IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
Division ___

Richard I. Fine
Petitioner
v.
Superior Court of California for the County of Los Angeles,
Respondent

Marina Strand Colony II Homeowners Association v. County of Los Angeles
Real Parties in Interest

Los Angeles Superior Court Case No. BS 109420
Hon. David P. Yaffe, Judge

PETITION FOR WRIT OF MANDATE, PROHIBITION OR OTHER APPROPRIATE RELIEF; MEMORANDUM OF POINTS AND AUTHORITIES [EXHIBITS IN SUPPORT THEREOF IN SEPARATE BINDER]

IMMEDIATE STAY OF CONTEMPT TRIAL SET FOR DECEMBER 22, 2008 IN THE LOS ANGELES SUPERIOR COURT BEFORE JUDGE DAVID P. YAFFE REQUESTED

APPENDIX VOLUME I

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Petitioner

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IMMEDIATE STAY OF CONTEMPT TRIAL SET FOR DECEMBER 22, 2008 IN THE LOS ANGELES SUPERIOR COURT BEFORE JUDGE DAVID P. YAFFE REQUESTED

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Petitioner

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PETITION FOR WRIT OF MANDATE, PROHIBITION OR OTHER APPROPRIATE RELIEF
MEMORANDUM OF POINTS AND AUTHORITIES

NECESSITY FOR IMMEDIATE RELIEF

A contempt trial is presently set for December 22, 2008 at 9:30 am in Department 86 of the Los Angeles Superior Court before the Honorable Judge David P. Yaffe.

On December 12, 2008, Judge Yaffe denied Petitioner's Motion to:

(1) Change Venue on the Grounds that Richard I. Fine Cannot Receive a Fair Trial in the Los Angeles Superior Court;

(2) Dismiss Contempt Charges for Constitutional Violations, and

(3) Dismiss Contempt Proceeding Pursuant to CCP § 425.16.

Violations of the right to freedom of speech, the right to petition government to redress grievances and due process have occurred.

Unless an immediate order is entered staying the contempt trial pending the decision of this Petition, the violations, in particular the due process violations, will continue to occur unabated.

Petitioner does not have any adequate remedy in the ordinary course of law other than a writ and an immediate stay pending the decision on the writ.

INTRODUCTION

Petitioner seeks an order immediately staying all proceedings involving Petitioner until further notice from this Court, including but not limited to the contempt trial set for December 22, 2008, the hearing on motion for sanctions set for December 22, 2008 and the debtors examination

set for December 29, 2008.

Petitioner requests this Court either (a) issue its pre emptory writ of mandate directing Respondent Superior Court to set aside and void its January 8, 2008 order, its April 15, 2008 order, its November 3, 2008 order and its December 12, 2008 order and all other orders relating to Petitioner and grant an order voiding and annulling Respondent Superior Court's January 8, 2008 order, April 15, 2008 order, November 3, 2008 order and December 12, 2008 order and all other orders relating to Petitioner, transferring any claim or cause relating to Petitioner out of the LA Superior Court and out of LA County and disqualifying all judges who presently receive, or who have received payments from LA County within the past 10 years; or (b) directing Respondent Superior Court to show cause why it should not be so directed, and upon return to the alternative writ, issue a pre emptory writ as set forth in (a) above.

This may be the first case to be brought to this court where the unconstitutional payments by LA County to the LA Superior Court judges are the demonstrated basis of the actions of the Superior Court. This may also be the first case where the campaign contributions of the developer are disclosed to show violations of the Political Reform Act by the LA County Supervisors which voided the approval of the EIR which was the basis of the underlying case. Neither, the counsel for LA County nor Real Parties in Interest have disclosed this information. Had such been disclosed, a full writ of mandate should have been issued by Judge Yaffe, as the EIR was never approved due to lack of votes.

This case demonstrates the "perfect storm" of campaign contributions

related to unlawful votes to approve the EIR and unconstitutional payments from LA County having the effect of LA Superior Court judges staying on cases despite the payments having been admitted and not contested and acting unconstitutionally to benefit LA County.

In this case, Judge Yaffe entered an order on January 8, 2008 requiring Petitioner to pay $1,000.00 in sanctions and attorneys fees and costs to LA County and Real Parties in Interest, without any notice or opportunity to be heard at the hearing. Petitioner was informed of the order by his successor counsel by service by mail on January 23, 2008. Petitioner had not been counsel to Marina Stand Colony II Homeowners Association since October, 2007.

Petitioner immediately moved to disqualify all judges receiving money from LA County and to dismiss the order. Petitioner then moved to tax costs when Real Parties in Interest presented their fees.

On March 25, 2008, Petitioner served Judge Yaffe with a CCP § 170.3 Objection based upon Judge Yaffe's statement in open court that he was receiving money from LA County. Judge Yaffe did not file a response and was disqualified under CCP § 170.3©)(4) on April 7, 2008. Judge Yaffe refused to send the file to the Supervising Judge and has refused to leave the case.

On April 15, 2008 Judge Yaffe entered an order requiring Petitioner to pay Real Parties in Interest approximately $51,000.00 in attorneys fees and costs.

On June 9, 2008, Supervising Judge Edmon denied Petitioner's motion to void the April 15, 2008 order and to transfer motion to dismiss

the January 8, 2008 order.

On August 26, 2008 Judge Yaffe denied Petitioner's motion for attorneys fees. (This is in appeal.)

On September 3, 2008, Judge Yaffe refused to send Petitioner's motion to quash writ of execution to the Supervising Judge for assignment.

On November 3, 2008 Judge Yaffe entered the OSC re Contempt setting the Contempt Trial for December 22, 2008.

On December 12, 2008, Judge Yaffe denied Petitioner's Motion to:

(a) Change Venue on the Grounds that Richard I. Fine Cannot Receive a Fair Trial in the Los Angeles Superior Court;

(b) Dismiss Contempt Charges for Constitutional Violations, and

©) Dismiss Contempt Proceeding Pursuant to CCP § 425.16.

PETITION

I. Jurisdiction

The Court of Appeal has original jurisdiction to hear petitions for writs of mandate. (CCP §§ 1085 and 1086)

A superior court order granting or denying a motion for change of venue is reviewable by writ of mandate. (CCP § 400)

The Court of Appeal has original jurisdiction to hear petitions for writs of prohibition (CCP §§ 1102 and 1103) to prevent the court from acting to enforce a void order or judgment through threatened contempt proceedings *(DeLuca v. Superior Court* (1968) 262 Cal.App.2d 254, 261), and to prevent hearing on OSC re Contempt (*McMahon v. Superior Court* (1967) 255 Cal.App.2d 363).

The Court has jurisdiction to hear an appeal "from an order ...denying a special motion to strike". (CCP § 904.1(a)(13)

II. The Parties

Petitioner is the former counsel for Marina Stand Colony II Homeowners Association, the petitioner in the underlying case.

The County of Los Angeles (LA County) is the Respondent in the underlying case.

Del Rey Shores Joint Venture and Del Rey Shores Joint Venture North (Del Rey Shores) are the Real Parties in Interest in the underlying case. The testimony in before the Los Angeles County Regional Planning Commission relating to Project No. R2005-00234(4) by Jerry B. Epstein showed that he was the developer. County documents show that the application was made by David Levine on behalf of Del Rey Shores Joint Venture.

