of law of which it is a part, so that all may be harmonized and have effect" {San Francisco Unified School Dist. v. San Francisco Classroom Teachers Assn. (1990) 272 Cal. Rptr. 38, 222 Cal. App. 3D 146}. That is when CCP 1049, CCP 391(b)(1) and CCP 391(b)(2) are read in conjunction, no reasonable person would interpret an initial appeal to be interpreted as being counted towards the total for determining

whether a litigant should be deemed vexatious.

Further, it is unclear how John came to be nominated for determination as a vexatious litigant, when John does not fall under the literal meaning or spirit of the statute, and wherein John has efficiently handled all proceedings, and never had a case dismissed based on frivolity, unintelligibility, or for re-litigating the same issues against the same parties ***after final determination***, or for maintaining an action for 2 or more years without bringing the matter to hearing or trial *{all factors must be considered; **law cannot be construed/applied in a vacuum** (particularly as in this instance, where the cases filed by John were filed or defended against to defend against the loss of property, the loss of her home, etc., & since in UD's, tenants are prevented from filing a Cross-Complaint {A cross-complaint is not permitted in an unlawful detainer lawsuit; **Vella v. Hudgins (1977) 20 Cal.3d 251, 255**)}.* That is, John should not have been nominated nor deemed as 'vexatious', since the main purpose of vexatious litigant statutes is to prevent frivolous filings in accordance with the Doctrines of Res Judicata and Collateral Estoppel *{A vexatious litigant who attempts to relitigate actions or issues already determined against him should have no ground for complaint that the second definition of "vexatious litigant" (**CCP 391(b)**) is superfluous because relitigation is precluded by the doctrine of res judicata. Litigant's "claim is already barred by other established principles of law {res judicata/collateral estoppel}, and hence his rights are in no way modified by the statute". **Muller v. Tanner (1969) 2 CalApp3d 445**}.}*

Further, actions stemming from **07U00180/BV027121**, should not be counted as separate litigation, since the underlying UD was reversed on Appeal by the Appellate Division in 2008, leaving one to conclude that any subsequent affirmative lawsuit is legally justified, particularly wherein said Plaintiff landlord dismissed the UD after reversal on appeal. **Further, had John not been required to move after eviction was granted in 07U00180/BV027121, John would not have been involved in the instant/underlying UD. That is, John would likely still be living at the subject premises from 07U00180/BV027121, but for the wrongful eviction**

(John had resided at subject premises for 8 years before being evicted for complaining; i.e. not evicted for non-payment of rent, nuisance, and no reason listed in 60 day notice to vacate), or still living at Chan's premises, but for Chan being notified by the attorney/litigants from 07U00180/BV027121, that John had been involved in said eviction/other litigation (despite 07U00180/BV027121, being sealed as a matter of law {CCP 1161.2(a)(6)}). That is, the attorney(s)/litigants from 07U00180/BV027121 were harassing John by following her to her new residences and informing her new landlords of John's other/prior litigation, in an attempt to get John to drop the then pending appeal and affirmative suit against them {not to mention that the Court that designated John as a 'vexatious litigant' went so far as to count an accusation filed against an attorney as a "litigation", to justify labeling John as a "vexatious litigant"}.

Further, the right to appeal is a statutory right CCP 904.1(a)(1), and cannot be simply eliminated. That is, it defies logic, that a 'vexatious litigant' named as Defendant needs to seek leave of court to appeal an unjust outcome, since Defendants have no choice in whether or not to participate in litigation, and wherein the right to appeal is vested to all litigants. Even losing Defendants in small Claims Cases have the right to appeal a losing judgment as a matter of law. CCP 116.710(b). **Certainly a losing tenant in a UD has at least equivalent rights to those of a losing Defendant in a small claims case.** In short, the vexatious litigant statutes should not be used to stifle the rights of the average person.

