In The Court Of Appeal Of The State Of California

Third Appellate District

Court of Appeal No. C082948

William C. Dresser
Plaintiff and Respondent

vs.

[redacted]
Defendant and Appellant

Appeal from Orders of the Superior Court of the County of Santa Clara No. 1-13-CV-239828

Judges: Socrates Manoukian-[primarily], Kevin McKenney, Peter Kirwan, & Carol Overton

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[1]APPELLANT'S OPENING BRIEF

[redacted]
C/o [redacted]
San Jose, CA [redacted]

Appellant

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[1] Rushed, incomplete & provisional, due to un-adjudicated, interim motions on (1)-augment, (2)-first-time short 30 day time-extension on briefing, (3)-stay on appeal, et al.. Jammed by 9/24/2018 order that wrongly blames 88 year old ADA disabled appellant for what is lower-court's inability to provide a complete and accurate record.

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS
(Cal. Rules of Court, rule 8.208)

[redacted] **is an interested party to this appeal.**

To the best of appellant's knowledge, besides [redacted], there are no interested entities or persons to list in this certificate (Cal. Rules of Court, 8.208(e)(3))

Dated: Oct. 23, 2018

/s/ [redacted], Appellant

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1. Introduction

88-year, ADA-disabled plaintiff/cross-defendant [redacted] ["appellant"] appeals-[CT.3374-(1/9/2014)]:

(1)-12/17/2013 Discovery terminating sanctions-["TS"] order-[CT.3311.R-V]

(2)-5/28/2013 Order denying motion to consolidate-[CT.3342-43]

(3)-1/3/2014 Request For Action-["RFA"] Order, refusing to vacate default entry-[CT.3340].

Amended Notice of Appeal-["NoA"]-[CT.3630-(3/3/2014)] adds:

(4)-1/24/2014 Order Quashing Subpoena-[CT.3473]

(5)- 2/7/2014 Order Re. Plaintiff's Ex Parte Application For Order Allowing Filing of "Counter X-Complaint"-[CT.3529]

(6)-2/7/2014 Order on Plaintiff's Ex Parte Application [#1]-[CT.3521]

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(9)-2/7/2014Order on Plaintiff's Ex Parte Application [#4]-[CT.3527]

(10)-2/20/2014 Order Re. Motion To Set Aside Default And Motion For Automatic Stay And To Vacate Orders Lacking Jurisdiction-[CT.3603]

(11)-2/28/2014 Judgment on Complaint and on Cross complaint in

favor of William C. Dresser and against [redacted]-[CT.3633]

Second Amended NoA-[CT.3697-(5/22/14)] adds:

(12)-5/19/14 Order Re. Motion For Relief From Proposed Default Judgment-[CT.3692]

2. Appealable

(1)-[2]§904.1(a)(1) judgment,

(2)-§904.1(a)(2) orders made after (1) supra

(3)-Under final judgment rule (a)-Orders denying motion to vacate default entry/judgment *Rappleyea v. Campbell*, 8 Cal. 4th 975, 981, (1994); (b)-Discovery terminating sanctions order & default entry/judgment, (c)-other interlocutory orders

3. Standard Of Review-["SoR"]

Separate SoR within each ground. Overall:

(1)-De-novo review on law

(2)-"[Can] consider for the first time on appeal an issue of law based on undisputed facts",-*Matera v. McLeod*, 145 Cal. App. 4th 44, 59, (2006).

(2)-"Evaluative judgment in which the court weighs the evidence"-*Golin*, 636, under substantial evidence review[3],

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[2] Unmarked "§" reference=>California Code of Civil Procedure

[3] *Myron v. Cervantez*, 2014 WL3697092, *7 ("*Myron*"), citing published *Moran* & *Golin* cases.

"This [deference to lower-court] rule, however, does not relieve an appellate court of its duty of analyzing the evidence in the light of reason and human experience and giving consideration to the motives and propensities which tend to influence or prompt human action, in an effort to solve the question as to whether the judgment is

(3)-Abuse of discretion

(4)-Independent prejudicial standard review for judicial misconduct/bias[4]

4. Overall-Factual/Procedural Background

Separate/particularized, within each reversal ground.

4.1.Genesis

Respondent/Dresser's unauthorized/without consent, dual attorney representation of, (1)-88 year old appellant, and (2)-appellant's son, oddly *both* on *same* 2009-1-FL-"149682" case[5].

4.1.1. Dresser Sues Appellant's Son

On 11/14/2011, Dresser, a State Bar disciplined attorney[6], sues-[2011-1-CV-"212974"] his client/appellant's son-[[7]CT.1-14], for

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reasonably and substantially sustained by the evidence"-*Herbert v. Lankershim*, 9 Cal. 2d 409, 471, (1937)-("*Herbert*").

"Substantial evidence is not synonymous with any evidence"-*Roddenberry v. Roddenberry*, 44 Cal. App. 4th 634, 651-(1996).

[4] "On appeal, we assess whether any judicial misconduct or bias was so prejudicial that it deprived defendant of "`a fair, as opposed to a perfect, trial.'"-*People v. Guerra*, Sup. Ct., 40 Cal.Rptr.3d 118, 160, (2006).

"Reversal required where judicial bias made it "`impossible for [party] to receive a fair trial.'"-*In re Marriage of Iverson*, 11 Cal.App.4th 1495, 1499, (1992)

[5] Between attorney Reynolds case-initiation, and return back for trial, Dresser also represents appellant on 2010-1-cv-163310 case.

[6] http://members.calbar.ca.gov/fal/Member/Detail/104375; [CT.1879-1885]-[CT.2016-2029]. "On Aug. 29, 2009 State Bar Court of California (Case #07-O-14460) disciplined Dresser, ordering 3 year probation"- CT.1072:25-26]. Also CT.Aug.#1-Ordered-12/28/2016, "Defendant's Declaration…"-¶4

[7] This sub-part references, are to *C082936* appeal record.

recovery of "false, fraudulent, imaginary"/excessive attorney fees[8]-[CT.2013], for a *limited scope*, co-counsel representation[9]-[CT.1598.¶3] on an unsuccessful ~*one day* trial re. appellant son's divorce Restraining Order-["RO"], which fees, Dresser recouped from appellant's son under barter-work arrangement-[CT.16-38]-[CT.1875] of the 8/23/2010 Fee-Agreement-"9.Separate Compensation For Services Rendered"-[1CT.12]-"Credit at the rate of $50 per hours"-[CT.1877;1911]

Appellant's son slaved for Dresser's clients, for e.g.-[CT.1874-distant San-Mateo-Court-filings]-[Marin/far out counties Summons service-CT.1878;CT.1912-1914]. Appellant's son billed Dresser for office/para-legal-type-work; leaving early for home, Dresser assigned work; appellant and her son toiled till late hours, alone in Dresser's office, on his clients' trial/other billable work-[CT.1899-1910].

Dresser's attorney bait/switch tactics is to snare vulnerable, weak clients like seniors[10], minorities, women[11], "trap innocent people"-[CT.2013] with false promises/schemes, like contingent fee,

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[8] $38,059.28 vs. sworn declaration in family Court of $9,000 fees-[CT.1604.¶22]-[CT.395:21-22];

Billing begins even before Dresser agrees to be an attorney/the 8/23/2010 fee agreement-[CT.1875]

Billing for services to Javad Majd, a client appellant brought for Dresser-[for e.g.CT.1403], who Dresser agreed to represent-[CT.1607-1612] and abandoned Majd, causing Majd losses.

[9] [CT.2335:8-10]. Appellant was otherwise represented by Theresia Sandhu-CT.2308

[10] Like 87 year old [redacted] Vasu Arora, Saeed Fazeli

[11] Aug.#1-Ordered-12/28/2016, "Defendant's Declaration…"-¶3, Pam-Nudelman, Linda-Boblitt, Dorinda Barnes, etc.

barter fee, recovery from opposing side. Dresser bombards clients with fraudulent/fake fee bills, including for the very work he has client perform, assuring, bills intended for recovery from opposition-[CT.1072:16-27]. Once snared, clients' case languish, when Dresser holds clients ransom, demanding more money, or withdrawing at critical/vulnerable point or upon losing[12], then turns arounds and sues the clients, for e.g. underlying case-#2013-1-CV-239828, for ~$177,838, on *contingent* fees, from 88 year old appellant, despite the contingency of prevailing, *never occurring*, or suing appellant's son for fraudulent amount, despite recouping his limited scope fees via barter work-[CT.395:16-396:28].

Dresser's vexatiousness/abuse is beyond words-[CT.Aug.#1-Ordered-12/28/2016]-[CT.2030-2042], e.g. in one case Dresser sued ~200 defendants-[Exh. O & P] asking for multi-million-$-[CT.2085]

"Dresser has sued his ex-law firm Tarkington and O'Connor-(1-95-CV-754482). Dresser's unethical conduct has brought against him lawsuits and state bar complaints by fellow attorneys (example-1-12-CV-228357, Attorney Nguyen). Dresser's own associate attorney Sean, office staff Debra Lumely, have forsaken Dresser"-[CT.1072:21-24]

"Dresser has sued [multiple] fellow attorneys like Delman Smith four times on same ground. Dresser's unethical conduct has

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[12] Dresser damaged appellant's RO defense when despite appellant's pleas he refused to present appellant's son's alibi at the questioned time/location-[CT.1977:4-26], despite available witness alibi-[CT.2007-2008].

Appellant's son promptly raised this malpractice act to Dresser-[CT.2010-2011]

brought against him lawsuits and state bar complaints by fellow attorneys (example 1-12-CV-228357, Attorney Nguyen, Attorney Craig Silman, Attorney Delman Smith for malicious prosecution)"-[CT.1787:21-24].

Dresser's own office staff, Marzella-Philip's, sworn affidavit-[CT.1792-1794] states:-"I observed Dresser order his staff, over objection, to sign declarations and proofs of service that he knew to be untruthful [by] overwhelm[ing] his staff with intimidation to cause compliance with his demands… Dresser himself sign declarations that he knew to be untruthful…[lying on service]..It included his..accounting of time spent and hourly rates billed to clients"-¶4; "caus[ing] evidence to be altered prior to its inspection by an opposing party"-¶5; "creat[ing], maintain[ing] a list of [attorney] Delman Smith's clients for potential solicitation of malpractice lawsuits, and who actively pursued those clients to refer to him for lawsuits"-¶6; "'sue the shit out of Delman Smith"-¶7; suing "because Delman Smith has insurance"-¶9

Witness Silvan-Renteria calls Dresser a liar-[CT.1797-1798] "I am shocked with disbelief and appalled at [Dresser attributing false statements as coming from Renteria]. It is completely untrue"-¶4, despite Dresser not knowing Renteria-¶6.

Same from three others:-Hans-Mellberg-[CT.1799-1800], Justin-Bradley-[CT.1801-1802], Tim-Duggan-[CT.1803-1804]

On work-quality, Dresser's clients, e.g. Linda Boblitt declares "Dresser represented himself to [her], as a family law attorney… this was false"-[CT.960:8-13]. "Dresser missed filing deadlines, refused to do anything including file necessary motions, that eventually caused

me to lose my home amongst many other things…Dresser refused my phone calls, billed me for hours I had worked [as a client on my own case], and was very abusive verbally, one time calling me retarded in front of his office staff. His bill is inaccurate [padded and false], and when..question[ed]..he would say "It doesn't matter you're not going to pay it anyway."-[CT.960:13-18].

On poor-quality and abuse, “Dresser has physically thrown things in my direction, while screaming at me. Dresser threaten[ed] a disabled person..Dresser's fail[ed] to protect the marital estate. Dresser would blow past filing dates…Dresser did not act competently, had minimal if any family law experience, however, held himself out as having expertise. Dresser...refused to [return] my file after I terminated him…. He continues to discuss my case with other people without my permission, and has caused millions of dollars in damages. He has been disrespectful to the court and court personnel… Dresser has foiled in every aspect of representation”-[CT.960:19-961:1]. Boblitt’s State Bar Complaint-[CT.962-964;CT.1891-1898] and malpractice suit-[CT.2043-2048].

Another Dresser’s client, Pam-Nudelman in her State Bar Complaint writes same, including “Dresser's unethical conduct..is a danger to those unsuspecting consumers who hire him for legal services…Dresser created a fiasco and billed me in excess of $2,600 for a subpoena that should have cost under $100… Dresser billed me extensively for organizing my file… He also failed to adequately prepare…I was stunned when I received his enormous bill… I discovered Dresser propounded an inordinate amount of discovery.. was so excessive…Discover Master Nat Hales…wrote in his…Order

that Dresser's behavior “was not acceptable...there were personal accusations, interruptions in my attempt to have dialogue with [Dresser], a biting "edge" to statements and speech patterns, incorrect statements of alleged fact…physical and speech aggressiveness that created an unreasonably tense atmosphere”… Dresser billed me a staggering $92,431.91. This included $28,000 in checks made payable to me by the court which he had me endorse over to him," Because of his absence, Dresser failed to represent my interests…Dresser also failed to inform me of the nature of Respondent's settlement offer.".. despite my asking him…I felt coerced, and placed under extreme duress by his sudden abandonment of our agreement…He abandoned me after I paid him $94,439.06 for his representation….I felt duped and thus consulted a malpractice attorney who advised that despite Dresser's verbiage, he remained accountable for what occurred...he breached our settlement agreement and subsequently abandoned me resulting in a substantive loss…he did so to cover his mistakes by using me as his scapegoat… Dresser billed unconscionably and, after speaking to several attorneys since, has a reputation for questionable ethics…I currently have a cause of action against Dresser”-[CT.2049-2062].

State Bar ordered Dresser to return appellant’s files within 10 days of 6/25/2012, which to-date he refuses, but uses attorney-client privilege file material to advance his interests in this case-[CT.2157]

Dresser disowns mail + email service, abusing appellant’s *personal servers*-[CT.2173.¶1-¶3]-[CT.2248.¶1-¶4].

Attorney Reynolds adversely comments on Dresser’s malpractice-[CT.2226-2228].

Appellant/son repeatedly warned Dresser re. his misconduct-[CT.2768-2778].

4.1.2. Appellant's Son's Malpractice Cross-[X]-Complaint

On 12/2/2011 appellant' son files an attorney-malpractice X-complaint against Dresser-[1CT.15-38]-[CT.397:13-20], later amended-4/23/12-FAX-complaint-[CT.554-579]

4.1.3. Appellant's Attorney Malpractice Complaint

On 1/22/2013, appellant files complaint against Dresser (personally served on 3/12/2013-[CT.33]), alleging fifteen claims arising from Dresser's breach of [13]"Contingency-Fee" agreement-[CT.280-293]/attorney-malpractice in appellant's 2009-1-CV-147737[14] & 2010-1-CV-163310 cases[15]-[CT.3,¶II.], where Dresser caused appellant to leave her existing attorney-Reynolds touting his trial-experience-[CT.459], but abandoned appellant before trial.

Appellant discovered Dressers' unethical/abusive behavior after the fact: State Bar disciplining Dresser-[CT.412-425;684-697]; Dresser's suing hundreds of defendants in one case-[CT.426-429;698-710;33-437]; Dresser sued by his other clients-[CT.439;711]; State Bar complaints by Dresser's clients-[CT.445;717;484;487]; Office-staff's sworn affidavit of Dresser's unethical practices-[CT.461;580]; several third parties' sworn affidavits questioning Dresser's allegations/credibility-[CT.464-471]; other attorney complaints

[13] Disclosed by respondent despite appellant not waiving her attorney-client privilege by appellant.

[14] Later merged with 2009-1-FL-149682 case; Dresser withdraws on 2/8/2013-[CT.472;2568;2576]

[15] E.g. Per attorney Milford Reynolds, Dresser's defective expert witness disclosure cost appellant the case –[CT.185-192]

against Dresser-[CT.836], alleging under "¶.III.MR. DRESSER'S FALSE STATEMENTS TO COURT AND FALSE PLEADINGS AND DOCUMENTS"-[CT.837]. "¶V.HARASSING CONDUCT"-[CT.849], "¶VI. MORAL TURPITUDE INFERRED FROM PATTERN OF MISCONDUCT"-[CT.855]; Process servers' sworn affidavit re. Dresser's perjury-[CT.533;CT.618]

4.1.4. Dresser's Summary-Dismissal Tactics

On 4/11/2013 Dresser files a (1)-Motion to Strike-["MtS"], and (2)-Demurrer-[CT.111]; Appellant opposes-[CT.344] with "Request to Strike"-[CT.335;CT.358;CT.371]. On 6/21/2013, court *denies* "MtS", *overrules* demurrer, barring 4th, 13th Claim-[CT.922]. Also ¶5.1.30

On 7/1/2013 Dresser files Answer to 1/22/2013 Complaint.

On 7/1/2013, appellant files "First-Amended-Complaint" ["FAC"]-[CT.980]

On 7/30/2013 Dresser files a *second* "MtS" + *second* demurrer to appellant's "FAC"-[CT.2441A;CT.2442;CT.1430;CT.1435;CT.1934;CT.2192]. Appellant opposes-[CT.2449A;CT.2461;CT.2487;CT.2491]. Dresser replies-[CT.2533;2698]. On 10/18/2013 Court *denies* demurrer entirely–[CT.2807] and *denies* "MtS"-[CT.2815]

On 10/28/2013 Dresser answers to [redacted]'s FAC-[CT.2852].