III. LA County Leases Land to Del Rey Shores in Marina del Rey, California Upon Which Del Rey Shores Developed an Apartment Complex for Private Rental

LA County leases Parcels 100 and 101 located at 4201 Via Marina, Marina del Rey, California to Del Rey Shores. Del Rey Shores presently operates a 202 unit apartment complex with parking spaces. Del Rey Shores applied to redevelop the property into a 544 unit apartment complex with 1,088 parking spaces. The redevelopment was designated Project No. R2005-00234(4). To accomplish the redevelopment, an EIR was required to be approved by the "lead agency", LA County.

IV. The Origin of the Underlying Case, the Monetary Relationships Between Del Rey Shores, LA County, the LA Board of

Supervisors, and the Judges of the Los Angeles Superior Court and Their Effect

A. Del Rey Shores Contributions to Supervisors Antonovich and Knabe Preclude Their Ability to Vote on the Project Under the Political Reform Act and Thereby Void the May 15, 2007 Approval of the EIR

The underlying case is founded upon the illegal vote of the Supervisors of Los Angeles County approving Project Number R2005-00234(4) on May 15, 2007 by a vote of 4-0 with Supervisors Antonovich, Burke, Knabe and Yaroslavsky voting in favor of the project. Supervisors Antonovich and Knabe did not disclose that the each had received contributions of greater than $500.00 in the twelve months previous to the vote making them ineligible to vote on the project under the Political Reform Act , Gov. Code, § 81000 et seq. (See *BreakZone Billards v. City of Torrance*, (2000) 81 Cal. App.4th 1205, 1227-1229) Neither of them was able to participate in the voting process on May 15, 2007. (Ex. 1)

Documents obtained from the new website of the County of Los Angeles Registrar-Recorder/County Clerk show that on 4/04/07 the Epstein Family Trust, Jerry B. Epstein Trustee, and David O. Levine (Real Estate Consultant, Office of Jerry B. Epstein) each contributed $1,000.00 to Re-Elect Supervisor Don Knabe 2008, for total contributions of $2,000.00 and on 4/24/2007 Jerry Epstein (Real Estate, Jerry B. Epstein Mgmt. Co.), David Levine (Real Estate Management, Del Rey Shores), and Pat Epstein (Artist, Pat T. Epstein)[wife of Jerry Epstein] each contributed $1,000.00 Board of Supervisor Antonovich 08 for total contributions of $3,000.00. (Ex. 2)

The contributions were not disclosed as no report was due and LA

County did not have a website.

Removing Supervisors Antonovich and Knabe from the May 15, 2007 vote leaves only two votes which was insufficient for the motion to pass as the Board did not have a quorum and the three votes needed to pass the motion. Further, the minutes of the Meeting show that the motion was made by Supervisor Knabe, who was not eligible to make such motion, thereby further negating the passage of the EIR.

After the "approval" of the EIR, Marina Strand Colony II Homeowners Association through their counsel Richard I. Fine (Petitioner herein) filed a Petition for Writ of Mandate in the Los Angeles Superior Court. LA County was named as the Respondent. The case was assigned to Judge David P. Yaffe.

B. LA County Makes Payments to LA Superior Court Judges Which the Court of Appeal Has Held Are Unconstitutional.

In or about 1988, LA County commenced making payments to LA Superior Court judges. Such payments were called "local judicial benefits".

In 1988, approximately at the time when the LA County "local judicial benefit" payments were approved for the LA Superior Court judges, the LA Superior Court had received a November 10, 1988 letter from the LA County Counsel to Frank S. Zolin, County Clerk/Executive Officer, Superior Court stating that only the Legislature could prescribe [the compensation of the judges] and that the Legislature could not delegate the function to another body or person citing *County of Madera v. Superior Court* (1974) 39 Cal.App.3d 665 and further stating that the Attorney General believed that the word "compensation" in Article VI, § 19 was not

limited to just "salary". (1988 Letter pages 1-2).

The letter stated at page 6 in relevant part:

> However, even assuming that such benefits are not specifically authorized by statute, we believe that the County may still provide them to judges, so long as the Board of Supervisors finds there is a benefit to the County in doing so. **This would also be true of other benefits for judges such as a professional development allowance or bonus.**
>
> **Superior court judges are technically State constitutional officers**, but they are in many respects quasi-county officers. ....
>
> **The Board of Supervisors has evidently found that in order to attract and retain qualified judges to serve in this [LA] County, it is necessary and appropriate to provide them with benefits such as the Flexible Benefit Plan contribution and the 401(k) match**, which are available to many employees in the private sector, as well as to County employees and court officers and employees other than judges.
>
> **It may be necessary for the Board of Supervisors to provide additional benefits for judges in the future in order to maintain a high level of judicial competence and performance in this County.** (Emphasis added.) A true and correct copy of the 1988 letter marked as Ex. 3 is incorporated herein as if set forth in full.

The LA County Supervisors and the LA Superior Court judges knew that LA County was not an employer of the LA Superior Court judges, that the LA Superior Court judges were not "LA County quasi county officers" and that LA County did not have any responsibility, obligation, or mandate to "attract and retain qualified judges to serve in this [LA] County" as such judges were elected state officers under California Constitution, Article VI, § 16(b) and ©).

California Constitution, Article VI, § 16(b) and © mandates that superior court judges are elected for six year terms or appointed by the Governor to complete an unfilled terms, prior to the next election. The LA County Supervisors and the LA Superior Court judges knew that under the California Constitution, Article VI, § 16(b) and ©), the benefits that LA County provides the LA Superior Court judges could not enhance the recruitment and retention of judges who serve in Los Angeles, as no "recruitment or retention" occurred other than an election which is controlled under the California Constitution, Article VI, § 16(b)-(d).

Further, the LA County Supervisors and the LA Superior Court judges knew that California Constitution, Article VI, § 17 precludes a judge from employment other than that of a judge or judicial office and requires the trial judge to seek leave of absence if he is seeking other public office.

Additionally the LA County Supervisors and the LA Superior Court judges knew that Cannon 4C (1) and (2) of the Code of Judicial Ethics prohibits the judge from employment with the county.

Additionally, the LA County Supervisors and the LA Superior Court judges knew that the taking of the payments from LA County by the LA Superior Court judges violates Code of Judicial Ethics Cannons 2B(1), 3E(1) and (2), and 4D(1) and (5).

On September 15, 2000, California Supreme Court Chief Justice Ronald M. George stated to the California Judges Association at a meeting in San Diego, in discussing the "local judicial benefits" paid by LA County to the LA Superior Court judges:

That state of affairs is not only wrong, it may be unconstitutional.

The fact that the payments are unconstitutional is now established by court decision. The court in the case of *Sturgeon v. County of Los Angeles, et al.*, October 10, 2008 modified November 7, 2008, Court of Appeal, Fourth App. Dist., Div. One, App. Case No. D050832, LASC Case No. BC 351286, Certified for Publication held at pages 1-2:

> **Section 19 article VI of the California Constitution requires that the Legislature**
> **"prescribe compensation for judges of courts of record. The duty to prescribe judicial compensation is not delegable. Thus the practice of the County of Los Angeles of providing Los Angeles County superior court judges with employment benefits, in addition to the compensation prescribed by the legislature, is not permissible.** Accordingly, we must reverse an order granting summary judgment in favor of the county in an action brought by a taxpayer who challenged the validity of the benefits the county provides to its superior court judges. (Emphasis added.)