The fact that John does not qualify to be labeled as 'vexatious' is further exemplified by the fact that she comes nowhere near other litigants who have been deemed 'vexatious' *{5 actions in 5 years does not a vexatious litigant make; none of John's lawsuits have been deemed frivolous}*, as indicated in the below case law. "An individual was a vexatious litigant within the meaning of CCP 391. He filed at least **43 unmeritorious and frivolous pleadings** in the appellate court, engaged in other frivolous tactics, abused his privilege of being excused from paying filing fees, *repeatedly failed to provide an adequate record for review*, and was **not deterred by**

previous assessments of sanctions against him for bringing frivolous actions". *In re Luckett (1991, Cal App 4th Dist) 232 Cal App 3d 107, 283 Cal Rptr 312.* "An individual was a vexatious litigant within the meaning of CCP 391(b)(1)(3). Since 1985, he had filed at least **24 unsuccessful actions** in 1 county, having been required to furnish security in 13 of the actions because he was found to be a vexatious litigant. He had also filed **35 writ and appeal proceedings** in the Court of Appeal, only one of which was resolved in his favor on a pretrial matter in a case subsequently resolved against him. *In light of the individual's extensive history of frivolous filings and the failure of less drastic remedies*, the individual was precluded from filing any litigation in propria persona in a California court without first obtaining leave of the presiding judge of the court in which the individual proposed to file the action (CCP 391.7(a)). *In re Whitaker (1992, Cal App 1st Dist) 6CalApp4th54.* In short, John does not meet the requirements nor the spirit of vexatious litigant statutes, whether or not her appeals are counted as separate actions.

John's good faith is also exemplified by the fact that though she vacated the premises from the UD related to BV030258, 2.5 years ago (*leaving property in good condition*), and to date, Chan has not complied with the legal requirements for returning John's security deposit (*despite Chan's self professed real estate expertise as a Real Estate Broker, and attorney assistance at every step of this litigation*), nor provided John with an accounting of said security deposit (**w/in 21 days-CC 1950.5(g); CT.p.27**), and yet John has not yet filed a small claims suit for return of her security deposit, despite John being within her rights to do so without seeking permission, since vexatious litigant rules do not apply to small claims cases. In short, John's litigation was pursued and/or defended in good faith and to protect property rights, and only where the law and common sense supported John's position, and never to harass or cause delay. The vexatious litigant title should *should be reserved for those that without dispute abuse the system.* **Litigants should not be penalized for making a good faith appeal, or for having a few unfortunate issues arise within a short period of time or making a mistake**

(particularly since attorneys are given great leeway when mistakes are made). Often one cannot control how life occurs . Had an attorney formally represented John's interests at every step and made the same choices as John, 'vexatious litigant' issues would not have been raised.

Also, where there may have been instances where John could have filed a small claims action instead of a Superior Court Action, John chose not to, based on her experience in the a small claims case 07s00203, wherein Judge Shubin ignored the laws and the facts (*i.e. ignoring two police officer's testimony and the Affidavit {CT, p.233-234} of an an attorney/neighbor residing in the condos behind the subject premises*), took the matter under submission and ruled against John. John was left without any right to appeal, which then gave the landlord ammunition to proceed with the retaliatory eviction{07u00180}, which was dismissed after the UD Judgment was reversed on appeal {CT, p.163}{Attorney Bruce McIntosh had claimed approximately \$8000 in attorney fees in 07u00180, despite there not having been a trial, and only having filed approximately 2 brief documents}.

D. Judge McKay's dismissal of John's appeal and denial of John's response to her request for pre-filing order, in one sentence without elaboration is not a determination as to the merits of the underlying appeal {EXHIBIT G,p.89}; Judge McKay giving John the option to have an attorney substitute in to handle the only remaining task (oral argument), is indicative that Judge McKay did see the merit in John's appeal(s) {EXHIBIT D, p.68}; Granting of Writ by COA reverses and/or makes moot any ruling re dismissal of John's Appeal.