4.1.5. Dresser Sues Appellant-Cross-[X]-Complaint

On 7/1/2013 Dresser files a cross-complaint alleging three claims against appellant-[CT.970]

On 10/28/2013 Appellant answers to Dresser's X-complaint.

4.1.6. Dresser's Two Complaints Arise From ***Same*** Events

In the "2011-1-cv-212974" case, [which lower court stayed on appeal, and which is pending appeal with this court-C082936] on 11/14/2011, Dresser sues appellant's son for the *very same events*-[CT.1260-1262, 5th-Cause-Of-Action("CoA")], that two years later on 7/1/2013, Dresser sues appellant in underlying-"2013-1-cv-239828" case.

Primary allegation is the same in both. Using Dresser's own 5th Cause of Action Title, Dresser suffered personal injury from appellant's son alleged "Tortious Interference With Contract" with appellant, causing damages *upwards* of $150,000-[CT.1261.¶34].

Compare with "239828"-[[16]CT.973, ¶15-19] appellant's son's alleged interference/obstructing/withholding /messing-up records causing $177,838.66 damages.

Upwards of $150,000 damages, and $177,838.66 damages, *arise from the same allegation*

Events are premised on Dresser's *only* contract with appellant ever, i.e. the two contingency fee agreements-[CT.280;CT.288]

"212974" *first* acquired jurisdiction over Dresser's claim of appellant's son's tortious interference with Dresser's contingency fee contracts with appellant.

4.2.Consolidate-Motion

For reasons above appellant moved to consolidate the two actions-[CT.93], which issue is pending C082936 appeal, see ¶5.7.

4.3.Appellant's Counter-Cross-Complaint

[16] Clerk's Transcript on Appeal

On 10/2/2013 appellant's request to file a "Counter Cross Complaint" is denied-[CT.2797;CT.2787], on 10/8/2013 stayed-"until I look into this issue of disqualification"-[RT.203:27-204:204:2] and eventually on 2/7/2014 "denied without prejudice"-[CT.3529-30]

4.4. Appellant's Default-Entry Requests

Appellant's 7/12/2013 "Request For Entry Of Default" is denied-[CT.1479-1480], despite Dresser's failure to answer within CRC.3.1320(j) *ten* day deadline, and worse, not answering the FAC.

4.5. Appellant's Deposition

See ¶5.1

4.6. Other-Discovery Disputes

On 5/6/2013 Dresser files a discovery motion-[CT.325;315;222]; Appellant opposes-[CT.625;584], objects/requests to strike-[CT.1054].

On 6/3/2013 Appellant files her own discovery motion-[CT.892;882;662;859;1008]; Dresser opposes-[CT.897]; Appellant replies-[CT.1062]

On 7/16/2013, Discovery-Judge Stoelker files "Order Re. Motion To Compel Initial Responses"-[CT.1077], ¶5.1.22

On 7/25/2013 Appellant files *second* discovery motion-[CT.1205;1208;1084;1219;1231]; On 8/5/2013, Dresser opposes-[CT.1455;1462]; Appellant replies-[CT.1539] & files "Supplemental Declaration]-CT.1850. On 8/22/18 Judge-Manoukian-["Manoukian"] files an order denying most of relief-[CT.1879]

On 6/14/2013, appellant files a "Motion For a Protective Order"-[CT.1545;1547;1561]. Dresser opposes-[CT.2511;2507].

Appellant replies-[CT.2782]. Judge Manoukian denies it on 10/8/2013-[CT.2800]

On 8/16/2013 appellant files "Discovery Motion For Terminating Sanctions"-[CT.1845;1837;1599]. Dresser opposes-[CT.1918;1887]. Appellant replies-[CT.1924]

On 9/17/2013 appellant files-[CT.2519]

Dresser's TS-Motion-See ¶5.1

On 11/19/2013 Appellant files a Discovery/Terminating Sanctions Motion-[CT.3104;3106;3112]. Dresser opposes-[CT.3415]. Appellant replies-[CT.3445]

On 12/3/2013 Dresser files a Motion to Quash Subpoena on State Bar-[CT.3196; 3189;3146]. Appellant opposes-[CT.3364]. Dresser replies-[CT.3410;3425]. Judge Manoukian quashes subpoena-[CT.3473]

4.7.ADA Accommodation

See ¶5.2

4.8.Interlocutory Ex-partes'

On 10/8/2013 appellant files ex-parte application on three issues-[CT.2803], see ¶5.9

On 1/7/2014 appellant files ex-parte on "Automatic Stay, Removal of Case to Federal Court"-[CT.3346;3350]

On 2/4/2014 appellant files ex-parte on "Scheduling Conflicts, Stay on Proceedings"-[CT.3514]. Dresser supports-[CT.3516]. On 2/7/2014 Court issues orders-[CT.3521-3532]

4.9.Default Against Appellant From Terminating Sanctions

See ¶5.1,¶5.3,¶5.4,¶5.5

4.10. Default Judgment

See ¶5.6 & ¶5.10

4.11. Sixth District's Recusal

On 8/10/2016, citing conflict of interest, this [Sixth District] Court grants "appellant's motions to transfer appeals [to an independent forum]". Supreme Court transfers to this [Third] District.

5. Reversal Grounds

5.1.12/17/13 Terminating-Sanctions-["TS"] Order

5.1.1. Review-Standard

De-novo review on "questions of law"-*Batarse v. Serv. Employees Internat. Union, Local 1000*, 209 Cal. App. 4th 820, 827, (2012)

Substantial evidence review on whether failure was willful,-*All. Bank v. Murray*, 161 Cal. App. 3d 1, 10, (1984).

Abuse of discretion review on discovery sanction. "'In a legal sense, discretion is abused whenever, in its exercise, a court exceeds the bounds of reason, all the circumstances before it being considered'",-*Crummer v. Beeler*, 185 Cal. App. 2d 851, 858, (1960) "A 'drastic' [penalty, without exhausting lesser sanctions] constitutes a clear abuse of discretion",-*Crummer*, 860

"[T]erminating sanctions are to be used sparingly, only when the trial court concludes that lesser sanctions would not bring about the compliance of the offending party"-*R.S. Creative, Inc. v. Creative Cotton, Ltd.* (1999) 75 Cal.App.4th 486, 496, Same-*Department of Forestry & Fire Protection v Howell* (2017) 18 Cal. App. 5th 154, 191.

"Its purpose is 'not to provide a weapon for punishment, forfeiture and the avoidance of a trial on the merits.'"-*Thomas v.*

Luong, 187 Cal. App. 3d 76, 81, (1986)

"Before imposing a terminating sanction, the judge should weigh a variety of factors, including "whether a sanction short of dismissal or default would be appropriate to the dereliction." *Deyo v Kilbourne* (1978) 84 CA3d 771, 796–797, (analyzing respondent's evasive and incomplete replies in relation to these factors, and concluding that default judgment was too drastic a sanction)", 4.Considering Less Drastic Sanction:, Cal. Judges Benchbook Civ. Proc. Discovery-["Cal.Judges-Discovery-Benchbook"]-§6.20

"Sanctions should generally be imposed in an incremental approach, with terminating sanctions being the last resort. 18 CA5th at 191. See *Creed-21 v City of Wildomar* (2017) 18 Cal. App. 5th 690, 701–702", *id* §6.20

5.1.2. 10/30/2013-Notice For 11/11/2013-Deposition

Falsifying record[17], Dresser mails appellant 10/30/2013-dated deposition notice-[CT.3020] for 11/11/2013-deposition date.

5.1.3. Procedural

Dresser's 11/14/2013 Terminating Sanctions-["TS"] Motion-[CT.2862;2878] based on irrelevant topics-[CT.2878-2881,¶2-¶3,¶5,¶7-¶9], e.g. Dresser's view on complaint merits, attaching irrelevant exhibits-[CT.2881-Exh.A to L].

Dresser's *conclusory* allegations on appellant refusing to appear at deposition, or communicate are unsubstantiated/unsupported.

Appellant opposes-[CT.3118;3134;3136;3223;3227]. Dresser

[17] E.g. "received no communication from [appellant]"-[CT.3020:18], when it is Dresser that ignored appellant's meet-&-confer-["M&C"], ¶5.1.8

replies-[CT.3199;3214]. Appellant objects to unserved reply-[CT.3311B]. Judge-Socrates Manoukian-["Manoukian"] grants TS against appellant-[CT.3311K]. Order entered on 12/24/2013-[CT.3311R]

5.1.4. Manoukian's Role

During [2013-2014]-times mentioned, Lebanon descent Manoukian was the *exclusive discovery & default-prove-up*-judge, the root-cause of this appeal.

5.1.5. [18]#1-Manoukian's Hostility/Predisposition vs. Appellant

Manoukian's unfavorable public reputation is unsurpassed-[Googling "Socrates Manoukian victims" yields 8,400 results, in 0.41 seconds[19]]

5.1.5.1. BEFORE-Federal-Action-&-Dresser's Poisoning

Manoukian behaved normally towards appellant, e.g. granting *entirely*, appellant's 1/17/2012-Request for ADA Accommodations-["ADA.Req"]-[CT.9/24/2018.AUG.SEALED.Attachment-to-Exhibit.A].

Also Manoukian's 8/15/2013 tentative "grants in part" with costs, appellant's RFA admitted-10/16/2018-AUG129, with pro-appellant comments in bubble:

> "**Comment**: I was not sure if it was appropriate or necessary to reference Mr. Dresser's smart-alecky

[18] Reversal ground#s

[19] https://www.google.com/search?source=hp&ei=4p_UW6KAI-ab0wLOopO4BA&q=Socrates+manoukian+victims&btnK=Google+Search&oq=Socrates+manoukian+victims&gs_l=psy-ab.3...881.7282..7422...1.0..1.299.2718.22j4j3.....0....1..gws-wiz.....6..0j35i39j0i131j0i20i264j0i10j0i22i30j33i160.8RVJGwtlT4I

> remarks to these. Maybe some admonition to remain professional?"
>
> **"Comment:** The amount is high, but it is the actual cost of serving. My assumption is that it doesn't matter how thick the papers in terms of the cost of service. Since she-[appellant] served all of the motions at the same time, it would be improper to parse amounts."

5.1.5.2. *AFTER* Federal Action→Blacklisted; Hostile

By Aug.2013, Dresser poisons-the-well/lower-court-judges, including Manoukian, blaming appellant's son as behind appellant's action, and attaching appellant's/son's 1/17/2013 ADA+civil rights lawsuit, against lower court, judges, court security/sheriff personnel[20]-[CT.1936;FAC-CT.2027;SAC-CT.2137]. E.g. SAC,-[CT.2147.¶38], complains of Manoukian's ADA denials. Both Manoukian and wife Bammattre-Manoukian, are named defendants.

As to defendant-Manoukian, among others, Federal-complaint-SAC alleges, the 6/24/2013/ongoing ADA-Req. denials, threats/retaliation, against son/appellant e.g. SAC.para.¶73 & ¶297

> "[son], going south-bound, passed by MANOUKIAN, who was walking northbound *on the sidewalk* somewhere between 161 N. First Street, San Jose, CA 95113 and the U.S. Post Office building south of it on 105 N. First Street. MANOUKIAN upon recognizing [son], threatened [son] and vowed with words to the effect that he, his spouse BAMATTRE MANOUKIAN, and the rest of the State's judiciary will make [son] and [appellant] pay dearly for their Federal action and other complaints"
>
> "¶72, ¶277. On or about Jan. 27, 2014 MANOUKIAN declared that the STATE COURT and its judiciary is prejudiced against PLAINTIFFS-[appellant+son]"
>
> "¶296. Ever since PLAINTIFFS informed

[20] Eventually defendants' paid/settled.

> MANOUKIAN, or ever since MANOUKIAN learned about the instant Federal action, PLAINTIFFS have been subjected to incessant retaliation, harassment, insults, defamation, threats, sabotaging, corrupting of, and conspiring with the State judiciary, sabotaging of PLAINTIFFS appellate cases, et al"
>
> SAC count XXI is against Manoukian+Bamattre

Federal-Court after 28.U.S.C.1915(e) review, allows certain claims to proceed-[CT.2906].

Manoukian's animus intensifies-8/16/2013: "You-[appellant's son] manipulated the situation by not having [appellant] be here"-[RT.105:11-12]. See fn.1 "[Son] is a Vexatious Litigant".

Appellant-favorable 8/15/2013 tentative ruling is reversed-e.g. despite acknowledging appellant's costs, **"because she is required to appear before the Court, this expense will not be granted**"-[CT.1881], and favorable ruling on deem admissions withdrawn-[CT.1880]-[CT.AUG.708]

-"Do not victimize my 84 year old mother because of your ill feelings, based on false assertions, about me"-[CT.AUG.720]

-"incessant personal attacks against me, false statements, name calling, et al." against appellant's son-[CT.AUG.719]

-Appellant from hereon refused CourtCall/court appearances-[CT.2800]-[CT.AUG.708]-[CT.AUG.712]

-Manoukian controls outcome "This matter will be heard by [him]"-[CT.2800].

-Creating false-record, controlling hearing-[CT.AUG.720.¶7]

-Referring appellant's son, just by first name, but Dresser as "Mr." Dresser-[CT.3311k].[CT.AUG.719.¶2]

-"The history of the litigation between the parties in this case

and in other cases is well-known to this Court"-[CT.2800]

-"This Court is on information and belief, of the impression that she has not filed any formal request for accommodation in this action"-[CT.2800,fn.3].

-Appellant's factual reference "to Mr. Dresser has-[sic-as] 'stalker, elder abuser, predator' as "uncivil behavior" warranting OSC-[CT.2800-2801].

-12/17/2013-"It is apparent to a casual observer that [appellant's-son] is engineering this lawsuit in the use of his mother's name"-[CT.3311K-fn.1]

-1/13/2013-Punishing appellant for her son's alleged deeds "You-[son] are behind it. You've been behind everything here"-[RT.308:11-28]

-1/27/2014-Same "This [default] is a situation of your [son's] own making"-[RT.605:25]

-On 1/27/2014 Manoukian states that Santa Clara County judiciary is prejudiced against [appellant's-family]-[RT.605.18-censored as "—"]

-12/17/2013, Manoukian, then abusing discretion, brazenly *blames appellant* for *Dresser's* Notice defects "Had Plaintiff been able to conduct yourself in accordance with the usual requirements of meet and confer, this would have been easily rectified"-[CT.3311L].

-Manoukian denies 1/13/2014 filed Media Request to Photograph, Record or Broadcast-[CT.3389], opaque proceedings.

"The purpose of..§ 2034d and the other provisions relative to discovery is not to provide a weapon for punishment, forfeiture and

the avoidance of a trial on the merits"-*Crummer*, 858,

5.1.6. #2-Manoukian Disqualified-Lack Jurisdiction

In 9/30/2013 Reply, appellant raised disqualification ["DQ"] as first/"Threshold Issue"-[CT.2782]. DQ ignored.

Week later, on 10/8/2013, appellant again raises DQ, on Ex Parte basis, as "Issue#2&#3"-[CT.2805]. "At..ex parte hearing, the Court (Judge Carol Overton) held that the ex parte application raises serious issues, including disqualification of Judge Manoukian, Superior Court, issues of prior discovery ruling re. deposition..Judge Overton stated on record that all activity will be on hold until she researches issues raised by [redacted]'s ex-parte…(see Exhibit B. Court's Minute Order)"-[CT.3140:19-24]-[CT.3368.¶8]

On 12/26/2013, appellant again raised DQ "Adjudication of 10/8/2013 pending Ex-parte Application and removal of case to Federal Court/Issue of Automatic Disqualification of Superior Court"-[CT.3319.¶16].

Dresser's own response admits pending appeal, *including* DQ-[CT.3332A:20-25].

On 1/7/2014, appellant raises another DQ-[CT.3346.¶4].

Same on 1/9/2014-[CT.3365.¶IV.1]-[CT.3369.¶3]

On 1/10/2014 appellant files DQ against Superior Court-[CT.3376] citing prior 8/9/2013 "DQ"-[CT.3376.¶2]. Appellant cites named judges as adversarial defendants in her Federal Court action, embroilment, predisposition, and more-[CT.3377.¶3-¶38], asking case removal to federal court.

Four months later, on 1/17/2014 Manoukian *denies* appellant's 9/23/2013 filed DQ on merits-[CT.3407], which itself is untimely-

§170.3(c)(3).

"[D]isqualification occurs when the facts creating disqualification arise, not when disqualification is established"-*Christie v. City of El Centro,* 135 Cal. App. 4th 767, 776, (2006). Per "California Supreme Court [in (*Giometti v. Etienne* (1934) 219 Cal. 687, 688–689, 28 P.2d 913] it is the *fact* of disqualification that controls, not subsequent judicial action on that disqualification"-*Christie*, 777 (original *italics*), see also *Rossco Holdings Inc. v. Bank of America* 149 Cal.App.4th, 1353, 1363.

"The acts of a judge subject to disqualification are void or, according to some authorities, voidable"-*Christie*, 776. "Because an order rendered by a disqualified judge is null and void, it will be set aside without determining if the order was meritorious",-*Christie*, 777. Void acts can be challenged *by anyone, at any-time*.