The Court further held at page 35:

> **Both section 69894.3 and the audit and credit procedures set forth in Lockyer-Isenberg are also ineffective as legislative prescriptions. They do not require the payment of benefits, let alone set any standard or safeguard which regulate the size or the conditions under which they should be paid.** In giving the county's *the option* of providing the benefits, and no limitation on the kind and amount of those benefits, these statutes in no sense set a fundamental policy with respect to benefits, provide any standard for applying such a policy, or contain any safeguards which would insure that benefits are consistent with the Legislature's adopted policy. Indeed, without violating section 69894.3 or Lockyer-Isenberg, the county could, in any given year, deprive its judges of MegaFlex benefits and continue to provide them to other employees.(Emphasis added.)

The court concluded at pages 36-37:

> **Because the benefits provided by the county are compensation**

Neither Supervisors Antonovich nor Knabe, nor the County Counsel, nor the counsel for Del Rey Shores Joint Venture or Del Rey Shores Joint Venture North ever disclosed the Del Rey Shores contributions at the hearings or in the underlying case. The failure of Supervisors Knabe and Antonovich to disclose the contributions and their participation in making and voting the May 15, 2007 motion violated Gov. Code, §§ 87100 and 87103.

The failure of County Counsel and counsel for Del Rey Shores Joint Venture or Del Rey Shores Joint Venture North to disclose the information in this lawsuit deliberately misled the court in violation of B&P Code 6068(d) and Rules of Professional Conduct, Rule 5-200(B). The Minutes of the LA Board of Supervisors Meeting of May 15, 2007 show the motion being made by Supervisor Knabe and the vote. A true and correct copy of the Minutes of May 15, 2007 marked as Exhibit is incorporated herein as if set forth in full.

D. Judge Yaffe Never Reversed the LA County EIR Approval Based Upon the Del Rey Shores' Contributions and the Same Political Reform Act Violation Has Just Occurred as to the December 16, 2008 Re Approval of the EIR.

Judge Yaffe overturned the LA County approval of the EIR on the grounds that a change in the last draft of the EIR had not been circulated. (This decision is presently on appeal and cross appeal) He did not address the contribution problem. The EIR was re circulated and a new vote was scheduled for December 16, 2008.

On December 16, 2008, the LA Board of Supervisors voted 5-0 to re approve the EIR. (Ex. 4) However, Supervisors Antonovich, Knabe and

Molina had received contributions greater that $500.00 from Jerry B. Epstein, David O. Levine, and Marina Properties, LLC within the previous twelve months. Jerry B. Epstein and David O. Levine each contributed $1,000.00 to Supervisor Antonovich, for a total of $2,000.00, Marina Properties, LLC contributed $500.00 to Supervisor Knabe, and Jerry B. Epstein contributed $1,250.00 to Supervisor Molina-Yes on Measure U etc.

Documents obtained from the new website of the County of Los Angeles Registrar-Recorder/County Clerk show that from 4/24/07 through 10/08/08 Jerry B. Epstein contributed $6,250.00 to Supervisors Antonovich, Burke, Molina, and Yaroslavsky in amounts of $1,000.00 or greater [$1250.00 to Molina], that from 4/04/07 through 10/08/08 David O. Levine contributed $8,250.00 to Supervisors Antonovich, Burke, Knabe, Molina, and Yaroslavsky in amounts of $1,000.00 or greater [$1250.00 to Molina], that from 4/04/07 through 11/07/07 the Epstein Family Trust, Jerry B. Epstein, Trustee contributed $2,000.00 to Supervisor Knabe in amounts of $1,000.00, that from 4/24/07 through 11/07/07 Pat Epstein [identified in previous years' reports as the wife of Jerry B. Epstein] contributed $3,000.00 to Supervisors Antonovich, Burke, and Knabe in amounts of $1,000.00, and on 3/18/08 Marina Properties LLC contributed $500 to Supervisor Knabe for total contributions of $19,000.00 from 4/04/07 through 10/8/08. (Exhibit 2)

E. LA County Documents Show that the Benefit that LA County Actually Received from the Payment of "Local Judicial Benefits" to LA County Judges Was that Literally No One Prevailed Against LA County When a LA Superior Court Judge Made the Decision in a Case.

LA County is not an official part of the selection process for LA

Superior Court judges who are State constitutional officers elected for six year terms, or are appointed by the governor to complete unfilled terms prior to the next election as shown by Article VI, § 16(b)-(d) of the California Constitution.

Since LA County could not use "local judicial benefits" "to attract and retain qualified judges to serve in this [LA] County" either under the California Constitution, the Code of Judicial Ethics or as a contribution to the judicial election campaigns, the only "benefit" which LA County could receive from the payments was preferential treatment in the cases which LA County had or would have before the LA Superior Court judges.

This treatment occurred, as disclosed by the June 9, 2005, October 3, 2007 and October 1, 2008 County Counsel Annual Litigation Cost Reports to the LA Board of Supervisors. The 2005 Report shows that 404 lawsuits were dismissed in the first three quarters of 2004-2005 as compared to 163 in the first three quarters of 2003-2004 and no decision in favor of a party by a judge in 2004-2005. 213 new lawsuits were filed in the third quarter of FY 2004-2005. (Pages 1 and 2)

The October 3, 2007 Report shows no decision in favor of a party by a judge in 2006-2007, (Page 3) and 261 dismissals in 2007 which was 12% less than 2006 (page 4). There were 670 new cases filed in 2007, which was 21% less than 2006 and 5% less than 2005 (page 4).

The October 1, 2008 Report shows the County tried 25 cases, prevailed in 16, received adverse verdicts or decisions in 7 and 2 cases resulted in "hung juries". The Report did not show that any adverse "decision" was rendered by a LA County Superior Court judge. (page 3).

Unlike previous years, the 2008 Report did not report "new cases filed" or "dismissals". True and correct copies of the 2005, 2007 and 2008 Reports marked collectively as Exhibit 5 are incorporated herein as if set forth in full.