Judge McKay's one sentence dismissal of John's appeal(s) is not supported by the record, and is equivalent to how one is barred from raising res judicata/collateral estoppel as a defense, where there is an insufficient record and/or a lack of an explanation of the judgment. {*"A Judgment based on a general verdict in an action wherein a determination of any of several issues may have been the basis for that verdict, does not authorize the application of the doctrine of [collateral estoppel] to such issues in a subsequent action under circumstances where...it is necessary to identify the specific issue determined in the former action."* - Stout v. Pearson

*(1960) 180 Cal App 2d 211,216; "Every estoppel must be certain to every intent, and not be taken by argument or inference. If upon the face of a record anything is left to conjecture as to what was necessarily involved and decided, there is no estoppel in it when pleaded, and nothing conclusive in it when offered in evidence." - **Beronio v. Ventura County Lumber Co. (1900) 129 Cal 232, 236.** }* Further, granting of the Writ by the Court of Appeals reverses and/or makes moot any ruling as to the dismissal of John's Appeal, since the Court of Appeals essentially informed Judge McKay that her decision and findings regarding John's dismissal are unsound.

While Judge McKay had no legal basis to require that John seek leave of Court to proceed with the instant appeal, had John known that the Judge McKay strongly preferred that John have an attorney substitute into the case to handle the non-mandatory oral argument (*the only remaining task*), John may have focused on finding an attorney willing to add to his/her workload on such short notice, and making payment arrangements with said attorney to handle the remainder of the appeal(s). However, because of the unexpected surprise of Judge McKay's May 1, 2014 order, and the brief time to respond to the Court's May 1,2014 order (*before May 12,2014/5 business days*), John opted to focus on responding to the pre-filing order, which would also show Judge McKay that John does not fall under the literal meaning or the spirit of the vexatious litigation statutes, and common sense and the law dictate that ***John is not required to seek leave of court when appealing from a case wherein she was named as Defendant.*** John requested that if Judge McKay was unwilling to allow John to proceed in pro per/required John to seek leave of Court, that John be allowed 30 days to find an attorney that John can afford and make payment arrangements with/substitute into the case, and handle the remainder of the appeal/oral argument {5 days in not sufficient to find and retain an attorney; any attorney would represent John if she had several thousands dollars to provide up front}.

Also, John requested one extension during the appeal (for filing her opening brief), and Chan requested two extensions, and had a Notice of Default issued

against her after having both extensions granted and despite having had approximately 5.5 months to respond to John's Opening Brief. Chan would not have suffered any prejudice from allowing John 30 days to seek an attorney, particularly wherein the Notice(s) of Appeal was filed approximately 1.5 years prior to this case being transferred to the Appellate Division, and wherein John no longer lives at the subject premises. Dismissing John's appeal, requiring John to seek leave of Court, denying John the ability to represent herself, and/or denying John the opportunity to seek and make arrangements with an attorney is not only a violation of the Equal Protection Clause of the U.S. Constitution, but also **encourages persons such as Chan and her attorneys to file frivolous lawsuits and violate the rights of persons they view as easily violatable because in their opinion the Courts won't or don't care about such individuals.** As previously mentioned, not allowing John/losing Defendant the ability to appeal from numerous prejudicial errors both as to the underlying judgment, and re the attorney fees judgment (*for approximately \$40,000*) is unjust, particularly wherein said judgments can prevent John from obtaining/maintaining housing and/or gainful employment.

E. Vexatious Litigant Statues violates equal protection under the law for pro se litigants (an issue touched on in John's 5/6/12 Request and Application).

Denying John her right to appeal is a violation of the 'Equal Protection Clause' of the Fourteenth Amendment of the U.S. Constitution, which provides that no state shall deny to any person within its jurisdiction the equal protection of the laws. Equal Protection doctrine means that all persons, or classes of persons, shall be treated equally "in the same place and in like circumstances" under the law - and "shall be treated alike, under like circumstances and considerations",

" . . . the guarantee of the equal protection of the laws means "that no person or class of persons shall be denied the same protection of the laws which is enjoyed by other persons or other classes in the same place and in like circumstances." Missouri v. Lewis, 101U.S.22,31. We have also said: "The Fourteenth Amendment, in declaring that no State 'shall deprive any person of life, liberty or property, without due process of law,

nor deny to any person within its jurisdiction the equal protection of the laws,' undoubtedly intended not only that there should be no arbitrary deprivation of life or liberty, or arbitrary spoliation of property, but that equal protection and security should be given to all under like circumstances in the enjoyment of their personal and civil rights; that all persons . . . should have like access to the courts of the country for the protection of their persons and property, the prevention and redress of wrongs, and the enforcement of contracts; that no impediment should be interposed to the pursuits of any one except as applied to the same pursuits by others under like circumstances; that no greater burdens should be laid upon one than are laid upon others in the same calling and condition, . . ." (*Connolly v. Union Sewer Pipe Company, 184U.S.540 (1902)*).