Next, Manoukian may only file an answer, not rule on the *merits* of his *own* DQ-§170.3(c)(3) & (5)

Next, Manoukian *commits perjury under oath* that "no Request for Accommodation under the Americans with Disabilities Act was requested by Plaintiff this case". Not only did appellant's son present appellant's ADA-Req. personally to Manoukian in Dep.#19 on 6/28/2013, but record supports appellant's ADA-Req. on file as early as day-1, 1/22/2013-filing of complaint, and subject of recurring discussion at every Manoukian's hearing in 2013, see ¶5.2.

Not only is "DQ-denial" problematic, but jurisdiction is questioned, given Manoukian cannot pass *on his own* DQ, & given Judge-Overton's 10/8/2013 "stay until ruling on appellant's DQ against lower court" due to parallel Federal Court action conflict.

Since Manoukian's DQ denial is *unauthorized by law*, on *de-novo* review, issued *without jurisdiction*, it renders interim orders *void*, strickable on remand.

5.1.7. #3.10/8/2013 Judge-Overton's Stay/Hold, Pending DQ

Per above, on 10/8/2013, appellant raises DQ, under "¶3.Issue#2" alleging since the Federal Court Action, appellant is victimized, retaliated, punished, with biased, arbitrary, pre-determined rulings, devoid of facts/merits, refusing a fair opportunity and access to justice, obstructing redress of grievances, repeatedly holding non-party-son's vexatious litigant status adverse to appellant, asking "case be moved to..an independent and objective judiciary"-[CT.2805].

Under "¶4.Issue#3" appellant reminds court of prior DQs, that court *may already be* disqualified, and reminds on stay pending H039806-[C082936] appeal.

At 10/8/2013, Judge-Overton "read the papers, [confirming] there is an allegation there that this court has been challenged and cannot preside over the matter"-[RT.202:20-22], adding, "I'll have to look into this issue of a challenge,…will not be able to address the matter substantively this morning"-[RT.203:3-6].

Judge-Overton holds everything, including appellant's cross-complaint: "That's the merits of the issue and until I look into this issue of disqualification—I reserve judgment on that"-[RT.204:1-4].

Matter reconvenes on 1/6/2014. Judge-Overton notes "[Federal] lawsuit-[sic] against judges..if I was sued I would not be hearing this matter right now"-[RT.410:18-28]

"One of the judges who has been very much an active Defendant in the Federal court case is Judge Manoukian, who has

been—for lack of a better word--discriminatory, denying ADA accommodation only to Ms. [redacted] All the parties on the calendar are allowed ADA except Ms. [redacted] And the rulings from Mr. Manoukian are nothing short of retaliatory gestures, and he had said so..When we have a Federal court case where [appellant] is suing the Santa Clara County Superior Court and some of the judges for not allowing ADA accommodations, and we have in this case a Santa Clara County Superior Court ruling on her other matter with Mr. Dresser, the members of the public has some doubt of the impartiality of the Court — besides the fact whether Mr. Manoukian is sitting"-[RT.414:6-21].

"[Appellant]—we are both Plaintiffs—and the Defendant is Santa Clara County Superior Court and certain judges…But you're part of the Santa Clara County Superior Court, which raises the conflict of interest, a major conflict of interest"-[RT.416:6-14]. Federal Court Case #13-0228 Norther District-[RT.421:13-24]

Judge-Overton replies "that's something that I would obviously have to look into"-[RT.416:18-19], adding "[a] question has been raised about potential conflict of interest..I would need to look into…the ethics of hearing and considering a matter while apparently there is a Federal court case pending… the entire bench of Santa Clara Superior Court…a defendant in this case…I would need to look into whether that poses some problems, ethically-speaking, independent of my belief that I could be fair in this matter"-[RT.424:28-425:20]

Re. "automatic stay, my attorney filed an automatic stay on appeal, not a writ..It is an appeal…, which among other orders,

contests or challenges [appellant]'s motion to consolidate her case, which is this case, and [son's] case with Mr. Dresser…when the law of appeals states that until you file an appeal everything gets stayed, which is affected by the appeals or embraced by the appeals"-[RT.414:25-416:25].

"When an appellate court takes over jurisdiction, which it did on June 2013, the Superior Court was divested and removed from jurisdiction.. Any orders in the companion case, or this case, affecting the merits of the case are void to begin with. They are not even valid…And now the companion case is on appeal status review. And Mr. Dresser is aware of that…in his response he agreed with my position. [T]he Superior Court, does not have jurisdiction.-[RT.417:8-28]

Appellant reiterates "Automatic stay pending appeal [citing] §916(a)..The appeal number H039806 is pending with the Sixth District Appellate Court, which [h]as not issued any remittitur"-[RT.418:20-419:24]

Appellant argues "Interim orders are void, and should be vacated-[RT.420:6-17]

Fifteen-days thereafter, appellant reminds Judge-Overton re. pending issues-[CT.AUG.693]

30-days from 10/8/2013, appellant re-reminds Judge-Overton re. pending issues-[CT.AUG.696]

On 1/5/2014, appellant emails courtesy copy re. Federal Complaint-[CT.AUG.698].

To enforce Judge-Overton's 10/8/2013 oral stay, on 1/8/2014 appellant re-re-reminds on 10/8/2013 resolution-[CT.AUG.700].

On 1/30/2014 Judge Overton hears DQ/Stay-“the issue of a potential conflict in terms of the ruling of substantive matters. And I am looking into that [proposing further continuance]”-[RT.703:12-18]. Same “There was an issue regarding a conflict by the Court that I still need to address. And that's going to be the new date”-[RT.706:1-3]. “I do have an ex parte [DQ/Stay] request that is under submission”-[RT.707.7-8].

Not seeing any DQ resolution, on 2/4/2014 appellant raises it-[CT.3514] complaining that Judge-Overton stayed the case, but Manoukian hears Dresser’s post-stay motions-[CT.3514.¶3-¶4]. At 2/4/2014 hearing, Judge-Overton re-re-confirms stay due to DQ: “There was a question about whether this Court had a conflict or not, and I'm still looking into that issue. I [am open only to procedural matter]. Otherwise, I'm going to have to hold off on hearing any contested matters. Either I will consider them or they'll be reassigned, and that decision will be made shortly…I'm not going to entertain argument on a contested matter this morning in light of the question about a potential conflict of interest which was raised by [appellant] in some earlier papers…I am looking into that issue,..will have a response..shortly”-[RT.803:12-804:2]

On 2/7/2014 Judge-Overton finally orders/schedules 2/20/14 hearing re. stay+orders lacking jurisdiction-[CT.3525] and denies “Issue#1” of appellant’s 10/18/2013 filing-[CT.3529], leaving DQ – [Issue#2&#3] unaddressed to-date.

Since Judge-Overton ordered stay on contested matters, pending decision on raised DQ-[CT.3140.¶IV.C.13], upon de-novo review, *interim orders are void*, strickable on remand.

5.1.8. #4.Automatic-Stay Pending Appeal

Undisputed then, [even now], a *separate* 6/24/2013- initiated appeal.no.H039806/C082936-[CT.3330] remains pending, challenging the 5/28/2013 denial of appellant's consolidate motion-[CT.640;3327]

Appellant's 3/29/2013 Consolidate-motion-[CT.93] is filed in, and impacts, *two* cases, i.e. [C082936-(underlying-case-"2011-1-CV-212974")], and [instant C082948-"2013-1-CV-239828]. Manoukian confirms this-[CT.3473]

Stay makes sense as if "C082936-appeal-court" reverses the 5/28/2013-order, all orders, *after* 5/28/2013 order, become moot.

Examples where "stay"/jurisdiction-[CT.3141.¶17] raised:

-8/14/2013-Motion for Protective Order-[CT.1557:8]

-10/8/2013-Exparte Application, Issue#3-[CT.2805:21]

-11/4/2013-"Objection#2-Discovery is stayed [§916(a)] due to pending appellate cases H039806, H040275"-[CT.3033]

-12/2/2013-Opposition to Dresser's TS Motion-[CT.3136.¶3;CT.3138.¶3;CT.3141.¶17]

-12/11/2013-Request To Strike-[CT.3311C:1-2]

-12/26/2013-Notice of Stay of Proceedings-[CT.3312]

-12/27/2013-Notice Of Motion, And Motion For Automatic Stay-[CT.3320;CT.3321;CT.3325]

-1/7/2014-Ex-Parte Application On Automatic Stay-[CT.3346]

-1/9/2014-Opposition to Quash-[CT.3364:16-17]

-1/9/2014-Ex-Parte Application-[CT.3369]

-1/9/2014-Appellant's email to Judge-Overton-[CT.AUG.702]

-1/15/2014-Relief from Default-[CT.3397]

-2/4/2014-Ex-Parte On Stay on Proceedings-[CT.3514]

-2/11/14-Motion For §916(a) Stay On Appeal-[CT.3533]

Next, lower-court lacks *jurisdiction*. The C082936-court retains jurisdiction over the subject matter, which per §916(a) includes the 5/28/2013 "order appealed from, or upon the matters embraced therein or affected thereby, including enforcement of the order".

TS-Order's reasoning-[CT.3311L] does not question the impact of appealed consolidation denial order on the underlying case, rather despite confirming "pending appellate writ petitions and appeals", rejects stay, because "no order from the Court of Appeal-["CoA"]".

§916(a) automatic stay is self-executing, no CoA order necessary. §916(a) express language "stays proceedings", *without* a CoA stay-order.

"The purpose of the automatic stay provision of §916(a) "is to protect the appellate court's jurisdiction by preserving the status quo until the appeal is decided", *Varian Med. Sys., Inc. v. Delfino*, 35 Cal. 4th 180, 189, (2005)

Despite aware of "self-executing" part, duplicitously/partisanly, when roles were reversed Manoukian applied §916(a), *without* a CoA order *against* appellant-[CT.3372:25-3373:5] but not vice-versa here, implicating the XIVth Amendment equal protection under law clause.

Worse, since deposition-notice cites/is in "212974" stayed-case/appeal-[H039806/C082936], where Judge-McKenney/lower-court *affirmatively* granted stay-[C082936.RT.153:22-156:25], pending to-date, Manoukian's "no stay-order" reason fails, notwithstanding other flaws.

On *de-novo* review, lower-court lacked jurisdiction to make

orders defying §916(a) "and that the resulting judgment is therefore void", *Varian*, 196, strickable on remand.

5.1.9. #5.ADA Accommodation On Deposition

All along appellant is open to deposition, subject to her disability accommodations-[CT.3141.¶IV.D].

See "Objection #19:Non-remote deposition can…be had upon [appellant]'s ADA/medical accommodation. Notice does not offer the necessary ADA accommodation"-[CT.3034]..

See ¶5.2,¶5.1.31 TS should be reversed as appellant, being medically ordered not to travel, etc., acted reasonably, is substantially justified given ADA/disability accommodations.

"§2025.310 authorizes depositions by telephone and other remote electronic means, such as videoconference and the internet", A. In General-["Cal.Judges-Discovery-Benchbook"]-§15.62.

5.1.10. #6.Discovery Closed; Notice Defective

Dresser sued *both* appellant, and *separately* her son in 2011-1-CV-212974 case.

11/11/2013-deposition Notice is in "No:1-11-CV-212974" case, same in prior deposition notice-[CT.936].

On its face, Dresser's deposes appellant *as non-party* in "212974" case.

By then, discovery cut-off expired on "212974" case; see web-docket entry, under "hearings":"Dept.20, Conference: Trial Setting, 7/23/13, 11:00 a.m. Set for Trial"[21].

Appellant is substantially justified in "Objection:#1: Discovery

[21] https://portal.scscourt.org/case/NDAyMzY0

is closed on the case cited by the "Notice" §2024.020”-[CT.3033:5;CT.3138.¶IV.B.3].

“Before granting a motion [on deposition], the judge should determine..in the case of a party deponent's failure to obey a deposition notice, whether the deponent served a timely written objection to the notice [CCP§2025.410(a), (b)]”, D.Judge's Checklist-[“Cal.Judges-Discovery-Benchbook”]-§15.40

Next, being non-party in “212974” case, Dresser must serve “deposition subpoena”-[CT.3138.¶IV.B.4]-[CT.3138,¶10]. Dresser argues on affidavit, but avoids lack of “deposition subpoena” part-[CT.2874:3-9].

Manoukian distorts appellant’s “non-party” objection, and discovery motion filed in wrong-case-[vs. 212974 case]-[CT.3136.¶I.1]-“She claims that there is an incorrect case number on the notice of the deposition. This number refers to other litigation between the parties”. Appellant never claimed incorrect case#.

Manoukian, abuses discretion, *blaming appellant* for *Dresser’s defects* “Had Plaintiff been able to conduct yourself-[sic] in accordance with the usual requirements of meet and confer, this would have been easily rectified”-[CT.3311L].

Burden on notice-defects is not appellants’, but Dresser’s.

Not only defective “212974”-case deposition-notice objectionable/untenable, but appellant is substantially justified.

Blaming wrong party/appellant is bad enough, penalizing with terminating sanctions is egregious.

5.1.11. #7.Untimely Notice

Undisputed:

(1)-Dresser *alleges* service by personal and Fedex delivery-[CT.3028], addressed to appellant's *mail-box* address, where appellant does *not* reside, despite Dresser aware of appellant's then residence-see Deposition-Notice-[CT.3027.¶53]. Appellant denied/never personally served.

Re. personal delivery, server does not indicate, time, circumstances, who, or where personal delivery made. Even date of service says "below referenced date" without a date-[CT.3028]. Since appellant disowns personal service, and since proof is defective, Manoukian errs on personal service-[CT.3311M].

Re. Fedex, Manoukian'-TS-Order's errs is taking Dresser's staff's *self-serving* proof of *placing* for Fedex *pick-up* vs. Fedex's *own* personal-delivery *proof*. Among Dresser's over-sized ~200+pages TS-Motion with ~20 exhibits, no Fedex-delivery-proof.

§1011 requires personal delivery to the party, or, per §1011(b) "service,..by leaving the notice or other paper at the party's residence [*not mail-box*], between the hours of eight in the morning and six in the evening [*service proof lacks delivery time*], with some person of not less than 18 years of age [*service proof states none, let alone identify a adult]*. [Absent all] the notice or papers may be served by mail".

(2)-Dresser's oversized ~200+ pages with ~20 exhibits, has no Fedex service/signature-proof, rather self-serving staff's service-proof of "placing…for…Fedex-[pick-up]"-[CT.3028].

Manoukian errs as "the service was not properly completed by personal service of process because (1) the proof of service was completed by the person who deposited the package of documents

with FedEx, rather than by the FedEx delivery person..; (2) [appellant] denies being [served by Fedex]; and (3) without a declaration by the FedEx delivery person, there is no way to verify who received the package…Proof of service allows a court to determine if service has actually been made. (*Oats v. Oats* (1983) 148 Cal.App.3d 416, 420.) Accordingly, considering (1) [appellant]'s denial that he received the package from the FedEx delivery person; and (2) the lack of a proper proof of service, a court could not reasonably determine [when and if appellant] was properly served", *Obeng-Amponsah v. White Mountains Servs., LLC*, 2010 WL 455348, at *6 (Cal. Ct. App. Feb. 10, 2010).

"Dresser could have easily avoided this problem by (a) asking [appellant] to arrange a..pick up from Dresser's address, or (b) accept [appellant]'s longstanding proposal of email as a mode of service, which Dresser steadfastly refuses, or (c) schedule a deposition date to accommodate the *increased* time on service. Further per *Ellard* v. *Conway* 114 Cal. Rptr. 2d 399, at 403, - Cal; Court of Appeal, 4th Appellate Dist., 3rd Div. 2001, "substitute service at a private post office box was improper…because there was an alternative means of service. The court stated, "'[A] statutory method has occasionally been held insufficient where a better method could just as well have been prescribed.' [Citation.]" (Id. at p. 614.)" [Appellant] is not dodging service. Dresser has the option of, and [appellant] is open to, substitute service(s) by U.S. mail, courier, email, et al. Deposition date is defective/premature"-[CT.3140.¶IV.B.12]

(3)-Appellant objected-[CT.3033.¶4] "Objection #4: The "Notice" is defective and insufficient §2025.270(a) plus additional

days for non-personal service §1005(b). No personal service of Notice was made on [redacted]" Also [CT.3139.¶.IV.B.12].

(4)-Per §1005(b) "if the notice is served by mail, [act due]..shall be increased by five calendar days", and "if the notice is served by facsimile transmission, express mail, or another method of delivery providing for overnight delivery, [act due] shall be increased by two calendar days". Order confirms, even citing §1013(c)-[CT.3311M]

(5)-Per §2025.270(a) "An oral deposition shall be scheduled for a date at least 10 days after service of the deposition notice".

(6)-Service of deposition was allegedly initiated on 10/30/2013. Either way, deposition-notice for 11/11/2013 depo.date is untimely.

(6)(a)-If Fedex next day delivery is credited, deemed served on 11/2/2013-[increased by two calendar days]. Earliest date for deposition [ten days *after* service of deposition notice] is 11/12/2013,.

(6)(b)-Without Fedex-delivery/service proof, service deem as regular mail, adding five calendar days, i.e. on 11/5/2013. Earliest date for deposition is 11/15/2013,

11/11/2013 deposition-date is untimely per §2025.270(a). Appellant's objection valid. Manoukian errs-[CT.3311M]

Dresser could have cured above by moving the date, but did not.