V. Actions by the LA Superior Court Against Petitioner Which Violated the Law in the Underlying Case

The acts constituting violations of law in the underlying case are:

(1) on January 8, 2008 Judge Yaffe ordered Petitioner to pay $1,000.00 in sanctions and attorneys fees and costs to counsel for LA County and counsel for Real Parties in Interest without any notice or Petitioner being present at the hearing;

(2) on March 20, 2008 Judge Yaffe took Petitioner's motion to disqualify LA Superior Court judges for receiving payments from LA County and dismiss the January 8, 2008 order off calendar;

(4) on March 27, 2008 Judge Yaffe issued a void order striking a non existent personal CCP § 170.3 Objection which he claimed existed in the February motion to disqualify all LA Superior Court judges receiving payments from LA County; even if such Objection did exist, the March 27, 2008 order was void as being greater than 10 days after the filing of the alleged § 170.3 Objection;

(4) on April 7, 2008 Judge Yaffe refused to remove himself from any part of the case relating to Petitioner and refused to transfer the file to the Supervising Judge for re assignment even though he was disqualified under CCP § 170.3©)(4) for failing to respond to a CCP § 170.3 Objection served on him on March 25, 2008 containing the reason that he admitted in open court on March 20, 2008 that he was receiving "local judicial benefit"

payments from LA County including "MegaFlex Benefits", a "professional development allowance" and a contribution to his 401(k) all of which were worth over $40,000.00 per year;

(5) on April 15, 2008 Judge Yaffe signed an order, requiring Petitioner to pay Real Parties in Interest approximately $51,000.00 in attorneys fees and costs at the request of Joshua L. Rosen counsel for Real Parties in Interest while knowing that Judge Yaffe was disqualified and did not have jurisdiction to act;

(6) on June 9, 2008 Supervising Judge Edmon denied a Petitioner's motion to void the April 15, 2008 order and to transfer the motion to dismiss the January 8, 2008 order and motion to tax costs which Judge Yaffe had taken off calendar;

(7) on June 18, 2008 Commissioner Gross, who has not been selected as a "temporary judge" or who has produced an order showing he was appointed as a receiver orders Petitioner to answer questions in a judgment debtor's examination;

(8) on July 30, 2008, Judge Yaffe heard a motion to strike a Memorandum for Costs and struck such despite being disqualified;

(9) on August 26, 2008, Judge Yaffe heard Petitioner's motion for attorney's fees despite being disqualified and denied such; previously he had struck a memorandum of costs;

(10) from September 3, 2008 onwards, Judge Yaffe has refused to send a motion to quash writ of execution of the April 15, 2008 order to the Supervising Judge for assignment to another judge after it was erroneously sent to him by Commissioner Gross;

(11) on November 3, 2008, Judge Yaffe granted the OSC re contempt and set the trial date even though he is disqualified and neither the OSC nor Declaration of Joshua L. Rosen gave specific notice of the charges;

(12) On December 12, 2008, Judge Yaffe denied Petitioner's Motion to:

(a) Change Venue on the Grounds that Richard I. Fine Cannot Receive a Fair Trial in the Los Angeles Superior Court;

(b) Dismiss Contempt Charges for Constitutional Violations, and

©) Dismiss Contempt Proceeding Pursuant to CCP § 425.16.

and

(13) on December 22, 2008, Judge Yaffe has also scheduled the hearing of a sanctions motion against Petitioner even though he is disqualified.

VI. Petitioner Does Not Have an Adequate Remedy at Law

No other legal avenue is available to Petitioner to remedy the violations of law that have and will occur if the petition is not granted. Given the historical conduct of Judge Yaffe, no reason exists to expect that he will obey the constitution, the law or the court rules. The petition for writ of mandate/prohibition or other appropriate remedy is the only remedy available to Petitioner for all causes other than the denial of the CCP § 425.16 motion for which an appeal may be taken. However, even such appeal if taken alone, would require an application for a stay of the contempt proceeding. Further, since no response was given to such motion to show that a claim exits based upon a statement or document not protected by the First Amendment, the issues of lack of notice, improper and unconstitutional

counsel, and improper court would still have to be addressed.

PRAYER

WHEREFORE, Petitioner Richard I. Fine prays that this Court:

1. Issue an order immediately staying all proceedings involving Petitioner until further notice from this Court, including but not limited to the contempt trial set for December 22, 2008, the hearing on motion for sanctions set for December 22, 2008 and the debtors examination set for December 29, 2008;

2. Either (a) issue its pre emptory writ of mandate directing Respondent Superior Court to set aside and void its January 8, 2008 order, its April 15, 2008 order, its November 3, 2008 order and its December 12, 2008 order and all other orders relating to Petitioner and grant an order voiding and annulling Respondent Superior Court's January 8, 2008 order, April 15, 2008 order, November 3, 2008 order and December 12, 2008 order and all other orders relating to Petitioner, transferring any claim or cause relating to Petitioner out of the LA Superior Court and out of LA County and disqualifying all judges who presently receive, or who have received payments from LA County within the past 10 years; or (b) directing Respondent Superior Court to show cause why it should not be so directed, and upon return to the alternative writ, issue a pre emptory writ as set forth in (a) above.

2. Award Petitioner his costs and reasonable attorneys fees incurred herein.

Dated: December 18, 2008

Respectfully submitted,

By:_____

Richard I. Fine, Petitioner

VERIFICATION

I, Richard I. Fine declare as follows:

I am the Petitioner herein. I have read the foregoing petition for writ of mandate/prohibition or other appropriate relief and know its contents. The facts alleged in the petition are true to my own knowledge.

I declare under penalty of perjury that the foregoing is true and correct and that this verification was executed on December 18, 2008, at Los Angeles, California.

_____

Richard I. Fine

COMBINED STATEMENT OF FACTS AND STATEMENT OF CASE

This Petition seeks to finally end the relentless unconstitutional oppression and harassment thrust upon Petitioner by through the combined efforts of Jerry B. Epstein, and his attorneys, LA County and its attorneys and the judges of the LA Superior Court, for the last year, long after Petitioner no longer represented Marina Strand Colony II Homeowners Association, the petitioner in the underlying case.

Epstein and the Supervisors and LA County are linked by contracts and campaign contributions. Epstein, his family and his business associate David O. Levine are major contributors to the members of the LA County Board of Supervisors, always giving the $1,000.00 limit. Epstein is also a major lessee of LA County land in Marina del Rey California where he develops private rental property on LA County public land. The LA Supervisors who receive the contributions approve Epstein's developments

and redevelopments.

LA County and the LA Superior Court judges are linked by money paid by LA County to the LA Superior Court judges. The money is approximately 27% of the Judge's state salary. The judges of the LA Superior Court who are presently receiving up to $46,433.00 per judge in payments from LA County in addition to their State salary of $178,888.00 plus benefits. The cost to the LA County taxpayers is approximately $21 million per year of "extra" monies paid to the LA Superior Court judges who are not LA County employees.

On the surface, the LA Superior Court judges and the Marina del Rey developers, such as Epstein, do not appear to have a connection . However, when LA County is a Respondent in a case involving a development in Marina del Rey, in the LA Superior Court, LA County and the developer are identical because the developer is the "Real Party in Interest" and the effect of the decision is on both LA County and the developer as a unity.

The three parties are linked by contracts and money. The Supervisors need the campaign contributions to win office. The developers need the Supervisors to obtain contracts, develop the land and re develop the land. The Supervisors and the developers want to reduce their litigation costs. The judges continuously need the extra 27% for their personal use. Each is financially dependent upon the other and all are interdependent.

Remove the campaign contributions and the Supervisors do no get elected. Remove the payments to the judges and anger will prevail as "privileges extended become rights denied."

The underlying case is about the Board of Supervisors' approval of the

EIR for Epstein's re development of Parcels 100 and 101 from a 202 unit private apartment complex to a 544 unit private apartment complex with 1018 parking spaces.

Petitioner represented Marina Strand Colony II Homeowners Association before the Regional Planning Commission and the Board of Supervisors. Petitioner filed and litigated the underlying case until October, 2007 when he was replaced with a new attorney. Petitioner did not have any contact with the case or the parties.