California's "vexatious litigant" statutes – (*CCP 391 et seq*) does not apply equally to all litigants who come before the court. Pro se litigants are treated very differently from lawyer-represented-litigants under the vexatious litigant statutes. *The Vexatious Litigant Statutes applies only to litigants who are unable to hire a lawyer. Litigants who do hire a lawyer are immune from the impediments of the statute. This constitutes an obvious discrimination against pro se litigants or those of a certain economic background. Therefore, an equal protection concern is raised by the Vexatious Litigant Statues.* “In a number of cases implicating fundamental rights’ infringements, the Court has specifically remarked upon the negative effects of these burdens disproportionately or uniquely upon the poor. This variety of equal-protection analysis and attendant concern for the poor has been evident, where the Courts have recognized the right of access to civil courts when certain fundamental rights are being contested . . .”.

In any case, whether or not pro se litigants/those too poor to afford a lawyer are a suspect class requiring a strict scrutiny review of the statute, is beside the point because the statute discriminates in regard to a fundamental protected right - the right to file a lawsuit (*Skinner v. Oklahoma ex rel. Williamson, 316 U.S. 535, 541 (1942)*). Because the power to sterilize affects "a basic liberty[,] . . . strict scrutiny of the classification which a State makes in a sterilization law is essential.". Is there any right more fundamental than the right to file a lawsuit? ‘The right to sue and

defend in the courts is the alternative of force. In an organized society it is the right conservative of all other rights, and lies at the foundation of orderly government.' (*Chambers v. Baltimore & O.R. Co.* (1907) 207 U.S. 142, 48). Hence any such laws should be very narrowly construed at all levels.

F. No law prohibiting one Judge from revoking/modifying an Order by another Judge/Court, naming a litigant as "vexatious".

In a once sentence denial Judge McKay denied John's Application to vacate the pre-filing order/be removed from the vexatious litigant list {"*The court lacks jurisdiction to rule on appellant's application to vacate the pre-filing order. (CCP 391.8(a))*"}, seemingly because the Court believes they cannot revoke/modify another Court's ruling regarding the status of a vexatious litigant. However, there is no law prohibiting this Court from taking action on John's Application to be removed from the vexatious litigant, nor any such prohibition listed in CCP 391.8(a). In fact, in PBA, LLC, et al., Plaintiffs/Cross-Defendants & Appellants, v. KPOD, LTD, et al., (2nd) 112 Cal App4th 965, Judge Gale vacated Judge Morgan's order declaring Sailor Kennedy a vexatious litigant and that Kennedy be required to obtain court permission before filing new litigation. John's position is further supported wherein litigants have been successfully removed from California's vexatious litigant list after being unjustly placed on said list list as exemplified in Wolfe v. Strankman, 392 F.3d 358 (9th Cir. 2004) {*firm Jones, Day represented the litigant pro bono, at the urging of the U.S. Court of Appeals Ninth Circuit's Pro Bono program; <http://www.jonesdayprobono.com/experience/ExperienceDetail.aspx?exp=21430>*}.

G. Zakari/Chan ignore that cases they cite are inapplicable, because said litigants raising 'vexatious litigant' issues were not defendant and/or the issues raised are not the same f.i.e. relevant facts & issues in *McColm* and *In re R.H.*, were if *McColm* should be deemed vexatious and/or if they should be required to issue security to proceed; the facts in John's case and *Mahdavi v. Supr. Crt (2008)* were if they needed to seek a pre-filing order to proceed on Appeal after being named as a Defendant.

Zakari/Chan refuse to accept the rulings of **Mahdavi v. Superior Court 166 Cal App 4th 32 (2008)**, because it does not support their position, and cites to **McColm v. Westwood Park Assn., 62 Cal App 4th 678(1998)**, and **In re R.H. 170 Cal App 4th (2009)** to support their/Judge McKay's position. However, Zakari/Chan refuse to acknowledge that in both **McColm v. Westwood Park Assn., 62 Cal App 4th 678(1998)**, and **In re R.H. 170 Cal App 4th (2009)**, the facts and issues to be resolved are not the same. The Court in **In re R.H. (2009)170 Cal.App.4th 678**, has made it very clear **Mahdavi** is inapplicable to **In re R.H.**, in part because the issues to be resolved are different.