5.1.12. #8-Violates §2025.240(a); Not All Parties Noticed

Deposition-notice is on "212974" case-[Dresser suing (appellant's son)], seeking non-party/appellant's deposition.

Appellant's son, the "212974" party, not noticed on deposition. Appellant objects. "Objection#7: The "Notice" fails to comply with §2025.240(a)"-[CT.3033]. Also [CT.3138.¶.IV.B.6].

Per §2025.240(a) “The party who prepares a notice of deposition shall give the notice to every other party who has appeared in the action. The deposition notice, or the accompanying proof of service, shall list all the parties or attorneys for parties on whom it is served”.

As deposition-notice is defective/not code compliant, appellant substantially justified in objecting.

Noteworthy is that Dresser’s prior notice was also objected on same grounds. Yet Dresser failed to clarify/cure defect.

5.1.13. #9.Violates §2025.240(b); Seeks 3rd Parties’ Records

Deposition-notice seeks third parties’ records, violates privileges,[22]-[CT.3020-27.¶8,¶16,¶17,¶18,¶19,¶27,¶28,¶33,¶45,¶46, ¶47,¶48,¶49,¶50,¶51,¶52,¶53]

No consumer notice to third parties impacted by deposition request. Appellant objects. “Objection #8: The "Notice" fails to comply with §2025.240(b)” Also “Obiection#11:Notice fails to comply with §1985.3. §1985.6, §1985.3(f)”-[CT.3033]. Also [CT.3138-9.¶.IV.B.7-9].

Per §2025.240(b) “If, as defined in subdivision (a) of Section 1985.3 or subdivision (a) of Section 1985.6,…the deponent is a witness commanded…to produce personal records of a consumer or employment records of an employee, the subpoenaing party shall serve on that consumer or employee all of the following…”.

As deposition-notice is defective/not code compliant, appellant substantially justified in objecting.

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[22] “Objection #14: Notice seeks discovery that is protected by multiple legal privileges”-[CT.3033] Also [CT.3139.¶.IV.B.11].

Noteworthy is that Dresser's prior notice was also objected on same grounds. Yet Dresser failed to clarify/cure defect.

5.1.14. #10.Deposition Untimely §2025.270(c); Not 20 Days

Where deposition seeks third parties' records, it must be set 20 days *after* service of deposition subpoena. Since 11/11/2013 is not 20 days from 10/30/2013, date of deposition-notice, vs. a subpoena, nor service date of notice, appellant is substantially justified in objecting.

"12. Objection #12: The "Notice" fails to comply with §2025.270(c)"-[CT.3033]. Also [CT.3138.¶.IV.B.5].

Per §2025.270(c), "if, as defined in Section 1985.3 or 1985.6,…the deponent is a witness commanded…to produce personal records of a consumer or employment records of an employee, the deposition shall be scheduled for a date at least 20 days after issuance of that subpoena".

5.1.15. #11-Deposition Canceled

88 year disabled appellant has no phone, is totally dependent on her care-giver for almost everything.

Appellant's opposition to TS-motion, includes sworn 12/2/2013-"Declaration of Witness [care-giver]…"-[CT3134] stating:

> "[o]n Nov 8, 2013 at 9:03 am[23], Dresser called and abused me stating that he was responding to [redacted]'s objections to deposition; that Nov. 11, 2013 deposition is canceled. Dresser then threatened me and [redacted] (not present) with profanities and if [redacted] did not dismiss her claims he would destroy us. I told Dresser to

[23] "This corroborates with Dresser's Nov. 14, 2013 Declaration at p.2:23-"I spoke only to [appellant's-son], as I have never had a call to me from [appellant], on Friday, November 8, 2011. He insisted in this call that I cannot speak to [appellant] but must write to her"

> communicate directly with [redacted] in writing, including re. the deposition cancelation and to stop further abuse I politely ended the call. Should the Court require, I can present the call log"-[CT.3134.¶5]

Per appellant opposition "[o]n Nov. 8, 2013, Dresser called [appellant]'s son…and canceled the deposition"-[CT.3141.¶IV.C.14]

When asked "So why haven't you submitted to a deposition?" appellant replied "Because one day before the deposition, that is on Friday, Dresser canceled the deposition"-[RT.305:23-306:14], also disproving Manoukian's "reading from paper", or "son controlled" theories.

11/8/2013, cited in caregiver's sworn declaration, is that Friday.

Dresser "unambiguously communicate[d] his expectation to" witness/caregiver to be relayed to appellant-*Jolley v. Sutter Coast Hosp.*, 2007 WL 3045194, at *2 (Cal. Ct. App. Oct. 19, 2007)

For self-serving reasons, Dresser lied/disowned it-[RT.306:18-307:18] narrating irrelevant support, e.g. his alleged calls to caregiver [not appellant] *on* [11/11/2013] *the deposition day*.

Witness-caregiver, testified "He did call and cancel"-[RT.307:19].

Dresser's own staff/employees state under oath that Dresser routinely lies-[CT.461-463;CT.578.¶5]

At best, deposition cancelation is a ***disputed*** fact.

Unlike an open-minded fact-finder, without hesitation, without inviting evidence/witnesses, Manoukian's bias, prejudice, predisposition triggers a predisposed reaction: "I don't believe you-[witness/caregiver son]"-[RT.307:20-23]

Witness/caregiver countered with corroborating evidence:

"Well, how about my phone record? Would you believe that?"-[RT.307:24-25].

Predisposed Manoukian, refused to receive evidence, stating "We're done"-[RT.308:2]. Manoukian cannot face the truth-[CT.AUG.720.¶6]

Even in worse scenario with pending communications between parties on agreeable deposition date, one side's refusal to grant additional time, trial court abused its discretion, on terminating sanctions/default judgment after defendant failed to appear at date set for taking of deposition-*Crummer v. Beeler* 185 Cal.App.2d 851, (1960).

Au contraire, Dresser, sanctionable for appellant's expenses, not vice-versa, see case-law where deponent deceived/misled-*Rosen v. Superior Court for Los Angeles County* (1966) 244 Cal.App.2d 586, 595-596.

Noticing deposition, canceling on short notice, constitutes harassment/discovery abuse.

Per §2025.430 deposition absence is unsanctionable, if "[deponent] acted with substantial justification or that other circumstances make the imposition of the sanction unjust".

Appellant acted reasonably, substantially justified, in presuming that the deposition would not proceed given a timely and clear communication from Dresser.

If Dresser is credited, at best, appellant was misinformed. Absence not willful. No detriment, as Dresser could set a date honoring appellant's ADA accommodations.

In imposing terminating sanctions, trial courts consider "the

totality of the circumstances: conduct of the [offending] party to determine if the actions were willful; the detriment to the propounding party"-*Lang v. Hochman* (2000) 77 Cal.App.4th 1225, 1246.

Next, appellant had no reason not to believe/rely on her caregiver, given her total reliance on caregiver on all matters.

Notwithstanding, why should appellant be penalized if Dresser lied, or at best, if caregiver misheard Dresser?

"[S]anction prescribed here, however, exceeded the court's legitimate prerogatives and requires us to reverse"-*McArthur v. Bockman*, 208 Cal. App. 3d 1076, 1081, (1989)

Next, above falls squarely under §473(b) default vacate, see ¶5.4, since appellant was misled due to no fault of hers

5.1.16. #12-Wrong "Venue"

Notwithstanding other defects, TS-order cites Judge-Stoelker's 7/16/2013 order, "that the deposition occur at Dresser's office"-[CT.3311K].

But Dresser notices-[CT.3020:22-23]/appears for deposition at *different* venue, "Talty-Court-Reporters" office-[CT.3183.¶16].

Appellant objected-[CT.3033]-"Objection #5: The "Notice" is defective and not code compliant §2025.220". Also [CT.3141.¶16]

If appellant is bound by 7/16/2013 order, notwithstanding ¶5.1.22, appellant is substantially justified in objecting location different from one ordered.

5.1.17. #13-Deposition On 11/11/2013-Judicial/U.S.Holiday

Appellant's "Objection#3: Deposition cannot be on judicial holiday §10, 12b, §133, §135, Gov. C. §6700"-[CT.3033:7], including because knowing Dresser, appellant anticipated trouble. Holiday

forecloses *immediate* court relief on deposition disputes-[CT.3141.¶15]

Per §10 "Holidays…are every Sunday and any other days that are specified…as judicial holidays in Section 135".

Per §133, §135 judicial business cannot be transacted on Govt. C§6700 designated judicial holiday.

Per Govt. C§6700(a)(13) "November 11th, known as "Veterans Day"" is a state/judicial holiday.

Per §12, "performance of any act provided or required by law" is excused/extended, if it falls on holiday.

Where last day for filing claim against city falls on November 11, claim may be properly filed on following day, since November 11, being a legal holiday, must be excluded-*Shea v. City of San Bernardino* (1936) 7 Cal.2d 688.

Dresser argues "no deposition prohibition on judicial holidays"-[CT.2864:21-22].

Manoukian echoes same "unable to find any authority that a deposition cannot be noticed for a legal holiday" calling objection, "outlandish claims"-[RT.305:12-22]

No law prohibiting deposition after-hours.

Protocol precludes holidays/weekends. See Sacramento County Public Law Library[24] sample Deposition notice, on date, states "Sundays and holidays excepted"

Courts same: "No depositions may be scheduled on…federal holidays"-*Fed. Hous. Fin. Agency v. UBS Americas, Inc.*, 2012 WL

[24] https://saclaw.org/wp-content/uploads/sbs-discovery-depositions.pdf

5954817, at *5 (S.D.N.Y. Nov. 28, 2012)

"[No] depositions may be scheduled on…national or religious holidays", § 62:139.Deposition protocol, 6 Wis. Prac., Civil Procedure Forms § 62:139 (3d ed.)

Objection that "depositions were noted for a federal holiday [is] well taken"-*Collins v. Pierce Cty.*, 2011 WL 766220, at *3 (W.D. Wash. Feb. 24, 2011)

"[O]bjects to the deposition occurring on a Sunday, "a legal holiday and traditional day of rest and religious observance""-*Logue v. Gray Ins. Co.*, 2011 WL 918073, at *2 (W.D. La. Mar. 14, 2011)

"Although not prohibited, depositions…that are scheduled for Sundays or legal holidays…are presumed unreasonable under one local-court rule", 68 Tex. Jur. 3d Sundays and Holidays § 9

Court's invariably orders deposition "so long as they take place on weekdays (excluding holidays) between the hours of 8:30 a.m. and 6:00 p.m."-*Maxwell v. MGM Grand Detroit, LLC.*, 2007 WL 3379679, at *3 (E.D. Mich. Nov. 13, 2007)

California law appears silent on after-hours/holidays, *as long as* parties agree. Here, appellant objected.

Dresser could have picked a *non*-holiday date vs. ~200+ pages motion burdening court+parties-[CT.3141:6-8].

No case-law precedent forced a deposition on holiday/after-hours, *after* deponent objects, a *first-impression* issue.

5.1.18. #14-Appellant Suffers For Hatred Against Son

To facilitate disabled person's communications with public entity, the ADA law/28 CFR 35.160(a), permits latter to communicate with disabled's "companion", "mean[ing] a family member".

Manoukian disregards law, worse, retaliates, repeatedly ruling adversely against appellant citing son's legally authorized 28 CFR 35.160(a) communication help, creating false record that son's engineering appellant's action-[CT.3311K.fn.1]; 1/13/2013"You-[son] are behind it. You've been behind everything here"-[RT.308:11-28]; 1/27/2014-"This [default] is a situation of your-[son's] own making"-[RT.605:25]. Also ¶5.1.5.2

Manoukian repeatedly shuts companion out, with threats/abuse even when companion is speaking for himself-[RT.303:21-25]

> See Federal SAC "298-300. [D]espite [appellant's-son] *not* being a party to [redacted]'s case, or before MANOUKIAN, the latter kept publishing to, and asserting to the world that "[appellant's son] is a Vexatious Litigant". Dragging [son] into a matter where [he] is not involved is not only irrelevant but supports MANOUKIAN's bad faith motive to defame, injure, hurt, et al. [appellant's-son].

Lower-court may not impose sanctions designed to impose punishment-*Rail Services of America v. State Comp. Ins. Fund* (2003) 110 Cal.App.4th 323, 331-332

5.1.19. #15-Appellant "Shut-Out" From Being Heard

Despite court confirming CourtCall permissible on discovery motions, despite appellant arranging CourtCall-[AUG173], despite appellant *physically* appearing once due to Manoukian's forced appearance-[AUG353-"CourtCall will not be allowed"], appellant remained "shut-out" from being heard.

Appellant: "But you give me chance to speak".

Manoukian-"No. That's it. We're in recess"-[RT.390:7-18],[CT.AUG.705.¶2]

Default "entered as a discovery sanction [reversed as defendants] were not provided an opportunity to be heard on the matter"-*Sole Energy Co. v. Hodges*, 128 Cal. App. 4th 199, 202, (2005). "[O]rder striking…and entering its default, violated due process; the orders are therefore void", *id*, 830–31.

"A judge may impose termination as a sanction under the Discovery Act only after…[t]he party has been given an opportunity to be heard regarding the disobedience. *Ruvalcaba v Government Employees Ins. Co*. (1990) 222 CA3d 1579, 1581", 2.Disobedience of Order Required-["Cal.Judges-Discovery-Benchbook"]-§6.18

See §2023.030 "and after opportunity for hearing"

Reversed where "court's actions deprived [party] of his due process right to a fair hearing"-*In re Marriage of Carlsson*, 163 Cal. App. 4th 281, 284, (2008).

5.1.20. #16.Dresser's TS-Motion Defective

Appellant objected-[CT.3137-3138]:

(1)-Dresser's motion should be filed in "212974" case, the case of deposition notices.-[CT.3137.¶IV.A.1]. Manoukian's 12/17/2013-TS-order ignores objection, covering up Dresser's defect by blaming appellant: "Had Plaintiff been able to conduct yourself in accordance with the usual requirements of meet and confer, this would have been easily rectified"-[CT.3311L]

(2)-Dresser's TS-Motion was purportedly served via Fedex on 11/14/2013, scheduled for 12/13/2013 hearing date. However, per

¶5.1.11, absent Fedex service-proof, appellant's denial of next day service, constitutes service by regular mail at her mail.box address.

Per §1005(b), five calendar days are added to sixteen court days' notice period-[CT.3137.¶IV.A.2]. In 2013, 11/28/2013 and 11/29/2013 were court holidays[25]. "Dresser knows [appellant]'s address is a *mailing* address [and not a residence address]". Calculating from 11/14/2013 motion-issuance date, sixteen court days comes to 12/10/2013, after accounting for 11/28 & 11/29 court holidays. Adding five calendar days, the earliest date is 12/16/2013.

As motion is set for 12/13/2013, it is untimely. Appellant prejudiced, insufficient time to oppose/object.

Manoukian's–TS-Order confirms that "CCP §1005(b),…a noticed motion must be filed at least 16 court days before the hearing date. Additional court days are added when Notice is sent through mail"-[CT.3311M].

However Manoukian disregards untimeliness by misconstruing manner of service [regular mail *without* Fedex next day delivery proof], and because flawed belief that "court dates to hear a motion for terminating sanctions do not need [appellant's] approval"-[CT.3311M]

Like ¶5.1.11, Manoukian errs in relying on Dresser's *self-serving* service-proof of *placing* for Fedex *pick-up* vs. Fedex's *own* delivery proof, especially given ~200+pages of 20+exhibits of TS-Motion, but not one page Fedex delivery proof.

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25 https://www.sfsuperiorcourt.org/sites/default/files/pdfs/Holiday%20calendar%2013-14.pdf

5.1.21. #17.Dresser's Intervening Acts, Nullified Deposition

Since served with appellant's complaint, Dresser filed Motions to Strike, Anti-SLAPP motions, etc., automatically staying discovery-[§425.16(g)]. It is not appellant, but rather Dresser's intervening acts, including ignoring appellant's ADA accommodation that nullified/delayed deposition-[CT.3143.¶IV.G.]

5.1.22. #18.Not A Repeat Offense

5.1.22.1. 3/17/2013- Notice, Unserved, Moot

Dresser's 5/6/2013 discovery motion-[CT.325;315;222], including to compel appellant's 4/26/2013 deposition, on *unserved* [26]3/17/2013-dated-notice-[CT.305] doesn't count.

Appellant opposes-[CT.625;584], citing discovery chronology-[CT.627-29], including non-service-[CT.585, para.¶5-¶15;CT.182], despite appellant volunteering pick up-[CT.587.¶21;CT.628:27-629:1;CT.630,¶3-¶4;CT.587.¶21;CT.586.¶13].

Dresser replies-[CT.645]

See Dresser's gamesmanship on faking service and perjury-[CT.627:8-21;CT.586,¶11,CT.587.¶19,CT.589.26;CT.578.¶3], including Dresser' staff sworn affidavit-[CT.461-463;CT.578.¶5]

Dresser confirms no-service blaming appellant's remote April-2013 court-appearance-[CT.224.¶12;CT.586.¶12;CT.20-24].

If served, appellant's medical appointment conflicts with deposition-[CT.628:7-9;CT.585.¶8-¶9;CT.587.¶22].