On January 8, 2008, Judge Yaffe ordered that Petitioner pay $1,000.00 sanctions and attorneys fees and costs to LA County and Real Parties in Interest without any notice to Petitioner and without Petitioner knowing about the hearing or being given an opportunity to be present.

No reason existed for the order other than to defer the County's and Real Parties in Interests litigation expenses, at the expense of an "outsider" .

LEGAL ARGUMENT

I. The LA Superior Court Has a History of Due Process Violations in Contempt Proceedings Against Petitioner

On September 24, 2001 LA Superior Court Commissioner Bruce E. Mitchell entered an unconstitutional Order and Judgment of Contempt Against Petitioner without notice or hearing. This was affirmed in the published case of *Fine v. Superior Court* (2002, Second App. Dist., Div. Two) 97 Cal.App. 4th 651, (review denied) which was also unconstitutional. On August 12, 2002, the U.S. District Court in the case of *Fine v. Superior Court* USDC Case No. CV-02-4647-GLT (SLG) entered a Stay of Execution; Order to Show Cause Re Immediately Granting Habeas Corpus Relief. On

August 21, 2002 the LA Superior Court voided and annulled the September 24, 2001 Order and Judgment of Contempt and represented such to the U.S. District Court. Despite the unconstitutional contempt order and its having been voided and annulled, the Court of Appeal never de published *Fine v. Superior Court*. (Ex. 6, pages 20-23)

On September 29, 2003 Judge J. Stephen Czuleger held Petitioner in Contempt based upon a declaration of Commissioner Bruce E. Mitchell alleging that he was a "temporary judge" in the case of *Di Flores et al. v. EHG et al.* LASC Case No. BC 150607 for post judgment proceedings. On August 20, 2006 Judge Czuleger was disqualified under CCP § 170.3©)(4) for failing to respond to a CCP § 170.3 Objection including the ground that he participated with Commissioner Bruce E. Mitchell to impose the jurisdiction of the court when non existed (See Ex. 6 Notice of Disqualification). The Declaration of Bruce E. Mitchell did not give specific notice of the charges and counsel for the LA Superior Court was also counsel for the LA Superior Court in the federal *Fine v. Superior Court* case , in *Fine v. Superior Court,* and *Silva v. County of Los Angeles et al.* USDC Case No. 02-04645.

II. The January 8, 2008 Order is Unconstitutional and Void for Lack of Jurisdiction

As of October, 2007, Petitioner was no longer counsel to Marina Strand Colony II Homeowners Association. Petitioner did not have any contact with any person in the case.

A. The Order is Unconstitutional for Lack of Notice

As a matter of due process, a party may not be sanctioned unless he

received notice and was provided with an opportunity to respond. (*Seykora v. Superior Court* (1991 Second Dist., Div 5) 232 Cal.App.3d 1075, 1081) In *Seykora*, supra, the court stated as follows at page 1081:

> **As it must to meet due process requirements (Bauguess v. Paine (1978) 22 Cal. 3d 626 [150 Cal. Rptr. 461, 586 P.2d 942]),** section 177.5 provides that sanctions "shall not be imposed except on notice contained in a party's moving or responding papers; or on the court's own motion, after notice and opportunity to be heard." Seykora contends that the court imposed sanctions in this case without sufficient advance notice, and without affording her the opportunity to be heard.
>
> 1. Seykora first contends that the cursory notice she received that the court was considering the imposition of sanctions (the "vague threat," "Don't make the court do something it doesn't want to do"), was insufficient to satisfy due process requirements.
>
> **"[A]dequacy of notice should be determined on a case-by-case basis to satisfy basic due process requirements. The act or circumstances giving rise to the imposition of expenses must be considered together with the potential dollar amount."** (Lesser v. Huntington Harbor Corp. (1985) 173 Cal. App. 3d 922, 932 [219 Cal. Rptr. 562].) In Lesser, a case construing identical language in section 128.5, notice of less than one day was held to be inadequate where, between the granting of a nonsuit and a hearing the next day, counsel was compelled to prepare a declaration demonstrating that his seven-year-old lawsuit was filed in good faith. Counsel could not make the required showing and the court imposed sanctions of nearly $60,000. (Emphasis added.)

In the instant case, the Court elected to not give any notice of the imposition of sanctions or "reasonable legal fees and costs".

Prior notice of the imposition of sanctions is also mandated by the due process clauses of both state and federal Constitutions. (*In re Marriage of*

Fuller (1985) 163 Cal.App.3d 1070, 1077; Cal. Const., art. I, § 7; U.S. Const., 14th Amend.) This is because "[t]he most basic principles of due process preclude the taking of . . . property without notice of an intention to do so. [Citations.]"(*Blumenthal v. Superior Court* (1980) 103 Cal.App.3d 317, 320.)

Further, when a person has not received notice of requested sanctions, the resulting order is void. (*Lovato v. Santa Fe Internat. Corp.* (1984) 151 Cal.App.3d 549, 553.) In *Lovato*, supra, the court stated at page 553 in holding that a default judgment entered based upon the non response to interrogatories was void for lack of notice to the party:

> The default judgment is void under the due process clause of the federal constitution unless Santa Fe had actual or constructive notice of the interrogatories and discovery motions. (Cf., City of Los Angeles v. Morgan (1951) 105 Cal. App. 2d 726, 730 [234 P.2d 319].)

B. The Order is Void for Lack of Jurisdiction

The issue of jurisdiction was discussed in the case of *Capotosto et al., v. Collins et al.*, (1991 Second Dist., Div. 1) 235 Cal.App.3d 1439 in which the court held that under CCP § 128.5 an attorney who is not of record cannot be sanctioned. The analogy exists for the instant case. The court stated at 235 Cal.App.3d at 1441-1443:

> **Collins's contention that Miller lacked standing to seek section 128.5 sanctions against him is well taken.** "Every trial court may order a party, the party's attorney, or both to pay any reasonable expenses, including attorney's fees, incurred by another party as a result of bad-faith actions or tactics that are frivolous or solely intended to cause unnecessary delay. . . ." (? 128.5, subd. (a), italics added.) As correctly noted by Collins, section 128.5 authorizes only an aggrieved

party to seek sanctions, which may be assessed against a party, the party's attorney or both. Miller was neither a party nor an attorney for a party. **Section 128.5 "does not** authorize imposing sanctions against an attorney of a nonparty, nor **does it contemplate imposing sanctions on an attorney who is not of record** and is simply associated to a party through separate litigation pursued entirely in a foreign jurisdiction. [Citation.]" (County of Imperial v. Farmer (1988) 205 Cal. App. 3d 479, 485 [252 Cal. Rptr. 382].) "Section 128.5 thus enables the trial court to impose sanctions on a party, the party's attorney, or on both. [para.] . . . [S]ection 128.5 enables a trial court to impose sanctions against an attorney, a client/party, or both, and in favor of another, opposing party to pay reasonable expenses, including attorney's fees, which another, opposing party incurs because of frivolous or dilatory bad-faith actions or tactics. [para.] **Cases imposing section 128.5 sanctions do so only against a party or a party's attorney, and in favor of an opposing party or an opposing party's attorney.** [Citations.]" (Rabbitt v. Vincente (1987) 195 Cal. App. 3d 170, 174-175 [240 Cal. Rptr. 524].)