“Mahdavi neither addresses nor resolves the issue before us. The underlying facts as well as the legal issue in Mahdavi are distinguishable from this case. The petitioner in Mahdavi, unlike R.H., previously had been declared a vexatious litigant and was subject to a prefiling order. The question was whether the prefiling order applied to his appeal arising out of a case in which he was the defendant. Here, the issue is whether to declare R.H. a vexatious litigant based on his numerous and unsuccessful appeals and writ petitions for purposes of issuing a prefiling order”. In re R.H. (2009)170Cal.App.4th678.

That is, in both **McColm** and **In re R.H.**, both parties were “Plaintiffs” (not Defendant like John or Mahdavi), and the pertinent issue in both cases were whether **McColm** and **R.H.**, should be deemed “vexatious” and/or be required to issue security in order to proceed, whereas in **Mahdavi's** and **John's** case the pertinent issue is whether **John** needed to seek a pre-filing order in order to proceed on appeal after being named as Defendant in a lawsuit/eviction case.

Also, **In re R.H. (2009)170 Cal.App.4th 678**, **R.H.**, in propria persona filed 13 final and unsuccessful appeals and writ petitions in that case alone, which often were **numerous duplicate “actions” when the matter was not yet ripe for Appeal or Writ, or where the time for seeking Appeal or Writ had passed, or were there was not an appealable issue nor an issue appropriate for writ review, and/or **R.H.** often failed to file opening briefs/the necessary initiating document, hence making **In re R.H.**, further inapplicable to the instant case, since **John** has never committed such “errors” nor has never been accused of committing such “errors”.**

Neither *McColm* or *In re R.H.*, support Chan's position or Judge McKay's findings, and hence Judge McKay did not have authority to seek a pre-filing order from John.

H. No Judge or party has ever declared that John's litigation (either as Plaintiff or Defendant) was frivolous, nor ever declared the actions taken by John to be improper, abusive or frivolous.

Zakari/Chan continue to mislead the Court and disparage John with falsities {RTRN,p.5}, in part seemingly because John complimented Commissioner Mitchell in her Opening Appellate Brief, that he gives the average person much more of an opportunity to have a fair shot/their day in Court, in comparison to John's observations and personal experience with other Judges. Chan/Zakari claim that two dozen motions were filed by John in the underlying UD, not specifying how many motions they filed nor the 6-7 sets of discovery motions they mail-served on John over Christmas/NewYear holidays, and that while John filed a total of approximately 14 motions in the underlying UD, the majority of said motions were discovery motions due to Zakari's/Chan's refusal to answer and/or appropriately answer the questions posed to them during discovery. **That is, Zakari/Chan ignore that Commissioner Mitchell granted the majority of John's discovery motions, and that many of John's discovery motions could have been avoided if Chan answered or appropriately answered the questions posed during discovery, and that discovery motions are excluded from Vexatious Litigation Statutes, as indicated in item one of *Judicial Council Form MC-701/'Request to file New Litigation by Vexatious Litigant'* {EXHIBIT E, p.70}.** Since Commissioner Mitchell granted the majority of John's discovery motions, John requested sanctions (*via motion*) against Chan as provided under the law (*just as sanctions had been awarded against John for not appearing at the initial deposition, wherein the Notice of Deposition was mail-served over the holidays when John was out of town*). Unfortunately, John was unable to attend the hearing of March 4, 2012, because of a personal emergency, and it seems that the comment Chan/Zakari cite Commissioner

Mitchell making {Petition,p.5;RTRN,p.5}, was namely so that Commissioner Mitchell could justify not awarding sanctions against Chan, and in part because he seemed somewhat surprised that John was using the tools available to her to defend the case against her.

I. No evidence provided at trial or in the record to contradict John's testimony, emails, checks and check log that John always paid rent in full and on time prior to the eviction being filed, or that John was not authorized to reduce rent when the unit was not habitable.