Instead of *serving* deposition-notice, Dresser misuses compel, needless litigation-[CT.10-17]. Compel motion futile when deponent

[26] 5 days from 3/12/2013-service of complaint

open to deposition.

Becoming aware *after-the-fact*-[CT.585.¶9] from Dresser's 4/21/2013 correspondence, of 4/26/2013 deposition-date, appellant questions Dresser's story, scheduling deposition without clearing date, choosing conflict-date despite Dresser's knowledge of appellant's medical-conflict, "without addressing [appellant's] language, hearing, mobility and other disabilities, which you are well aware of as my ex-counsel"-[CT.186]

On Dresser's discovery obstruction, appellant files 6/3/2013 discovery motion-[CT.892;882;662;859;1008]; Dresser opposes-[CT.897]; appellant replies-[CT.1062]

Agreeing with appellant's proposal, Judge-Stoelker's 6/7/2013-tentative-[CT.584,para.¶3], combines/continues both motions to 7/12/2013-[AUG.CT.689]. Same day, Dresser issues another deposition notice-[CT.936] in "212974"-case.

On 7/12/2013 Dresser contests court's-7/11/2013-tentative-[AUG.CT.70;RT.10:20-22]. Appellant asks: "How I'm suppose to respond to discovery that I never got [citing Dresser's refusal even on appellant's pick-up-offer]"-[RT.27:3-7;RT.28:8-14]. Also raising "pending ADA accommodation request before [discovery]-Judge Manoukian"-[RT.27:13-14]-[RT.31:4; 31:12]. See later Judge-Stoelker's ADA response-[CT.AUG.SEAL.VOL.II.002].

5.1.22.2. 6/7/2013-Notice-Nullified

While above discovery motion is pending, Dresser negates/replaces 3/17/2013-Unserved-Deposition Notice, with 6/7/2013-dated-Deposition-Notice-[CT.936;CT.931.¶4].

"Legislature..provide[s] that objections may be made to

defective deposition notices", *Zellerino v. Brown*, 235 Cal. App. 3d 1097, 1112, (1991).

"Any deposition taken *after* the service of a written objection *shall not* be used against the objecting party…if the party did not attend the deposition"-§2025.410(b).

While open to deposition, appellant objects/raises defects-[CT.946-948;CT.1563.¶11;CT1597]:

(1)-Notice defective-["No:1-11-CV-212974"]-[CT.947A]

(2)-Failure to comply with §2025.240(b) service on consumer of record discovered-[e.g.¶33.related to Javad-Majad]

(3)-20 days notice-§2025.270(c)…and more…

Notwithstanding defects, appellant responds on document production-[CT.1597.¶9].

Appellant proposes deposition "on a weekday, excluding Wednesday"-[CT.947;CT.947A]

5.1.22.3. Improvident 7/16/2013-Order

Discovery compel orders are *only* appealable post-judgment-[§904.1(b)]-*S. Pac. Co. v. Oppenheimer*, 54 Cal. 2d 784, 785, (1960)

7/16/2013, interim discovery-Judge-Stoelker's "Order Re. Motion To Compel Initial Responses"-[CT.1077], grants most of appellant's discovery motion, and, in part, deposition-[CT.1080] *without* document production, ordering parties "shall meet and confer to agree upon a date"

(1)-Learning of *unserved* 3/17/2013-dated deposition notice; appellant, volunteered pick-up; Dresser chose compel over deposition; Appellant's lodged "Request for [ADA] Accommodations"-["ADA-Req."] on deposition and "moving for a protective order that allows a

proper civil deposition". Under these circumstances, compel, should have been denied, without prejudice.

"Before granting a motion compelling attendance, the judge should determine, whether…the moving party made a reasonable effort to accommodate the deponent's special needs; and whether special arrangements can be made to accommodate these needs when the deposition is rescheduled", D.Judge's Checklist:-["Cal.Judges-Discovery-Benchbook"]-§15.40

Dresser's admission on no-service of 3/17/2013-dated deposition notice, makes order reversible on substantial evidence, and abuse of discretion review-standard because "disputes regarding unserved discovery are premature and not ripe", *O'Grady v. Superior Court*, 139 Cal. App. 4th 1423, 1453, (2006). Appellant cannot be compelled to a deposition "until it is actually propounded…Adjudication of a preemptive motion brought under such nebulous circumstances…waste court resources, either because it ultimately proves unnecessary, or because it addresses the pertinent issues at too abstract and hypothetical a level for sound resolution" *id*, 1453-54.

(2)-Court without jurisdiction. Dresser's compel motion is in *wrong* case, Deposition noticed in *different* case-"No:1-11-CV-212974"-[CT.305]

(3)-*Post-filing* compel motion, Dresser's *subsequent* 6/7/2013-dated-deposition notice-[CT.1582], propounded *prior to* 7/12/2013 hearing-[CT.930.¶2-¶4], which court knows, *erased/replaced* 3/17/2013-dated deposition notice, making compel motion moot; *no longer in-play*.

(4)-Appellant's willingness to *subsequent* 6/7/2013-dated-deposition notice, barring objection/defects, ADA-Req., and "a protective order that allows a proper civil deposition"-[RT:27:24-26] *left no controversy* to adjudicate. Compel unripe.

(5)-Judge-Stoelker's ignorance of appellant's pending 6/24/2013 ADA-Req. on deposition, rendered 7/16/2013 unripe-[CT.1548:5-17].

(6)-Judge-Stoelker ignored that appellant filed, in interim on 6/14/2013, for a deposition protective order-[CT.1545;1547;1561]. At best, compel order should be deferred/continued after ruling on protective order-See ¶5.1.27 Manoukian foreclosing protective order by misconstruing Stoelker's compel order, as ruling on protective order, a lose-lose proposition.

7/16/2013-order should be reversed; implicates 12/17/2013-terminating-sanctions order, as latter, predicated on former.

5.1.22.4. Order Nullified By Stoelker's 9/24/2013 ADA-Response

Judge-Stoelker nullified 7/16/2013 order with later 9/24/2013 filed response to ADA-Req., asking appellant *to follow* "prior orders of 2/5/2013 and 5/8/2013", which in turn asks appellant to work with Dresser on ADA accommodations-[CT.AUG.SEAL.VOL.II.002], and permits remote appearances for discovery related matters, see ¶5.2

5.1.22.5. Post 7/16/2013-Dresser's Non-compliance On M&C

Also, Dresser rebuffed appellant's [7]-*six separate* meet & confers-["M&C"]-[CT.1548:21-1549:11] beginning with appellant's 7/21/2013 fax-[CT.1565], 8/8/2013 follow up-[CT.1568], 8/8/2013-phone-call-[CT.1568], 8/10, 8/11, 8/12/2013 (2) text messages-[CT.1561.¶2-¶7]

It is Dresser that disobeyed 7/16/2013-Order, for e.g.M&C §2025.450(b)(2) requirement.

5.1.23. #19.Stringent Medical Orders Against Appellant's-Travel

Months earlier, on 4/5/2013, appellant's pulmonary expert, "under the penalty of perjury" orders against appellant travel-[[27]Exh.A, to Exhibit C-Appellant's 6/24/2013-ADA-Request 9/24/2018-AUG-SEALED], "in the strongest language possible…as it could be fatal".

5.1.24. #20.Appellant's Age, Disability, Fatal Condition

Appellant's age, disabilities, fatal medical condition is known to her ex-attorney-Dresser and court-[CT.179,¶1;CT.182;first-para]. Asking appellant to go against medical experts orders, is suicidal. Appellant substantially justified in relying on medical expert's orders.

5.1.25. #21.Appellant's Openness To Deposition

Appellant, open for deposition "with proper notice and ADA accommodation"-[RT.27:22-24].

On 6/7/2013-dated-deposition notice-[CT.1582], a first, since 3/17/2013-[CT.305] was unserved, notwithstanding defects, appellant indicated "moving for a protective order that allows a proper civil deposition"-[RT:27:24-26]-[CT.577¶1].

Appellant:"I am caught between being medically restricted from traveling, and being falsely blamed for dodging a deposition that I am happy to attend via electronic means.."-[9/24/2018-AUG-SEALED.Exhibit.E]

5.1.26. #22. Dresser's Own Actions Prevents Compliance;

[27] This court's 9/24/2018 Order re.exhibits under seal.

Deposition Abandoned

Appellant's 8/8/2013 M&C: "I am providing you notice that your-[Dresser] own actions are preventing me to comply with Court's Order of July 16, 2013 re. my deposition.. If I do not hear back from you by Aug. 12, 2013, I will presume that you are not interested in my deposition". 7/16/2013 asked parties to M&C. Dresser refused. Appellant substantially justified.

5.1.27. #23. 6/14/2013-Protective Order/Depo Stay

Exhausting Ku's *first* suggestion-["M&C with Dresser"], appellant-[CT.1565], exhausted Ku's *second* suggestion-[CT.1548:9-11], filing, on 6/14/2013, for Protective-Order ["PO"], requesting deposition-stay/pre-conditions-[CT.1545;1547;1561] set for 10/4/2013.

Dresser opposed-[CT.2511;2507] with irrelevant, conclusory statements, without addressing ADA law, proposed protective pre-conditions.

Appellant replies-[CT.2782].

5.1.27.1. Imprudent Denial Of Protective Order

10/8/2013-J.Manoukian's denies "PO", construing motion as "reconsideration of" 7/16/2013 Judge-Stoelker-order, and "appears that not all of [appellant's] papers were served according to the CCP"-[CT.2801]

Reversible because:

(1)-7/16/2013-order relates to 3/17/2013-moot-deposition notice vs. 6/7/2013-dated-deposition notice, a ***different*** deposition.

(2)-7/16/2013-order, lacked jurisdiction on ***different*** 6/7/2013-dated-deposition notice, being unripe, not before court, absent

controversy.

(3)-but for timing, 7/16/2013-order, should have accounted for appellant's Protective-Order motion,

(4)-7/16/2013-order, *never* considered merits of Protective-Order.

(5)-10/8/2013-Manoukian's PO-Order does not identify/ but conclusorily comments: "appears that not all of [appellant's] papers were served". The only papers Dresser identifies not received, is appellant's "sealed declaration"-[CT.2508.¶8] containing appellant's ADA-Req. with medical documents, which by law-[Cal.Rule.of.Court.1.100(c)(4)[28]] must be sealed/kept confidential, even from Dresser, as Judge-Stoelker explained "If it's ADA related, you won't [get service/notification].-[RT.31:16-26]

At worst, order should be *without* prejudice, pending service/disclosure.

(6)-Lacks jurisdiction, due to pending DQ challenge-[CT.2782,Threshold-Issue]

Protective-Order reversal warranted

5.1.28. #23.Manoukian's Pejorative/False Record

Non-exhaustive fact-check:

(1)-"[redacted] is to appear"-[CT.3311K]. Appellant indeed physically appear-RT.303

(2)-At fn.1-[CT.3311K].:" she has been given accommodation not to be required to appear in Court. A review of the Requests for Accommodation reveals this statement to be false". See 9/24/2013-

[28] " may not be disclosed to the public or to persons other than those involved in the accommodation process"

AUG.SEALED.Exhibit.B, on discovery motion, "parties are allowed to appear by phone for proceedings such as:…hearings on discovery motion".

(3)-Fn.1-[CT.3311K]. "During the course of the hearing [appellant's-son] continued to speak on the merits of the motion". Hardly. Compare 8/16/2013 reporter transcript-[RT.103-106]

(4)-Fn.1"-[CT.3311K]:"Both individuals continue to represent that [redacted] is gravely ill and disabled even though no medical report has been produced to that effect". No one used words "gravely ill". 4/5/2013 medical report "under penalty of perjury" attached to ADA-Req., see 9/24/2013-AUG.SEALED.Exh.A.to Exhibit.C, speaks for itself. Also-[CT.AUG.719.¶3]. Manoukian is no expert/qualified to diagnose medical condition.

(5)-"On 18 March 2013, Ms. [redacted] was served with Notice of Taking Deposition"-[CT.3311K]. Appellant was never served, despite volunteering pick-up-¶5.1.22.1. At best, allegation/service disputed.

(6)-"Plaintiff…did not appear to be in any type of distress"-[CT.3311L]. Appellant coughed incessantly, breathing+hearing difficulties. Moreover, distress unnecessary to qualify as ADA disabled-42.U.S.C.§12102.

(7)-"At times during the proceeding, Plaintiffs son placed papers in front of her and pointed to various parts of the papers"-[CT.3311L]. False. Appellant was shut-out from speaking-[RT.309:15-18]-[CT.AUG.720.¶5] and appellant's uttered word were responses to Manoukian's impromptu questions, for e.g. on hearing-aid-[RT.303:27-304:7;RT.305:23-306:4]-Also ¶5.1.15. Given her

weak English and no legal skills-[CT.AUG.720.¶4], appellant may have prepared argument paper-points. Attorneys/judges do likewise.

(8)-"She claims that there is an incorrect case number on the notice of the deposition"-[CT.3311L]. False. Quite contrary, appellant took deposition-notice at face value, i.e. issued in "212974" case, and argued that TS-motion was defective, s/b in "212974"-case-[CT.3137.¶IV.A.1]

(9)-"Had Plaintiff been able to conduct yourself in accordance with the usual requirements of meet and confer, this would have been easily rectified"-[CT.3311L]. Blaming appellant for Dresser's deposition-notice in "212974" case#-¶5.1.10.

(10)-"Plaintiff makes the argument that this Judge is disqualified. Her challenges for cause had been previously stricken"-[CT.3311L]. False. On 10/8/2013 appellant raised DQ, which Judge-Overton took under submission and never issued a response until 2/20/2014, almost five months later, see ¶5.1.7 and ¶5.9

(11)-"Plaintiff makes an odd argument that discovery was suspended pursuant to Code of Civil Procedure, §425.16(g) or during the period between and including 29 August 2013 to 18 October 2013. while the SLAPP suit was pending"-[CT.3311M]. §425.16(g) is not odd, stipulates: "All discovery proceedings in the action shall be stayed upon the filing of a notice of motion made pursuant to this section…until notice of entry of the order ruling on the motion"

(12)-"The deposition notice was served by Federal Express. Next Day Delivery, and by personal delivery to Plaintiffs address of record in this litigation". Same later "Notice was personally served at the address of record for Ms. [redacted]"-[CT.3311N]. Appellant's

mailing address, is a mail-box, does not accept personal service, see "Ms. [redacted] claims lack of personal service, since Ms. [redacted] does not reside at her address of record"-[CT.3311N], ¶5.1.11.

(13)-"court dates to hear a motion for terminating sanctions do not need [appellant]'s approval". Per local rules, motion hearing dates needs to be cleared with other side, a question always asked by court's calendaring clerk.

5.1.29. #24.Dresser's Anti-SLAPP; §425.16(g)-Depo. Stay

Disregarding deposition M&C, Dresser overtly stayed deposition-[§425.16(g)[29]] by filing on 8/29/2013, ~516 pages long-anti-SLAPP motion-[CT.2441A;2442;2192;1934-2449].

Appellant opposed-[CT.2491;2487]

Manoukian finds appellant raised §425.16(g) argument as odd/inexcusable-[CT.3311M]

On 10/18/2013, court denies-[CT.2815] Dresser's anti-SLAPP finding "Dresser has not made a prima facie showing that this suit "arises from" [protected activity]"-[CT.2816:14-15]

5.1.30. #25.Dresser's Bad-Faith Summary Dismissal Manouvers

Dresser cared less for deposition/facts/merits. Instead repeatedly sought *summary dismissals*-[CT.3136:15-17] culminating in discovery/terminating sanctions, examples include:

Date	Filing	Result
4/11/2013	Demurrer.#1-[CT.111;118]	Denied-[CT.922]
4/11/2013	Motion to Strike-[CT.127;129]	Denied-[CT.922]
7/30/2013	Demurrer.#2-[CT.1430;1435]	Denied-[CT.2807]

[29] "All discovery proceedings in the action shall be stayed upon the filing of a notice of motion"

8/29/2013 Anti-SLAPP Motion-¶5.1.21,¶5.1.29 Denied-[CT.2815]

"[M]aintaining an unjust action [violates] Business and Professions Code §6068, subdivision (c), and committing moral turpitude in violation of §6106. The record clearly and convincingly establishes that [Dresser] has committed "serious, habitual abuse of the judicial system," which constitutes moral turpitude. (*In the Matter of Varakin* (Review Dept.1994) 3 Cal. State Bar Ct. Rptr. 179, 186.)", *Matter of Missud,* 2014 WL 5139143, at *5 (Cal. Bar Ct. Oct. 1, 2014).

"Business and Professions Code §6068 makes it the duty of attorneys "(c) To counsel or maintain such actions, proceedings, or defenses only as appear to him or her legal or just....(g) Not to encourage either the commencement or the continuance of an action or proceeding from any corrupt motive of passion or interest....", *Sorensen v. State Bar*, 52 Cal. 3d 1036, 1041, (1991).

5.1.31. #26.Appellant's Absence Not Willful

From 25+ reasons above, clearly, appellant's deposition absence is not willful. Efforts on ADA, protective order, M&C, stipulating on depo. dates, proves that appellant gave deposition utmost attention. None of 25+ reasons show willfulness, for e.g. obeying medical expert's orders, or raising legitimate objections/notice defects.