Miller's contention that Collins made him a party authorized to seek section 128.5 sanctions when Collins sought sanctions against him is not supported by any cited authority. **Bauguess v. Paine (1978) 22 Cal. 3d 626, 634, footnote 3 [150 Cal. Rptr. 461], states that a party's attorney ordered to pay sanctions to the opposing party's attorney could appeal that order. Likewise, Ellis v. Roshei Corp. (1983) 143 Cal. App. 3d 642, 645, footnote 3 [192 Cal. Rptr. 57], merely permitted a sanctioned party's attorney to appeal the order. Both cases stated that the sanctioned attorneys, while not parties in the underlying lawsuits, were, for purposes of appeal, parties in the collateral sanctions matters.** Later, section 904.1, subdivision (k) codified a sanctioned attorney's right to appeal sanctions exceeding $750. Miller could have appealed had the trial court imposed sufficient sanctions against him. **Neither case suggests that attorneys who neither are nor represent parties become parties authorized to seek section 128.5 sanctions if erroneously targeted for sanctions by an opponent.** (Emphasis added.)

III. Criticizing a Judge is not Contempt

Charges 9-14 in the Order to Show Cause (OSC) (Ex. 11) include "attacking the integrity of the court [Judge Yaffe]" and "attacking the integrity of the Los Angeles Superior Court". The charges of "Attacking the integrity of the court [Judge Yaffe]" and "attacking the integrity of the Los Angeles Superior Court", are essentially charges of "criticizing Judge Yaffe" and "criticizing the Los Angeles Superior Court". Public criticism of a judge even with the purpose of having him change his opinion will not support a contempt action by the judge against the person leveling the criticism. See *Craig v. Harney* (1947) 331 U.S. 367. The court stated at 331 U.S. at 372-374:

> .....**And in Bridges v. State of California, supra, we held that the compulsion of the First Amendment, made applicable to the States by the Fourteenth** (Schneider v. State of New Jersey, Town of Irvington, 308 U.S. 147, 60 S.Ct. 146, 84 L.Ed. 155; Murdock v. Commonwealth of Pennsylvania, 319 U.S. 105, 108, 63 S.Ct. 870, 872, 891, 87 L.Ed. 1292, 146 A.L.R. 81) **forbade the punishment by contempt for comment on pending cases in absence of a showing that the utterances created a 'clear and present danger' to the administration of justice.** 314 U.S. at pages 260 264, 62 S.Ct. at pages 192—194, 86 L.Ed. 192, 159 A.L.R. 1346. **We reaffirmed and reapplied that standard in Pennekamp v. State of Florida, supra, which also involved comment on matters pending before the court.** We stated, 328 U.S. at page 347, 66 S.Ct. at page 1037: 'Courts must have power to protect the interests of prisoners and litigants before them from unseemly efforts to pervert judicial action. In the borderline instances where it is difficult to say upon which side the alleged

offense falls, we think the specific freedom of public comment should weigh heavily against a possible tendency to influence pending cases. **Freedom of discussion should be given the widest range compatible with the essential requirement of the fair and orderly administration of justice.**'

Neither those cases nor the present one raises questions concerning the full reach of the power of the state to protect the administration of justice by its courts. The problem presented is only a narrow, albeit important, phase of that problem—the power of a court promptly and without a jury trial to punish for comment on cases pending before it and awaiting disposition. **The history of the power to punish for contempt** (see Nye v. United States, supra; Bridges v. State of California, supra) **and the unequivocal command of the First Amendment serve as constant reminders that freedom of speech and of the press should not be impaired through the exercise of that power, unless there is no doubt that the utterances in question are a serious and imminent threat to the administration of justice.** (Emphasis added.)

The court continued at 331 U.S. at 376:

This was strong language, intemperate language, and, we assume, an unfair criticism. **But a judge may not hold in contempt one 'who ventures to pubish anything that tends to make him unpopular or to belittle him * * *.'** Craig v. Hecht, 263 U.S. 255, 281, 44 S.Ct. 103, 108, 68 L.Ed. 293, Mr. Justice Holmes dissenting. The vehemence of the language used is not alone the measure of the power to punish for contempt. **The fires which it kindles must constitute an imminent, not merely a likely, threat to the administration of justice. The danger must not be remote or even probable; it must immediately imperil.** (Emphasis added.)

IV. A Criticized Judge Cannot Hear the Contempt Charges Where He Is the Subject of the Criticism

In the present situation, both Judge Yaffe and the judges of the LA Superior Court cannot rule on the alleged "contempt" because the alleged

"attack on their integrity" although not specifically set forth in the OSC or any "affidavit from a judicial officer, arbitrator or referee" or anyone, appears to be the uncontested fact that Judge Yaffe and the LA Superior Court judges are receiving unconstitutional annual payments of money from LA County.

The only declaration submitted in support of the OSC was the Declaration of Joshua L. Rosen, attorney for Real Parties in Interest Del Rey Shores Joint Venture and Del Rey Shores Joint Venture North. (Ex. 12) Such declaration did not specifically set forth any "direct contempt "attacking the integrity of the court [Judge Yaffe]" and "attacking the integrity of the Los Angeles Superior Court" and did not specifically set forth any "indirect contempt" "attacking the integrity of the court [Judge Yaffe]" and "attacking the integrity of the Los Angeles Superior Court".

Irrespective of this failure to specify, on December 12, 2008, Judge Yaffe denied Petitioner's motion to dismiss the contempt proceedings for failure to give notice. Judge Yaffe's action was a denial of federal constitutional due process.

In *Little v. Kern County Superior Court,* (2002) 294 F. 3d 1075, the court stated at 294 F.3d 1080-1081:

> **A. The Requirements of Notice and Hearing**
>
> **1. Clearly Established Supreme Court Precedent Establishes that Notice and Hearing are Required for Delayed Summary Contempt Proceedings.**
>
> Among his arguments, Little asserts that Judge Moench violated his due process rights by failing to give him specific notice of the contempt charges and the time of the hearing, and depriving him of a fair opportunity to be heard on the merits of the charges. We agree.

Goss v. Lopez, 419 U.S. 565, 95 S.Ct. 729, 42 L.Ed.2d 725 (1975), the Supreme Court held that, at a minimum, due process requires both notice and the right to be heard before any "deprivation of life, liberty, or property by adjudication." *Id.* at 579, 95 S.Ct. 729 (quoting *Mullane v. Central Hanover Trust Co.*, 339 U.S. 306, 313, 70 S.Ct. 652, 94 L.Ed. 865 (1950)). Clearly established Supreme Court precedent specifically requires that notice be given of contempt proceedings, even in instances of direct contempt, when there is a delay between the time that the contempt occurred and the proceedings themselves. *See United Mine Workers of America v. Bagwell*, 512 U.S. 821, 832, 114 S.Ct. 2552, 129 L.Ed.2d 642 (1994) ("If a court delays punishing a direct contempt until the completion of trial, ... due process requires that the contemnor's rights to notice and a hearing be respected."); *Codispoti v. Pennsylvania*, 418 U.S. 506, 94 S.Ct. 2687, 41 L.Ed.2d 912 (1974); *Taylor v. Hayes*, 418 U.S. 488, 94 S.Ct. 2697, 41 L.Ed.2d 897 (1974); *Harris v. United States*, 382 U.S. 162, 86 S.Ct. 352, 15 L.Ed.2d 240 (1965).