Zakari/Chan claims that the relationship between Chan and John become strained “*due to John's refusal to pay rent, John's unilateral rent decreases, and other generally insulting and rude conduct,*” and that “*the 60 day Notice Chan served on John stated that the reason to terminate John's tenancy was based on her refusal to comply with her obligations as a tenant*” {RTRN,p.5}. Not only is the '60 day Notice to Vacate' vague at best, stating only that it was issued “*because of your {John's} failure to comply with your obligations as a tenant primarily in your obligation to pay the rent*” {CT,Vol.1,p.35}, but it directly contradicts Zakari/Chan's claims that John was **not** evicted for refusing to pay a rent increase {EXHIBIT B,p.36,¶2, RB} {EXHIBIT C,p.54 – Appellate Div. Reply Brief}. That is, Zakari/Chan claim when convenient that John was **not** evicted for her refusal to pay a rent increase **and/or** that the eviction did not have to do with John reducing rent for times when the unit was not habitable (*i.e. when the unit had no running water, when the unit had workers in the unit from morning till night, when the unit & entire building had backed up sewage, etc ; Zakari/Chan seem to think that tenants should continue to pay full rent and be happy they still have a roof over their head*) {EXHIBIT A, pgs.8-12}, but does not provide any dates/instances when John was behind or late on rent, and continues to refer to an email sent from John to Chan, wherein John wrote that she would not be paying a rent increase in the near future {RTRN,p.7; EXHIBIT A, p.37}, and wherein Zakari/Ward/Chan successfully opposed John introducing a jury instruction regarding the 'warranty of habitability', and over objection was allowed to introduce the 'Repair & Deduct' jury instruction

{EXHIBIT A, pgs.8-12}. At no time during the trial, or in their Appellate Opposition Brief, has Zakari/Chan provided any evidence that John was ever behind on rent, or that John did not timely pay the full rent by the due date, which was supported by evidence that John had checks automatically sent to Chan each month directly from her bank, by the due date, as testified to by both John and Chan.

J. It is Zakari/Chan that are a drain on Court resources by retaliatory seeking eviction against John, refusing all attempts at settlement until the eve of trial, lying to the Courts in person and in Court documents, etc. John's timely and proper use of the tools available to her are not a drain on the Courts particularly when she is named as Defendant; John is not responsible for Zakari's 'overbilling' of Chan; Having attorney representation from point A to Z is not a likely possibility for most persons as claimed by Chan {Petition,p.9,¶3}

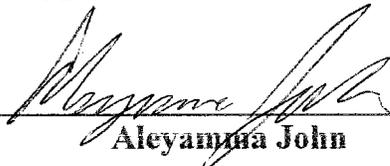
Zakari/Chan did not include certain arguments from their Writ opposition with their Writ Return *{i.e. ¶3 of page 4 of their writ opposition is excluded from their Return; "John argues...that her retaliation defense has been improperly defeated by rulings made by the trial court..."}*, seemingly because Zakari does not feel comfortable "verifying" such statements that are clearly false and in direct contradiction to the record. Said argument by Chan **¶3 on page 4 of writ opposition**, completely contradicts Zakari/Chan's claim in their Appellate Opposition Brief *(as pointed out in John's Appellate Reply brief)*, wherein they claim that the retaliation defense is not available to John **{EXHIBIT B, p. 43; RB,p.8}**, but that everything was assumed in "favor of Appellant's retaliation defense" and that "John lost her retaliation defense, despite every benefit afforded to her" *(no supporting evidence from the record provided)* **{EXHIBIT C, p.44:12-16; RB,p.9:12-16}**, ignoring the fact that preventing John from presenting relevant evidence and jury instructions, inclusive of evidence specifically allowed by **CC 1942.5**, prevents jurors from making an informed decision **{EXHIBIT C,p.59-60; EXHIBIT B,p.43}**. Obviously Zakari/Chan tries to manipulate the facts and the record whenever they think can get away with it, even when the record clearly does not support their position - another example of Zakari's/Chan's improper tactics with