5.1.32. #27.Open To Remote Depo; "Physical" Absence, *Involuntary*

At best, appellant's "physical" absence is involuntary, either due to Dresser' own doing [cancelation, defective notice, etc.] *and* due to medical expert's order not to travel, or suffer fatal

consequences. Steps to taken to protect life left appellant no choice.

"A conscious or intentional failure to act, as distinguished from accidental or involuntary noncompliance, [required] to invoke a penalty"-*Deyo v. Kilbourne*, supra, 84 Cal.App.3d at pp. 787–788.

5.1.33. #28.TS-Three Prong Test: Unmet/Not Considered

Per §2025.450(g) *all three* conditions must meet be met:

CONDITION-#1-§2025.450(a) deposition compel motion granted. FAILS, or at best, QUESTIONABLE, see ¶5.1.22

CONDITION-#2-"[appellant] acted with substantial justification". YES See 27+ reasons above.

CONDITION-#3-"other circumstances make the imposition of the sanction unjust". YES, same above.

5.1.34. "Given Chances"; A Lie!

Notwithstanding above, exhausting ADA accommodations, with no empathy for disabled elder, risking her life, appellant threw to the mercy of the court and begged opportunity on deposition. Manoukian cruelly states "No. I've done that. I've given chances"-[RT.308:27-309:2]. Record contradicts. Manoukian never gave a prior chance.

5.1.35. Harshness

Manoukian's TS-Order is politically-ill-motivated, egregious, harsh, under the circumstances. No prior lesser sanction exhausted, e.g. monetary sanction

"[A]lthough the proper disciplining of a party under circumstances of default must be left to the discretion of the trial court, the penalty assessed here is too 'drastic' and constitutes a clear abuse of discretion", *Crummer*, 860.

Facts/law warrant reversing TS-Order, mooting rest of appeal.

5.2. ADA, Cal. Disability, Etc. Statute Violations

Appellant lodges "Request for [ADA] Accommodations"-["ADA-Req."] 1/22/2013, the *same day* appellant/files original complaint-[[30]9/24/18-AUG.SEAL.Exhibit.A].

In 2009-1-CV-142193 case, on 1/17/2012, Manoukian granted in full, appellant's identical request-[Exh.A.to AUG.].

On 2/15/2013, court's ADA coordinator-["Ku"] grants "ADA-Req." in part-[9/24/18-AUG.SEAL.Exhibit.B].

On 5/8/2013 Ku responds to appellant's 4/30/2013-ADA-Req-[AUG.SEAL.VOL.II.009]

On 6/24/2013, appellant lodges "ADA-Req."/accommodation on deposition-[9/24/18-AUG.SEAL.Exhibit.C].

Next day, 6/25/2013, Ku denys it because "a deposition is not a proceeding…and so the Court cannot make an order related to this request…If…unable to agree with other party on…manner of the deposition, you may ask the Court for relief under the laws which relate to discovery proceedings"-[9/24/18-AUG.SEAL.Exhibit.D].

On 6/28/2013 appellant lodges ex-parte application to discovery-Judge Manoukian showing legal authority that a deposition is a "judicial proceeding", listing her medical handicap-[9/24/18-AUG.SEAL.Exhibit.E]. Same by email-[AUG.SEAL.VOL.II.013]

On 7/22/2013 Ku stands by her prior response, suggesting contacting Dresser on mutually agreeable location, deposition format-[9/24/18-AUG.Exhibit.F].

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[30] This court's 9/24/2018 Order re.exhibits under seal.

On 8/21/2013 appellant's "ADA-Req.", Judge-Stoelker refers appellant to Ku's 2/15/2013 & 5/8/2013 responses-[AUG.SEAL.002], unserved on appellant. On 10/7/2013, appellant complains of non-service, and confidentiality breach/public-filing-[AUG.SEAL.VOL.II.011]

On 9/13/2013 Manoukian files ADA-Req./Ku's 5/8/2013 response-[CT.2518]

5.2.1. Review-Standard

ADA cases [reviewed] de novo",-*Humphrey v Mem'l Hosp*, 239 F.3d. 1128, 1133 (9th.Cir.2001).

On "question of a violation of law [appellate-court reviews] whether statutory or constitutional law was correctly interpreted and applied by the trial court"-*California Assn. of Dispensing Opticians v. Pearle Vision Ctr., Inc.*, 143 Cal. App. 3d 419, 426, (1983).

5.2.2. Statutes Implicated

-1st Amendment U.S. Constitution "petition the government for a redress of grievances", also California Constitution Article I, §3

-14th Amendment, U.S. Constitution "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", also California Constitution Article I, §7, §31

-42 U.S.C. Chapter 126 "Equal Opportunity For Individuals With Disabilities",

-*Tennessee v Lane*, 541 U.S 509, (2004)

-Cal. Civ. Code §51 "Unruh Civil Rights Act".

-1.100 California Rules of Court.

5.2.3. Deprived Access Because Of Disability; Retaliation

"Prior to knowledge of Fed. Case. "Manoukian" permitted me requested ADA accommodations. Since knowledge of my Fed. Case "Manoukian" has singled me out and willfully denied ADA accommodation of Courtcall (telephone hearing) while allowing every other attorney/party on that days' Court Calendar Courtcall, despite the latter not requesting ADA accommodation. This happened in Dept. #19, on 8/16/13, 9/13/13, 10/4/13 12/13/13 ["hearing dates"]"-[CT.3377.¶5]

Because of Manoukian's animus against appellant, her son, appellant was deprived from being heard, e.g. 8/16/2013-CourtCall appeared but not heard because did not appear physically-[RT.103:6-23;RT:106:12-14],9/13/2013-[AUG171],10/4/2013-[AUG172]. Penalized for disability-"**[B]ecause she is required to appear before the Court, this expense will not be granted**"-[CT.1881]-¶5.1.5.2

5.2.4. Forcing "Physical" Appearance For No Good Reason

At one time, appellant, coughing incessantly "with great difficulty, [at] the risk of [her] life", against her physician's orders, appeared physically in a wheelchair, Manoukian, created false record, refused appellant opportunity to speak, proving physical appearance a pretext to retaliate/harass-[RT.309:7-18].

5.2.5. Deposition, Indeed A Court Proceeding

Ku refused appellant's ADA-Req. because "a deposition is not a proceeding…and so the Court cannot make an order"-[9/24/18-AUG-SEALED.Exhibit.D].

But "[a] judge may expressly provide that a nonparty deponent may appear at the deposition by telephone if the judge finds there is

good cause and no prejudice to any party"-A.In General-["Cal.Judges-Discovery-Benchbook"]-§15.62

"On any person's motion, a judge may make other orders deemed appropriate. Cal Rules of Ct.3.1010(e)"-B. Appearance and Participation-["Cal.Judges-Discovery-Benchbook"]-§15.63

Appellant argued "deposition is a "judicial proceeding"-*McClatchy Newspapers, Inc. v. Superior Court*, 189 Cal. App. 3d 961, 968, (1987)-[9/24/18-AUG-SEALED.Exhibit.E].

"In theory, a deposition is a court proceeding; the court reporter who swears the witness in is an officer of the court"-B. Judge's Role-["Cal.Judges-Discovery-Benchbook"]-§15.2.

See "a discovery demand…is a "proceeding"…'Proceeding' means an action or remedy before a court…Broadly, it means "All the steps or measures adopted in the prosecution or defense of an action..'The term "proceeding" is generally applicable to any step taken by a party in the progress of a civil action. Anything done from the commencement to the termination is a proceeding'"-*Zellerino*, 1105.

Next, ADA accommodations are *not* limited to "proceeding that [physically] takes place in Court". Pursuant to CRC§l.100(a)(2) it applies to "<u>any</u> proceeding before any Court". Any proceeding includes a deposition, as a deposition is a judicial proceeding

"Before granting a motion compelling attendance, the judge should determine, whether…the moving party made a <u>reasonable effort to accommodate the deponent's special needs</u>; and whether <u>special arrangements can be made to accommodate these needs</u> when the deposition is rescheduled"-D.Judge's Checklist-["Cal.Judges-

Discovery-Benchbook"]-§15.40.

5.2.6. Dresser Ignored Appellant's M&C/ADA-Req. Needs

All along appellant is open to deposition, with Dresser/court accommodating her disability accommodations-[CT.3141.¶IV.D].

See "Objection #19:Non-remote deposition can only be had upon [redacted]'s ADA/medical accommodation. Notice does not offer the necessary ADA accommodation"-[CT.3034].

Dresser failed to meet-&-confer-["M&C"] on ADA accommodations, leaving appellant to choose between death by disobeying medical expert's stern orders not to travel risking fatality, or deposition non-appearance.

Notwithstanding 28+ other grounds, any reasonable 88 year disabled elder, faced with life, vs. deposition non-appearance would choose former.

5.2.7. Public-Entity ***Must*** Honor Accommodation of Applicant's Choice

"[P]ublic entity must provide [accommodation] of [applicant's] choice. This expressed choice shall be given primary consideration-(§ 35.160(b)(2))"[31].

"The entire ADA regulatory scheme is premised on the disabled individual being given accommodation choices which a public entity must honor, not on the public entity dictating the form of accommodation to the disabled individual",-*Pierce v City of Salem*, 2008WL4415407, *20 (D. Or. 2008)

"[P]roblem with [Order's] argument is that it conflicts with the

[31] 28.C.F.R.35,Appendix-B,Subpart E—Communications, §35.160,General

regulatory mandate that a public entity honor a disabled person's choice of [accommodation]"-*Chisolm v McManimon*, 275 F.3d. 315, 327, (3d.Cir.2001); *Hayden.v.Redwoods Cmty.…*, 2007WL61886, *9, (N.D.Cal. 2007). "In resolving..request for accommodation, a judge should give primary consideration to the accommodation requested.-Cf.28.C.F.R.§35.160(b)(2)"-*In re. McDonough*, 457 Mass. 512, 525, (2010)

"[T]hat their actions were merely "reasonable" does not constitute a defense.."-*Fisher v Oklahoma Health Care,* 335 F.3d. 1175, 1182, (10th.Cir.2003).

Applicant's preferred CourtCall accommodation is readily available; used by all, but denied *solely to* appellant, and that too, *only by* Manoukian.

5.2.8. Manoukian Allowed CourtCall To All, *Except* Appellant

Per CT.10/16/2018.AUG.092 to AUG.678, appellant *discriminately* denied CourtCall to Manoukian hearings but other litigants were not.

Manoukian Hearing Date	# of CourtCall Participants Allowed
8/16/2013-[CT.AUG128]	4-[CT.AUG.670]
9/13/2013-[CT.AUG210]	11-[CT.AUG.670]
10/14/2013-[CT.AUG301]	11-[CT.AUG.671]
12/13/2013-[CT.AUG353]	3-[CT.AUG.670]

5.2.9. Manoukian Faking Ignorance Of Appellant's ADA-Req.

Manoukian previously granted appellant's ADA-Req.-[CT.9/24/2018.AUG.SEALED.Attachment-to-Exhibit.A].

On 6/28/2013Manoukian, personally served with appellant's ADA-Req.,/Ex-Parte request-[CT.9/24/2018.SEALED.Exhibit.E].

Manoukian fakes ignorance of appellant's ADA-Req.-[e.g.CT.1879]

5.2.10. ADA Denials Deprived Appellant Access To Court

CT.10/16/2018.AUG.171 to AUG.173.Exhibit D are CourtCall confirmations, where Manoukian *discriminately* denied appellant's CourtCalls, depriving appellant from contesting tentative-rulings on almost all Manoukian's discovery orders, e.g. Protective Order-[AUG301], appellant's discovery sanctions-[AUG210].

Foreclosing access-to-court, violates ¶5.2.2., including Title II of the Americans with Disabilities Act of 1990 (ADA or Act), *Tennessee v. Lane*, 541 U.S. 509, (2004) "Congress enacted Title II against a backdrop of pervasive unequal treatment in the administration of state services and programs, including systematic deprivations of fundamental rights", *id*, 524. "Congress learned that many individuals, in many States across the country, were being excluded from courthouses and court proceedings by reason of their disabilities", *id*, 527. "Title II is aimed at the enforcement of a variety of basic rights, including the right of access to the courts at issue in this case", *id*, 529. "This duty to accommodate is perfectly consistent with the well-established due process principle that, "within the limits of practicability, a State must afford to all individuals a meaningful opportunity to be heard" in its courts", *id*, 532.

5.2.11. Reversal For Denial Of Access To Court

Statutes, including *Tennessee v Lane*, 541 U.S 509, (2004), warrant reversal, and Manoukian's discriminate targeting/depriving appellant, court access.

5.3.Wrong Default Entered

Notwithstanding above, TS order struck appellant's 1/22/2013 *complaint*-[CT.3311N], *not* the 7/1/2013-First-Amended-Complaint.

Dresser confirms-"December 17th, 2013, filed order striking the Complaint of [appellant]"-[RT.704:5-6], again "struck [appellant]'s Complaint"-[RT.406:2-3]

Court-clerk erred. Default against *wrong* 7/1/2013-First-Amended-Complaint-[CT.3311P]. Warrants reversal.

5.4.2/20/14-Vacate Default-"Entry" Denial Order

Appellant filed 1/15/2014 "Motion For Relief From Default"-[CT.3406;3397;3394]. Dresser opposed-[CT.3479]. Appellant replied-[CT.3504;3502].

2/20/2014 Court Order denies it, construing motion as §1008(a) 12/24/2013 TS-Order reconsideration-[CT.3603;RT.905:16-23].

Reversal because:

5.4.1. §473(b)-Motion Is Not §1008(a) Reconsideration

(1)-§473(b) is a *statutory* remedy to vacate default taken/entered on e.g. mistake.

§1008(a) is inapplicable, as §473(b) offers *exclusive* remedies to vacate default. If not §473(b) would be hollow/meaningless, as no order can be reconsidered outside of §1008(a)

(2)-§473(b) is broad, applies to *any* "judgment, dismissal, order, or other proceeding taken against [party]"

(3)-Appellant's case-law precedents-[CT.3509,¶7;RT.907:7-908:14] *in 2014*[32] support "*unlimited*" §473(b) motions; support

[32] Prevailing law when 2/20/14-Order was decided holds that §473(b) trumps §1008, allowing *unlimited* renewed §473(b) motions. Seventeen months later, prevailing law modified. "*Renewed* §473(b)

§473(b) trumps §1008, e.g. *Standard Microsystems Corp. v. Winbond Elecs. Corp.*, 179 Cal. App. 4th 868, 873, (2009). Order inconsistent with prevailing law.

(4)-Entitled to §473(b) relief from default, from terminating discovery sanctions-*Matera*, 68-[RT.908.5-8].

(5)-Appellant's motion, not a renewed motion, but *initial* §473(b) motion, nor has appellant *previously* applied for relief that Manoukian/court refused[33]. "§1008 never restricts initial applications for relief from default under §473(b) in any way", *Even*, 841.

(6)-Manoukian-Court agrees, see 1/24/2014-Order, given default entry "[t]he only action she-[appellant] can take is to file a motion for relief from default"-[CT.3474]-confirming §473(b) remedy

(7)-Appellant notes-[CT.3510:16-20], when roles were reversed in "212974"-case, Dresser's *3 months late* §473(b) vacate default motion was *not* deemed untimely, or as §1008 reconsideration-[C082936.CT.982]. Double-standard!

(8)-§1008(b) is not limited to "new" facts alone, but also "different facts, circumstances, or law".

(9)-§1008 does not prohibit motions that question court's jurisdiction; can be raised at any time.

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application" governed by §1008-*Even Zohar Constr. & Remodeling, Inc. v. Bellaire Townhouses, LLC,* 61 Cal. 4th 830, 837, (2015)

[33] Notwithstanding *new-2015* interpretation, "§1008 expressly applies to all renewed applications for orders the court has previously refused"-*Even*, 840.

5.4.2. Concurrent Timely Stay/Vacate-Motion

Separately discussed-¶5.5 12/27/2013-"Stay/Vacate Orders"-Motion, filed *within* §1008 deadline, adding 5 calendar-days mail service of 12/17/2013-TS-Order, +court-holidays-Christmas.

5.4.3. §1008 Does Not Bind *Court*

Appellant raised court's inherent equity power, without time limitations-[CT.3405.¶9].

§1008 "do[es] not limit a *court's* ability to reconsider its previous interim orders on its own motion," even while it "prohibit[s] a *party* from making renewed motions not based on new facts or law"-*Even*, 840, cf *Le Francois v. Goel* (2005) 35 Cal.4th 1094, 1096–1097. Order did not exhaust court's *inherent power*

5.4.4. Order Ignores Other Grounds

(1)-Protection to vulnerable elders under Division 8.5. Mello-Granlund Older Californians Act [§9000 -§9757.5] and the Elder Abuse and Dependent Adult Civil Protection Act [§15600 - §15675]-[CT.3405.¶IV.10]

(2)-Court lack jurisdiction due to §916(a) automatic stay-[CT.3400.¶IV.1]

5.4.5. Due Process Deprivation

Appellant waited long-time to contest tentative-[RT.903:26-908:25] but deprived opportunity because of Dresser's tardiness; Appellant objected:-"that is not my fault. Dresser came late. I was sitting here since such a long time".