In *Taylor*, 418 U.S. at 497-98, 94 S.Ct. 2697, the Supreme Court held that, although summary contempt proceedings may be delayed, summary adjudication is always "disfavor[ed]," and where delayed, it must be accompanied by notice and a hearing. *Sacher v. United States*, 343 U.S. 1, 8, 72 S.Ct. 451, 96 L.Ed. 717 (1952). In that case, the trial judge waited until the end of the trial before punishing the attorney who was the subject of eight charges of criminal contempt allegedly committed during the trial. *Taylor*, 418 U.S. at 488, 94 S.Ct. 2697. The Court held that, given the delay between the allegedly contemptuous conduct and the proceedings on the charges, the contemnor's due process rights were violated: the violation lay in the trial court's failure to give the contemnor notice and an opportunity to be heard. *Id.* at 500, 94 S.Ct. 2697. The Supreme Court reiterated the necessity to afford contemnors due process in *Codispoti*, 418 U.S. at 515, 94 S.Ct. 2707. There, the Court stated that [w]hen the trial judge, however, postpones until after the trial the final conviction and punishment of the [alleged contemnor] for several or many acts of contempt committed during the trial, there is no overriding necessity for instant action to preserve order and *no justification for dispensing with the ordinary rudiments of due process.* (emphasis added).

> Specifically, the Supreme Court has held that due process requires that the contemnor be given "'*reasonable*' notice of the specific charges and opportunity to be heard in his own behalf."[12] *Taylor*, 418 U.S. at 500 n. 9, 94 S.Ct. 2697 (emphasis added). As the Court's decision in *Taylor* makes clear, notice of the contempt charges and of the contempt hearing must be explicit in order to conform to the requirements of due process. The contemnor's due process rights of a reasonable opportunity to be heard are compromised both by a lack of notice of the specific charges against him, as well as by a lack of notice of the time of the contempt hearing. Notice on both issues is required for the contemnor reasonably to be able to respond effectively to the charges against him.

On December 12, 2008, Judge Yaffe also denied Petitioner's motion to dismiss the contempt charges because it is a denial of due process for a "criticized judge" to rule in a contempt proceeding, where he is the subject of the criticism. See *Mayberry v. Pennsylvania* (1971) 400 U.S. 455, and *Offutt v. United States* (1954) 348 U.S. 11cited in *Little*, supra at 1082-1083. The court in *Little*, supra stated at 294 F.3d at 1082-1083:

> **B. The Requirement of an Impartial Adjudicator**
>
> **1. Clearly Established Supreme Court Precedent Establishes that an Impartial Adjudicator is Required for Contempt Proceedings.**
>
> **Clearly established Supreme Court law holds that** "where the contempt charged has in it the element of personal criticism or attack upon the judge," and where delay would not be impracticable, a judge must ask another jurist to rule on the contempt in his place. *Mayberry v. Pennsylvania*, 400 U.S. 455, 464, 91 S.Ct. 499, 27 L.Ed.2d 532 (1971) (citation omitted); *Offutt v. United States*, 348 U.S. 11, 13, 15-17, 75 S.Ct. 11, 99 L.Ed. 11 (1954); *Cooke v. United States*, 267 U.S. 517, 539, 45 S.Ct. 390, 69 L.Ed. 767 (1925). Similarly, when a judge has become "personally embroiled" with the alleged contemnor, it is compelling proof that the judge "fail[s] to represent the impersonal authority of law," and therefore, the judge must ask a judicial colleague to preside over the contempt proceedings. *Offutt*, 348 U.S. at

16, 17, 75 S.Ct. 11, 99 L.Ed. 11 (1954). (Emphasis in original)

IV. Due Process Requires Specific Notice of the Charges

The contempt proceeding is unconstitutional for lack of notice of the charges. *Taylor v. Hayes* (1974) 418 U.S. 488 (no reasonable notice of charges). Every paragraph of the OSC is defective. The OSC does not specify the exact conduct or statements for which the contempt hearing is being held. The OSC charges both "direct contempts" and "indirect contempts".

Since the LA Superior Court judges cannot decide the contempt proceedings, an affidavit from the judicial officer before whom the "direct contempt" occurred or even a transcript demonstrating such contempt is required to give notice of the alleged contempt. No affidavit of a judicial officer as required by CCP § 1211(a) was submitted in support of the OSC and no proof was submitted of any "facts as occurring in such immediate view and presence" of the Court to support a summary contempt as required by CCP § 1211(a).

Neither the OSC nor the Declaration of Joshua L. Rosen (Rosen Declaration) specify the "direct contempts" occurring in the "immediate view and presence" of the court alleged at paragraphs 10, 12 and 15 of the OSC, and neither attach an affidavit from a judicial officer in whose "immediate view and presence" such "direct contempt" occurred or a transcript of any proceedings where such alleged direct contempt occurred.

Neither the OSC nor the Rosen Declaration specify the "indirect contempts" relating to "attacking the integrity of the court" or "attacking the integrity of the LA Superior Court" as generally alleged at paragraphs 9, 11,

and 13, of the OSC . The only reference to such are inadmissible legal conclusions by Rosen relating to statements made in court filed documents at paragraphs 31 a. and b. (page 7, ln. 10-15), 42 d. (page 11, ln. 21-23), 45 c. (page 12, ln. 25-26) and 46 b. and c. (page 13, ln. 6-12), 49 c. (page 15, ln. 26-28) of the Rosen Declaration.

Neither the OSC nor the Rosen Declaration set forth any underlying order of reference appointing Commissioner Gross as a "referee" or a stipulation for Commissioner Gross to act as a "temporary judge" pursuant to Article VI, § 21 of the California Constitution in this case as required under CCP § 708.140 as a basis to bring contempt charges for "refusing to respond to a Judgement Debtor Examination on June 18, 2008 etc." at paragraph 1 of the OSC and "Failing to produce documents pursuant to a duly served Subpoena Duces Tecum etc. " at paragraph 2 of the OSC, both referred to in Exhibit 9 to the Rosen Declaration, the Transcript of the June 18, 2008 Hearing.

Neither the OSC nor the Rosen Declaration set forth specific examples of "Refusing to Respond to questions at judgement debtor examination on August 25, 2008" (OSC paragraph 3, no transcript and Rosen Declaration, paragraph 50 (page 17, ln. 11-16 is hearsay)), "Failing to produce documents on August 25, 2008" (OSC paragraph 4, no transcript and Rosen Declaration, paragraph 50 (page 17, ln. 11-16 is hearsay)), "Refusing to Respond to questions at judgement debtor examination on October 15, 2008" (OSC paragraph 5, no transcript and Rosen Declaration, paragraph 6 (page 22, ln. 3-7 is hearsay)), "Repeatedly making knowingly false statements of fact and law in various pleadings and other documents filed with this court" (OSC

paragraph 7 and argued with legal conclusions by Rosen relating to statements made in court filed documents at almost every paragraph in the Rosen Declaration), "Making repeated motions for reconsideration etc." (OSC paragraph 8, and argued with inadmissible legal conclusions by Rosen relating to statements made in court filed documents at paragraphs 12 (page 4, ln. 5-6), 18 (page 5, ln. 13-14), 27 (page 6, ln. 18-19), 33 (page 7, ln. 26 - page 34, ln. 1), 47 b. (page 13, ln. 27-28), 48 d. (page 16, ln. 1-2), and 54 d. (page 19, ln. 1-2) in the Rosen Declaration), "Failing to produce documents on October 15, 2008" (OSC paragraph 4, no transcript and Rosen Declaration, paragraph 62 (page 22, ln. 3-7 is hearsay)) and "Holding yourself out to practice law" (OSC paragraph 16 no example in the Rosen Declaration).