the Courts. Further John is not responsible for Zakari's choice to overcharge his clients/Chan, or for charging her for his mistakes or for charging her fraudulently, as discussed in the attorney fee appeal {Zakari claims Chan incurred nearly \$50,000 in attorney's fees {RTRN,p.7} although he & Ward claimed approximately \$46,000 in their joint attorney fee motion which was reduced to approximately \$40,000 by Judge Christian on opposition from John}. Also, Chan/Zakari's statement in their Petition that "John has at her disposal an even less restrictive means of continued and essentially unfettered access to the court; hiring an attorney" {Petition, p.9,¶3}, shows how out of touch/in denial Zakari/Chan are. More often than not, it is financially impossible for the average person to afford an attorney at all , much less at every step of a lawsuit.

K. CONCLUSION

For the reasons given, this Court should clarify the vexatious litigant statutes as stated in this brief, but should not modify the Court of Appeal's decision to vacate the Appellate Division's order dismissing John's appeals, and that John's appeals be heard on the merits.

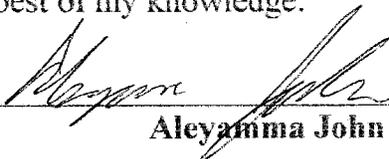
4/27/15
Dated _____


Aleyamma John

IV. VERIFICATION

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my knowledge.

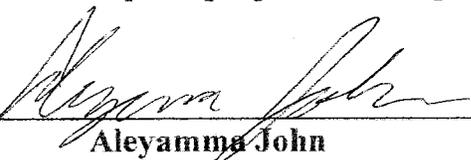
4/27/15
Dated _____


Aleyamma John

V. CERTIFICATE OF COMPLIANCE

The undersigned certifies that this Answer Brief on the Merits is 8,821 words. The undersigned relies on the word count of the computer program used to prepare this brief.

DATED: 4/27/15


Aleyamma John

Proof of Service

STATE OF CALIFORNIA)
)ss.
COUNTY OF LOS ANGELES)

I reside in the County of Los Angeles, State of California. I am over the age of 18 and AM a party to the within action; my address is:

**10 W. BAY STATE ST., #7831
ALHAMBRA, CA 91802**

On 4/27/15, I served the following document(s):

1) Answer Brief on the Merits

On the within parties in this action by serving a true copy upon the aforementioned party(ies) as follows:

Raymond Zakari/Zakari Law
46 Smith Alley, #200, Pasadena, CA 91103

Judge PattiJo McKay, Appellate Division Presiding Judge, Los Angeles Superior Court
111 North Hill St., Rm 607, Los Angeles, CA 90012

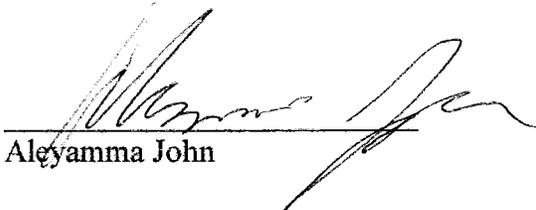
California Court of Appeals, 2nd District, Division 7
300 S. Spring St, Los Angeles, CA 90017

Judge Deborah Christian, Los Angeles Superior Court, Dept. 94
111 N. Hill St., Los Angeles, CA 90012

- BY PERSONAL SERVICE. I caused such envelope to be delivered by hand to the above named addressee.
 BY MAIL. In compliance with court rules, I enclosed a copy in an envelope and **(a)** deposited the sealed envelope with the United States Postal Service with the postage fully prepaid; and/or **(b)** I am "readily familiar" with the business' practice for collection and processing of correspondence for mailing with the United States Postal Service. I know that this correspondence is deposited with the United States Postal Service on the same day this declaration was executed in the ordinary course of business. I know that the envelope was sealed and, with postage thereon fully prepaid, place for collection and mailing on this date, following ordinary business practices, in the United States mail at Los Angeles, California. Courtesy copy will be sent via email as well.
 BY OVERNIGHT COURIER. I caused the above referenced documents to be delivered to an overnight courier service (Federal Express), for delivery to the above address(es).
 BY FACSIMILE. I caused such documents to be delivered via facsimile to the offices of the addressee(s) at the following facsimile number:

Executed on 4/27/15 at Los Angeles, California.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.


Aleyamma John