Appellant's objection "Sir, I would like to be heard. I would like to be heard, Sir"-[RT.908:15] fell on deaf ears.

"The Fourteenth Amendment due process clause generally requires that a person be provided notice and an opportunity to be heard before the government deprives the person of property through adjudication or some other form of individualized determination", *Matera*, 60.

5.5.2/20/14-"Automatic Stay/Lack Jurisdiction" Order

Appellant, with help, noticed court clerk re. no jurisdiction to enter default due to pending appeal on 5/28/2013 denial-order in both Dresser's lawsuits-["239828" & "212974"]. Judge-Overton held off action "at present"-[CT.3340].

On 12/24/2013 appellant filed "Notice of Stay Of Proceedings" citing H039806 appeal of 5/28/2013 order-[CT.3312]

On 12/27/2013 appellant filed "Motion For Automatic Stay and Vacate Orders Lacking Jurisdiction"-[CT.3320;CT.3321;CT.3325].

Dresser opposes-[CT.3428]. Appellant replies-[CT.3442].

On 1/9/2014, appellant emails this Court's active appeal status on H039806/C082936 that automatically stays underlying case-[CT.AUG.702]

On 2/20/2014, Court denies it-[CT.3603], misconstruing stay "based upon Writ-[RT.905:24-28].

Reversal because:

5.5.1. §916(a) Stay Based On H039806/C082936-Appeal

Order mistook stay upon "Writ", when motion *explicitly* identifies 6/24/2013-"Appeal.No.H039806" citing §916(a) and lack of lower-court's jurisdiction-[CT.3321.¶I-¶III]

Order re. "motion to consolidate" is reviewable upon appeal, *People v. Locklar*, 84 Cal. App. 3d 224, 230, (1978)

5.5.2. Due Process Deprivation

Per ¶5.4.5 above, depriving appellant time to contest the tentative because of Dresser's tardiness/court's time-constraints, prevented appellant from clarifying "not writ, but appeal" fact.

5.5.3. No Time-Limit To Vacate Orders Without Jurisdiction

Since lower-court lacked jurisdiction, which was/is vested with this court, order is void; parties/court may raise without time-limit.

5.6.2/28/2014-Default-Prove-Up-Judgment

On 1/27/2014 Manoukian hears default judgment-[CT.3478]

On 2/28/14 Judgment for $177,838.66 awarded-[CT.3628], entered on 3/6/2014-[CT.3632

"In general, the law favors a hearing on the merits"-*Ely v. Gray*, 224 Cal. App. 3d 1257, 1260, (1990)

Reversal because:

5.6.1. Striking Wrong/First-Amended-Complaint

Dresser drafted Judgement *wrongly states* 12/17/2013-TS-Order striking *FAC*-[CT.3629].

But 12/17/2013-TS-Order strikes *complaint*, [*not* FAC].

5.6.2. §425.11(c) Non-Compliance

De-novo review-*Falahati v. Kondo* (2005) 127 Cal.App.4th 823, 828.

Dresser drafted $177,838.66 Judgement is "compensatory" damages "on the third cause of action for fraud"-[CT.3629-23-24], i.e. *personal injury* premised on *alleged* fraud.

California law-§425.11 requires special statement for "personal injury". Dresser never served appellant with §425.11(c) "statement setting forth the nature and amount of damages being sought".

Required even in <u>*non*</u>-personal injury default, *Ely*, *1257; *Van-Sickle v. Gilbert*, 196 Cal. App. 4th 1495, 1522, (2011).

This court noted "when a statement of damages is required but not served, the underlying entry of default is invalid also and is subject to set-aside…This requirement applies even when the default is entered as a discovery sanction"-*Van Sickle*, 1521.

"Absent this notice, the entry of default and default judgment are void as a matter of law…[because its jurisdictional-at *6,..can be raised *sua sponte*, first-time on appeal]", *Stewart v. Kauanui*, 2012 WL 748312, at *5 (Cal. Ct. App. Mar. 7, 2012).

"[A]n *entry of default* is void if a required statement of damages was not served on the defendant (or cross-defendant) *before* the default was taken. (*Schwab v. Rondel Homes, Inc.* (1991) 53 Cal.3d 428, 435; *Van Sickle*, 1521; *Schwab v. Southern California Gas Co.*, *supra*, 114 Cal.App.4th at p. 1320; *Matera v. McLeod* (2006) 145 Cal.App.4th 44, 60–62 (*Matera*)", *Stewart*, at *6

Appellant timely raised above defect-[10/22/2018-AUG.688.¶14]. Instead of heeding this court's *Van Sickle* [¶9.Some-Advice], 1530, Manoukian disregards §425.11(c).

5.6.3. <u>Barred By "Rule of Exclusive Concurrent Jurisdiction"</u>

In "212974" case, stayed on appeal-[C082936], on 11/14/2011, Dresser sues appellant's son, <u>*for the very same events*</u>-[CT.1260-1262, 5th-Cause-Of-Action-("CoA")], that on 7/1/2013, Dresser sues appellant in underlying-"239828" case.

Allegation is same, i.e. Dresser suffered personal injury due to

appellant's son "Tortious Interference With Contract"[34] with appellant, causing damages *upwards* of $150,000-[CT.1261.¶34].

Compare to "239828"-[CT.973,¶15-19] appellant's son's alleged interference/obstructing/withholding/messing-up records causing $177,838.66 damages.

Upwards $150,000 damages, and $177,838.66 damages, *arise from same allegation*

Dresser's *only* contract with appellant ever, are two contingency fee agreements-[CT.280;CT.288]

"212974" *first* acquired jurisdiction over Dresser's claim of appellant's son's tortious interference with Dresser's contingency fee contract with appellant.

That's why appellant moved to consolidate the two actions-[CT.93]; now pending C082936 appeal.

Appellant raised "Rule of Exclusive Concurrent Jurisdiction"-["RoECJ"]-[10/22/2018-Motion-CT.AUG.682.¶10]

If Dresser loses the "212974" it would act as a bar to same claim in *later filed* "239828" action,-*Plant Insulation Co. v. Fibreboard Corp.,* 224 Cal. App. 3d 781, 788, (1990). "[T]he res judicata test is not required for application of the rule of exclusive concurrent jurisdiction. Instead,…the more expansive subject matter test applied…whether the first and second actions arise from the "same transaction", *id*, 789.

The question of whether appellant's son interfered with Dresser's two contingency fee agreements with appellant, is *common*

[34] Title of 5th CoA.

and central to both cases.

"The pendency of another action growing out of the same transaction is a ground for abatement of the second action. Here there is no dispute that the ["212974"] action was filed before the ["239828"], or that the dispute in both cases arose out of the same transaction"-*Lawyers Title Ins. Corp. v. Superior Court*, 151 Cal. App. 3d 455, 458, (1984). "[RoECJ is] a matter of right not as a matter of discretion", *id*, 460.

In *Plant Insulation* case (at p.788), this Court and its progeny cases hold that "[u]nlike the statutory plea of abatement, the rule of exclusive concurrent jurisdiction does not require absolute identity of parties, causes of action or remedies sought in the initial and subsequent actions, *(Stearns* v. *Los Angeles City School Dist.* (1966) 244 Cal App.2d 696, 708; *Myers* v. *Superior Court, supra,* 75 Cal. App.2d at p. 931.) If the court exercising original jurisdiction has the power to bring before it all the necessary parties, the fact that the parties in the second action are not identical does not preclude application of the rule. Moreover, the remedies sought in the separate actions need not be precisely the same so long as the court exercising original jurisdiction has the power to litigate all the issues and grant all the relief to which any of the parties might be entitled under the pleadings. *(Childs* v. *Eltinge, supra,* at p. 850; *Robinson* v. *Superior Court* (1962) 203 Cal. App.2d 263, 270-271)"

"239828"-court lacked jurisdiction, including on default-judgment; "239828" must abate until resolution of "212974"-action.

5.6.4. Stay, Pending "Vacate Default" Motion

With roles reversed, when appellant's-son in "212974"-case-[C082936-appeal] attempted default-prove-up, Judge-Stoelker held default-judgment *in abeyance* for un-filed/potential Dresser's vacate default motion-[C082936,2/9/2018-Opening.Brief.¶4.H.], including-[C082936.CT.911:11-914:8], even asking Dresser to vacate default-"…unless an appropriate order makes the application for the default judgment moot"-[C082936.CT.959].

In contrast, Manoukian, despite told of appellant's 1/13/2014 "Motion For Relief From Default"-[CT.3406;3397;3394] pending adjudication-[10/20/2018-AUG681.¶4], with utmost speed awards default-judgment-[RT.604:16-23], ignoring case-law precedent. Double-standard-[CT.AUG.715.¶1].

Manoukian's position that default-prove-up *must* proceed, *notwithstanding* a vacate default-entry motion, defies common-sense, judicial efficiency, well-established court protocol/practice. E.g.

(1)-"court ordered that all prove-up on default judgment be deferred until disposition of defendants' motion to vacate the default"-*Cohen v. Superior Court (Eddy)*, 215 Cal. Rptr. 23, 27 (1985)

(2)- "[C]ourt continued…default prove-up hearing until after the hearing on..motion to vacate"-*Jade K.* v. *Viguri*, 210 Cal. App. 3d 1459, 1471-1472, 258 Cal. Rptr. 907 (1989)

(3)-"[S]cheduled…prove-up hearing…was continued, [as] in the interim…defendants filed a motion to vacate the default"-*Hung Phuong Nguyen v. Lap Trung Hua*, 2014 WL 4594431, at *1 (Cal. Ct. App. Sept. 16, 2014)

(40-"[Court] reminded [at prove-up hearing] that motions to vacate the default had been filed…then agreed to…continue the

hearing until…the date set for the hearing on…motion to vacate"-*Sherman Villas Homeowners Ass'n v. Nazanin A. Azargin*, 2004 WL 363508, at *11 (Cal. Ct. App. Feb. 27, 2004).

5.6.5. $177,838.66 Foreclosed By Law

Dresser drafted judgment awards $177,838.66 windfall-[CT.AUG.705.¶3-¶4].

5.6.5.1. Default-Prove-Up Role

"The court's role in the process of entering a default judgment is a serious, substantive, and often complicated one, and it must be treated as such"-*Kim v. Westmoore Partners, Inc.*, 201 Cal. App. 4th 267, 272–73, (2011)

"[D]efendant's default is [not] an unalloyed gift: an opportunity to obtain a big judgment with no significant effort"-*Kim*, 271.

"And even when the allegations of a complaint do support the judgment a plaintiff seeks, he is not automatically entitled to entry of that judgment by the court, simply because the defendant defaulted. Instead, it is incumbent upon the plaintiff to *prove up* his damages, with actual evidence. That evidence may establish the amount [Dresser] *feels* entitled to recover, but it fails utterly to demonstrate what he is *legally* entitled to recover. [Dresser]'s failure to offer any significant evidence to support his damage claims precludes any monetary judgment in his favor"-*Kim*, 272,

"It is imperative in a default case that the trial court take the time to analyze the complaint at issue…It is not in plaintiffs' interest to be conservative in their demands, and without any opposing party to point out the excesses, it is the duty of the court to act as gatekeeper, ensuring that only the appropriate claims get through"-

Heidary v. Yadollahi, 99 Cal. App. 4th 857, 868, (2002)

5.6.5.2. Judgment Foreclosed, Absent Contingency/Wrongful Discharge

Notwithstanding default, court may not assume Dresser's "contentions, deductions or conclusions of fact or law"-*Kim*, 281.

"And if the well-pleaded allegations of the complaint do not state any proper cause of action, the default judgment…cannot stand. On appeal from the default judgment, "[a]n objection that the complaint failed to state facts sufficient to constitute a cause of action may be considered"-*Kim*, 282.

Notwithstanding void-12/17/2013-TS-Order, Dresser demands/drafts $177,838.66 judgment-[CT.3629] premised on contingency attorney fees, mislabeled "for services [allegedly] rendered" Third Cause of Action only-[CT.976.¶30].

Dresser's referenced two contingency fee agreements "take precedence over any contradictory allegations in the body of the complaint"-*Kim*, 282.

Dresser's two ***contingency*** attorney fee agreements for representing appellant on-[1/13/2014-RT.4:15-16]

(1)-"1-09-FL-149682" family court case-[Appeal-C082930],

(2)-"1-10-163310" battery case-[CT.971.¶6-¶7]-[C082947]

both of which appellant lost;

Dresser performed *little* work on "163310" case [attorney-Reynolds initiated action-[Appeal.No.C082947.[35]Supp.CT.1-8; amended-complaint-FAC-Supp.CT.10]; Reynolds tried the case-

[35] C082947-Suplemental-Clerk's-Transcript-Filed-9/6/2018

C082947.CT.2015] after Dresser left appellant stranded/withdrew before trial date was set-[C082947.CT.1761] ironically *not* blaming appellant, but blaming in sworn declaration non-party [appellant's-son]-[C082947.CT.1764-65],.

Appellant lost both "149682" and "163310" case, latter, despite attorney-Reynolds representation, because Dresser's failed to uphold appellant's legal rights, e.g. Dresser's flawed/inadmissible disclosure of appellant's expert witness-Hence appellant's malpractice action.

Notwithstanding Statute-of-Limitation-["SoL"] bar, for Dresser's quantum meruit recovery-:

(1)- contingency [appellant successful/prevail] must occur, *and*

(2)-Dresser [must be] discharged wrongfully/without cause by client/appellant-*Fracasse v. Brent*, 6 Cal. 3d 784, 786-787, (1972)

Neither conditions occurred. Worse Dresser committed malpractice, *abandoned* appellant vs. wrongfully discharged, and Dresser *never* performed $177,838.66 worth of attorney fees.

"[A] claim based [even] upon *unlawful* discharge of an attorney retained under a contingent fee contract did not accrue until the happening of the contingency"-*Fracasse*, 791.

"Any contrary rule would be palpably unjust…A client…without any recovery on his claim could find himself adjudged to pay many times its value—a disaster to the client and a windfall to the attorney", *Brown v. Connolly*, 2 Cal. App. 3d 867, 870, (1969).

That's exactly the case here. Dresser, drafted himself to judgment award that is illegal/unauthorized by law. If allowed, all contingent attorneys, upon losing the case, would sue clients for fake

attorney fees recovery, making *contingent* fee agreement meaningless.

Much worse in "163310" case, withdraw with very little work, and sue for $177,838.66, where majority work is done by attorney-Reynolds, let alone, client losing the case.

The reason why contingent fees have a % fee sharing-higher reward, is to take the risk of contingency/losing.

"[A] wrongfully discharged attorney has no cause of action against his former client for compensation Based upon a contingency fee contract until the happening of the stated contingency", *Brown*, 871. Worse, Dresser withdrew.

Above *undisputed* facts, raised/were before Manoukian-court, before default prove-up-[10/22/2018-AUG.683.¶11]

Dresser's "actual allegations of [cross-]complaint do not support any judgment in his favor"-*Kim*, 272.

"A discovery sanction may not place the party seeking discovery in a better position than it would have been in if the desired discovery had been provided and had been favorable"-*Deyo v. Kilbourne* (1978) 84 Cal.App.3d 771, 792

5.6.5.3. Barred By Statute-Of-Limitations

Dresser's $177,838.66-Third CoA/Quantum Meruit arises from alleged misrepresentation(s)-[CT.976.¶27,¶28].

Dresser's 7/1/2013-cross-complaint alleges material breach/misrepresentation began *3+ years* prior, "On or about April 29. 2010"-[CT.972.¶11]

Judgment errs because "[t]he statute of limitations ["SoL"] for quantum meruit claims is two years"-*Iverson, Yoakum, Papiano & Hatch v. Berwald*, 76 Cal. App. 4th 990, 996, (1999). See also §339.1.

Same [2]-tow year limit on rescission (§339.3)

[2]-two year SoL expired on 4/28/2012, *before* appellant's 1/22/2013-complaint/7/1/2013-Dresser+cross-complaint.

5.6.5.4. Conclusory Demand, Is Not Prove-Up Evidence

"On appeal, defendant may challenge the sufficiency of the evidence offered to support the default judgment"-*Kim*, 288.

"[N]o statutory or constitutional barrier which requires an appellate court to ignore gross injustice in the award of damages simply because the judgment was procured by way of default"-*Kim*, 288.

"[Dresser]'s prove-up evidence consisted of nothing more than his own conclusory demand" devoid of any objective evidence", *Kim*, 287–88.

Dresser presented "relevant affirmative relief pleadings, orders on demurrers, order to strike and default, followed by register of actions for this case [largely irrelevant on prove-up]..retainer agreements between [Dresser] and [appellant]…attorney-fee invoice"-[1/3/2014-RT.4:11-16] supporting *contingency fee* foreclosed by law.

Manoukian took no oral testimony, nor does court docket show any evidentiary support filed.

Same at 1/27/2014-date-[RT.604:26-605:11]

"The requirement of proof of damages is meaningless if it can be fulfilled by any evidence, even evidence which results in a judgment prompted by 'passion, prejudice or corruption.'"-*Kim*, 288.

"[W]here [Dresser]'s evidence is insufficient as a matter of law to support a judgment for plaintiff, a reversal with directions to enter

judgment for the defendant is proper.'"-*Kim*, 289.

5.6.5.5. Default-Judgment-$ Void

"[A] default judgment awarding damages [unauthorized by law] is beyond the court's jurisdiction and therefore is void"-*Matera v. McLeod*, 145 Cal. App. 4th 44, 59, (2006),

5.6.6. Foreclosed By Pending Appeal

Given §916(a) automatic stay, appellant raised pending appeal bar-[CT.AUG.680.¶1-¶3]-[CT.AUG.715.¶2-¶5]

5.6.7. Foreclosed By Pending DQ

Appellant raised pending 10/8/2013-DQ bar-[CT.AUG.681.¶5-¶7]-[[CT.AUG.715.¶7]

5.6.8. Judgment-$ Foreclosed By Dresser's Own Admission

Dresser's own *sworn* admission precludes recovery-[CT.AUG686.¶12].

A court may take judicial notice of plaintiffs own affidavits and unequivocal discovery responses based on plaintiffs personal knowledge, to the extent they contradict the complaint. *Bockrath v. Aldrich Chem. Co.*, 21 Cal. 4th 71, 83, (1999)—discovery responses binding.

Dresser's response to appellant's discovery re. loss of income, earning capacity, etc., precludes default judgment-$

See 4/16/2013 appellant's "Form Interrogatories ["FI"] Set One"-[CT.665],"Sec.4.(a)(2).INCIDENT"-[CT.666]: "Your association with [redacted], directly, or through others, either in an attorney capacity, or otherwise", under damages,#7-#9-[CT.668-669]

Dresser's sworn 5/14/2013 response is "This party [Dresser] is not making any contention in the complaint in this case"-[CT.817:16-27].

Also appellant's 4/30/2013 "Request To Identify & Produce ["RTIP"]", #2-[CT.801]

Also appellant's 8/27/2013-RTIP, #18-[CT.3051.¶18] where Dresser failed to apprise appellant of nature/details of claim.

Dresser's confirmation of not making any contention/claim to the INCIDENT, precludes Judgment-$ based on that same incident.

5.7.5/28/2013 Order Denying Consolidate-Motion

"When separate lawsuits share common questions of law or fact, the court may order consolidation or coordination for trial. (See CCP§§403, 1048(a))", §28:27.Motion to consolidate or coordinate, Cal. Civ. Ctrm. Hbook. & Desktop Ref. § 28:27 (2017 ed.)

[Coordination/Consolidation-Motions] warrant plenary [de novo] review"-*McGhan Med. Corp. v. Superior Court*, 11 Cal. App. 4th 804, 811, (1992).

On 3/29/2013 appellant filed ["Consolidate-Motion"] "Motion-to-Consolidate" "239828" with "212974", both attorney malpractice action against Dresser-[CT.93;CT.94]; 4/22/13 *tentative* ruling-[C082936.5CT.1167] has one word, "Denied"-[C082936.Aug#4.CT.Exhibit-A,Line20]

On 4/23/2013 Judge McKenney hears "Consolidate-Motion". Denial Order filed on 5/28/2013-[CT.640;CT.3342-43]

On 6/24/2018, the 5/28/13 Order is appealed in "212974" case-[CT.3330]-Appeal.No.H039806/C082936, ***and*** in instant-"239828" case, including appealed after default/judgment, on 1/9/2014-

[CT.3374], revised on 3/3/2014-[CT.3630], re-revised on 5/22/2014-[CT.3697]

Appellant files "Notice of Stay Of Proceedings"-[CT.3312] due to appeal no. H039806/C082936

5.7.1. Invalid "Special Appearance" Voids Order

At 4/23/13 hearing-[C082936.RT.41], [36]*pro se* Dresser fails to appear. In both cases, Dresser, pro se, never files a §284 substitution of attorney request.

"Anthony Passaretti specially appear[ed] for Dresser"-[C082936.RT.43:17], without notice, or paperwork, which is objected-[C082936.RT.43:26].

CCP§285:"When an attorney is changed, as provided in [CCP§284], written notice of the change and of the substitution of a new attorney...must be given to the adverse party. Until then, he must recognize the former [arrangement]".

"The purpose of these statutes is to have the record of representation clear so the parties may be certain with whom they are authorized to deal. Litigants are not required to investigate the relationship between opposing attorneys of record and their clients. They and the courts have every right to rely on court records as binding on both litigants and the attorneys appearing of record on their behalf", *McMillan v. Shadow Ridge At Oak Park Homeowner's Ass'n*, 165 Cal. App. 4th 960, 965, (2008). "[S]uch notice is for the protection of the adverse party",-*Anderson v. City Ry. Co.*, 9 Cal. App. 2d 205, 207, (1935).

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[36] 5/28/13 order drafted by Dresser as "Defendant in pro per"-[CT.640]

Special appearance "denote[s] an appearance at a hearing by one attorney at the request and in the place of the attorney of record...(See, e.g., *McCullough v. Commission on Judicial Performance* (1989) 49 Cal.3d 186, 195–196; *Vernon v. Great Western Bank* (1996) 51 Cal.App.4th 1007, 1010", *Streit v. Covington & Crowe,* 82 Cal. App. 4th 441, 444, fn.2, (2000)-("*Streit*")

"[A]n attorney making a special appearance is associated with the party's attorney of record. Indeed, if that were not the case, the specially appearing attorney would not be allowed to be heard",-*Streit*, 445,

"Therefore, unless it can be established that the new attorney was "associated" with the attorney of record, the former should not have been recognized by the trial court as appearing on behalf of [party]",-*In re Marriage of Park,* 27 Cal. 3d 337, 343, (1980)("*Park*").

Dresser being pro se, Passaretti's appearance was invalid and "the..court should not have so recognized him. As a result, the court was without authority to enter judgment other than by default",-*Park*, 344. See also *Jackson v. Jackson*, 71 Cal. App. 2d 837, 840, (1945)-[act of invalid attorney is defective/void]

5.7.2. Due Process Denial

Despite appellant & son's objection:-"I'd like to have the Court give us an opportunity to address."-[C082936.RT.45:2-3], lower-court denies it, despite objection that "the previous case took 50 minutes, and...one minute is not fair on a significant motion like this"-[which too was denied].

Ironically, and committing a fraud on the Court, Judge-McKenney signs the 5/28/13 Order falsely stating-"The Court.. having

provided counsel and the in pro per parties an opportunity for oral argument"-[C082936.CT.641:10-11].

One word "Denied" tentative, with no opportunity to argue, guts the adversarial due process system of justice.

5.7.3. Denial Because Of Son's VL, Is A Reversible Error

Courts reasoning-[C082936.RT.45:15-19]-"I'm going to deny the motion [because] [y]ou-[appellant's son] are a vexatious litigant; that has been taken into account on this. And it's likely that you're the one that wrote it".

Consolidating/coordinating two viable[37] separate actions runs contrary to vexatious litigation. Consolidation would avoid duplication, redundancy, savings in court's, parties, and witnesses' time and effort vs. "waste the time and resources of the court system and other litigants",-*Shalant*, 1169.

Also ¶5.6.3-"RoECJ".

"[It] promote[s] the ends of justice taking into account whether the common question of fact or law is predominating and significant to the litigation; the convenience of parties, witnesses, and counsel; the relative development of the actions.; the efficient utilization of judicial facilities and manpower; the calendar of the courts; the disadvantages of duplicative and inconsistent rulings, orders, or judgments; and, the likelihood of settlement of the actions without further litigation",-CCP§404.1

Next, "Consolidation-motion" is premised on, and requires Court analyzing CCP§1048 factors, vs. denial on §391

[37] Withstood Dresser's multiple demurrers

stigma/prejudice/bias. Reversal for misapplication of law.

5.7.4. McKenney's Own Dubious Reasons For Denial

"[Consolidation] Judge..did not properly weigh the advantages of coordination against the disadvantages noted in his order, and that he applied the wrong legal standard in reaching his ruling",-*McGhan*, 808.

Court misconstrued "Consolidation-motion" as an attempt to merge #212974 case into #239828-[C082936.RT.44:21-24]. But a plain reading shows opposite "will move the Court to consolidate case no. 1-11-CV-212974 with 1-13-CV-239828"-[CT.1167:20-21]. See also "seeks consolidation of the two cases"-[CT.1168:21], "the two cases qualify for consolidation"-[C082936.CT.1168:25].

Misread, still not a valid reason not to consolidate.

5.7.5. Court's Conclusory Excuse Rings Hollow

Judge-McKenney's gave conclusory boiler plate excuse that consolidation "would not be a judicially economical thing to do", without explaining why, how?

Given circumstances and posture of the two questioned cases-[C082936.CT.1168-1171:27], consolidation, highly logical.

Reversal warranted as son's VL infected appellant's consolidation request.

5.8.1/24/2014 Order Quashing Subpoena

Given attorney malpractice claim, California State Bar's disciplinary actions against Dresser is relevant, especially when Dresser evades appellant's discovery on point.

To resist discovery, on 12/3/2013 Dresser filed Motion to Quash Subpoena Directed to "California State Bar"-[CT.3196;CT.3189;CT.3146]

Appellant opposed citing eight grounds-[CT.3364;CT.3350]

Dresser replies-[CT.3410]

Order grants motion, questioning designated deposition officer's qualifications and finding dispute moot-[CT.3474].

Reversal of 12/17/2013-TS-Order-¶5.1 and denial of CourtCall-¶5.2, are among many grounds to reverse instant order.

5.9.Justice-Delayed, Justice Denied-Ex-Parte-Orders

On 10/8/2013, appellant raises [3]-three issues-[CT.2803] on urgent/ex-parte basis:

#1.Clerk's refusal to file appellant's counter-cross-complaint,

#2.Disqualification-["DQ"] due to Judges/lower-court adversary Federal defendants' vs. appellant,

#3.Stay, pending H039806/C082936 appeal.

Same day-10/8/2013, Judge-Overton "read the papers…this court has been challenged and cannot preside over the matter"-[RT.202:20-22] "I'll have to look into this issue of a challenge"-[RT.203:3-6] holds contested-matters off, including appellant's cross-complaint "until I look into this issue of disqualification"-[RT.204:1-4].

Per ¶5.1.7, despite three intervening hearings, Judge-Overton delays ruling on appellant's relief for [5]-five months, until after damage is done, and issues become moot-[CT.3521;CT.3523;CT.3525;CT.3257;CT.3529] "To allow such conduct to go unrestrained by necessitating long delays…is to give

encouragement to the actor with the stronger hand"-*Hillman v. Hillman Land Co.*, 81 Cal. App. 2d 174, 189, (1947)

> Federal-Action.SAC.¶354. PLAINTIFFS reminded OVERTON of making a determination on the submitted Oct. 8, 2013 matter, by calling her clerk, Mr. Joe Paura, numerous times in the last quarter of 2013"

Appellant sent multiple email reminders to Judge-Overton, e.g. on 10/23/2013-[CT.AUG.693], 11/7/2013-[CT.AUG.696].

A [5]-five month delay to file trial-decision, let alone an ex parte ruling, is egregious, violates "Trial Court Delay Reduction Act"-Govt.C. Article§5, California Constitution, Article 6, §19, and Govt.C.§68210 "No judge of a court…shall receive his salary unless he shall make and subscribe before an officer entitled to administer oaths, an affidavit stating that no cause before him remains pending and undetermined for 90 days after it has been submitted for decision"

Judge-Overton's committed Govt.C.§68210 perjury by certifying above for Nov. 2013 to Jan. 2014, but delaying ruling on appellant's 10/8/2013 ex-parte.

Judge-Overton held back decision on appellant's ex parte, until Manoukian defaulted appellant, and awarded judgment, making the ex parte moot with half year of decisional delay.

Appealed orders prejudiced appellant[38] given "legislative recognition of the fundamental axiom "that justice delayed is justice denied and the unmistakable requirement that the judiciary now take active management and control of cases, from start to finish, for speedy dispute resolution"-*Laborers' Internat. Union of North*

[38] For e.g. Appellant cannot now file a X-Complaint with case now in post-judgment status-[CT.3529-30]

America v. El Dorado Landscape Co. (1989) 208 Cal.App.3d 993, 1007.

Judge-Overton's willful delay in resolution of 10/8/2013 ex-parte application is abuse of discretion, just as litigants delay tactics are deemed "abuse of the litigation process"-*Coleman v. Gulf Ins. Grp.*, 41 Cal. 3d 782, 797, (1986)

5.10. 5/19/2014 Order-Relief From Default "Judgment"-

Appellant files "Motion For Relief From Default Judgment ['DJ"]"-[CT.3644;3645;3639;3640].

Dresser opposes-[CT.3669]. Appellant replies-[CT.3675].

On 5/19/2014 motion is denied because "essentially seeks reconsideration of previous court orders and is not timely made under §1008(a). Plaintiff has not otherwise shown entitlement to the requested relief"-[CT.3692]

5.10.1. Review-Standard

De-novo review standard-*Talley v. Valuation Counselors Grp., Inc.*, 191 Cal. App. 4th 132, 146, (2010)

5.10.2. Instant Motion On "New"/Different Facts/Law

Instant 3/10/14-Motion attacks the 2/28/14 "*DJ*", vs. separate-default-"entry", e.g. "Judgment Barred by Law"-[CT.3650.¶IV.5], -[CT.AUG.705.¶3-¶4].. "Language Of "DJ"…"-[CT.3655.¶6], "Rubber Stamped 'DJ'"-[CT.3657.¶IV.7], and more.

Appellant filed *no* other motion since 2/28/14-Default-Judgment-Order

Reversal because:

5.10.3. §473(b)-Motion Is Not §1008(a) Reconsideration

Order's flawed:

(1)-Appellant's motion is not, and cannot be a renewed motion, but *initial* §473(b) motion, nor has appellant *previously* challenged default-judgment-[CT.AUG.705.¶3-¶4]. Motion raises *first-time* subjects-[CT.3650.¶IV.5;CT.3655.¶IV.6;CT.3657.¶IV.7]"§1008 never restricts initial applications for relief from default under §473(b) in any way", *Even*, 841.

(2)-Appellant noted-[CT.3645:22-24], when roles were reversed in "212974"-case, court vacated Dressers default three times, including Dresser's *3 months late* §473(b) vacate default motion was *not* deemed untimely, or as §1008 reconsideration-[C082936.CT.982], [CT.AUG.705.¶1]. Double-standard!

(3)-§1008 (b) is not limited to "new" facts alone, but also "different facts, circumstances, or law".

(4)-§1008 does not prohibit motions that question court's jurisdiction; can be raised at any time-[CT.3646.¶IV.1-2].

5.10.4. §1008 Does Not Bind Court

Appellant raised court's inherent equity power, without time limitations-[CT.3648.¶3;CT.3658.¶IV.8;CT.3659.¶IV.10]. See ¶5.4.3

5.10.5. Order Ignores Other Grounds

Order ignores:

(1)-Protection to vulnerable elders under Division 8.5. Mello-Granlund Older Californians Act [§9000 -§9757.5] and the Elder Abuse and Dependent Adult Civil Protection Act [§15600 - §15675]-[CT.3659.¶IV.11]

(2)-Court lack jurisdiction due to §916(a) automatic stay-[CT.3646.¶IV.1]

"Having concluded the orders entering the defaults of

defendants are void, we must conclude the default judgment against defendants is also void. “‘“A void judgment [or order] is, in legal effect, no judgment. By it no rights are divested. From it no rights can be obtained. Being worthless in itself, all proceedings founded upon it are equally worthless. It neither binds nor bars any one.””-*Sole Energy Co. v. Hodges*, 128 Cal. App. 4th 199, 210, (2005)

5.10.6. “Liberal Trial On Merits” Cuts Both Ways

Despite finding not qualifying for §473(b), lower-court vacated default against Dresser in “212974”-case, citing “the longstanding overriding principle that relief from default is to be liberally granted in favor of trial on the merits”-[C082936.CT.984:11-13] which now partisanly denied to appellant here-[CT.3645:22-24] underscoring prejudice, double standard against appellant

5.11. Manoukian/Lower Court’s Animus//Fraud on Court

Covered throughout the brief

5.12. Transfer To Impartial Judiciary; Fraud On The Court

Given outright animosity/prejudice against appellant/her son, consistent with Sixth District-CoA, appeal transfer to this court, the “239828”-case be ordered removed to independent/unbiased judiciary.

6. Conclusion

Appealed orders drip with Manoukian’s animosity/discrimination/misconduct against appellant, his excessive/undue control, abuse of power/discretion[39], vs. adjudication on facts, law, merits.

On *de-novo* review of law, on any one of the countless reversal

[39] E.g. http://shameonyoumanoukian.blogspot.com/

grounds, appealed orders should be reversed with costs, transferring appellant's cases to impartial judiciary, to prevent future "fraud on the court", and to regain public's trust in the judiciary[40].

Oct. 31, 2018 /s/ [redacted], Appellant

[40] Lack of public trust resulted in 126,352 voters, on 6/5/2018, recalling appellant's family court Judge Aaron Persky. http://apps.mercurynews.com/election-results/

CERTIFICATE OF COMPLIANCE

Pursuant to rule 8.204 (c) of the California Rules of Court, I certify that this brief, prepared with assistance, contains 16,577 words. This certification relies on the word count of the computer program used to prepare this brief.

Oct. 31, 2018 /s/ [redacted], Appellant