"Attacking the integrity of the State Bar Court" alleged at paragraph 13 of the OSC and argued with legal conclusions by Rosen relating to statements made in court filed documents at paragraphs 45 b. (page 12, ln. 23-24), 46 d. (page 13, ln. 13-14) and 49 b. (page 15, ln. 24-25) in the Rosen Declaration, "attacking the integrity of counsel for real parties in interest etc" alleged at paragraph 14 of the OSC and argued with inadmissible legal conclusions by Rosen relating to statements made in court filed documents at paragraphs 31 c. (page 7, ln. 16-19), 42 e. (page 11, ln. 24-27), 46 e. (page 13, ln 15-17)and 49 e. (page 16, ln. 3-5) in the Rosen Declaration and "holding yourself out to practice law etc." alleged at paragraph 16 of the OSC without any specific examples set forth in the Rosen Declaration of Fine practicing law and "Repeatedly making knowingly false statements of fact and law in various pleadings and other documents filed with the court"

alleged at paragraph 7 of the OSC and argued with inadmissible legal conclusions by Rosen relating to statements made in court filed documents in numerous paragraphs of the Rosen Declaration are not reasons for contempt charges as set forth in CCP § 1209, particularly as they do not set forth any facts.

This denial of due process also exists under California law. In the case of *Reliable Enterprises Inc., v. Superior Court*, (1984) 158 Cal.App. 3d 604, 204 Cal. Rptr. 786 the court held at 795-796:

> **Because indirect contempt proceedings are criminal in nature, an accused is entitled to constitutional guarantees of due process of law, including notice of the charges.** (Arthur v. Superior Court (1965) 62 Cal.2d 404, 408-409, 42 Cal.Rptr. 441, 398 P.2d 777; Warner v. Superior Court (1954) 126 Cal.App.2d 821, 825, 273 P.2d 89.) **"Due process of law requires that an accused be advised of the charges against him in order that he may have a reasonable opportunity to prepare and present his defense and not be taken by surprise by evidence offered at his trial.** [Citations.]" (Emphasis added.) (In re Hess (1955) 45 Cal.2d 171, 175, 288 P.2d 5; followed in People v. Anderson (1975) 15 Cal.3d 806, 809, 126 Cal.Rptr. 235, 543 P.2d 603.) **While some American cases have departed from the rule that a sworn affidavit must be used to initiate indirect contempt proceedings, to our knowledge the cases have uniformly insisted the accused [158 Cal.App.3d 620] be presented with a writing setting forth the alleged contempt.** [11] (See, e.g.,In re Morelli, supra, 11 Cal.App.3d at pp. 828-829, 91 Cal.Rptr. 72; Ex Parte Winfree (1953) 153 Tex. 12, 263 S.W.2d 154; Sheets v. City of Hagerstown (1954) 204 Md. 113, 102 A.2d 734; Hunter v. State (1948) 251 Ala. 11, 37 So.2d 276; Roe v. Watson (1921) 151 Ga. 365, 106 S.E. 907; see generally Anno., **Necessity of affidavit or sworn statement as foundation for constructive contempt** (1955) 41 A.L.R.2d 1263.)

VI. Truth Is a Complete Defense

In addition to charging actions before a non judicial officer and not setting forth specific statements and facts in charges in paragraphs 1-8 of the OSC, the OSC generally charges, without specificity, attacking the integrity of the court and Los Angeles Superior Court at paragraphs 9-16. No declaration from a judicial officer or transcript of proceedings was submitted to support these charges and the charges do not specify any specific factual conduct. Further, the charges do not account for a violation of First Amendment rights and truth as a defense.

In *Standing Committee v. Yagman*, (9th Cir. 1995) 55 F.3d 1430, the court stated at 1438:

> Attorneys who make statements impugning the integrity of a Judge are, however, entitled to other First Amendment protections applicable in the defamation context. **To begin with, attorneys may be sanctioned for impugning the integrity of a Judge or the court only if their statements are false; truth is an absolute defense.** See Garrison v. Louisiana, 379 U.S. 64, 74, 13 L. Ed. 2d 125, 85 S. Ct. 209 (1964). **Moreover, the disciplinary body bears the burden of proving falsity.** See Philadelphia Newspapers, Inc. v. Hepps, 475 U.S. 767, 776-77, 89 L. Ed. 2d 783, 106 S. Ct. 1558 (1986); Porter, 766 P.2d at 969.
>
> **It follows that statements impugning the integrity of a Judge may not be punished unless they are capable of being proved true or false; statements of opinion are protected by the First Amendment unless they "imply a false assertion of fact."** See Milkovich v. Lorain Journal Co., 497 U.S. 1, 19, 111 L. Ed. 2d 1, 110 S. Ct. 2695 (1990); Lewis v. Time, Inc., 710 F.2d 549, 555 (9th Cir. 1983); Restatement (Second) of Torts § 566 (1977) (statement of opinion actionable "only if it implies the allegation of undisclosed defamatory facts as the basis for the opinion"). **Even statements that at first**

blush appear to be factual are protected by the First Amendment if they cannot reasonably be interpreted as stating actual facts about their target. See Hustler Magazine, Inc. v. Falwell, 485 U.S. 46, 50, 99 L. Ed. 2d 41, 108 S. Ct. 876 (1988). **Thus, statements of "rhetorical hyperbole" aren't sanctionable, nor are statements that use language in a "loose, figurative sense."** See National Ass'n of Letter Carriers v. Austin, 418 U.S. 264, 284, 41 L. Ed. 2d 745, 94 S. Ct. 2770 (1974) **(use of word "traitor" could not be construed as representation of fact)**; Greenbelt Coop. Publishing Ass'n v. Bresler, 398 U.S. 6, 14, 26 L. Ed. 2d 6, 90 S. Ct. 1537 (1970) **(use of word "blackmail" could not have been interpreted as charging plaintiff with commission of criminal offense**). (Emphasis added.)

VII. All Orders Entered By the LA Superior Court Judges and Commissioner Gross in This Case Against Petitioner Are Void and Are Not Punishable as a Contempt

A. Violation of a Void Order is not Punishable as Contempt

Violation of a void order is not punishable as a contempt and may be attacked for the first time in the contempt proceeding. See *People v. Gonzalez* (1996) 12 Cal.4th 804. The Court stated at 12 Cal.4th at 819:

California courts continue to reject the collateral bar rule adopted by other jurisdictions. Instead, they apply the rule that in the contempt proceeding, the contemner may, for the first time, collaterally challenge [910 P.2d 1376] the validity of the order he or she is charged with violating. (See Corenevsky v. Superior Court (1984) 36 Cal.3d 307, 327, 204 Cal.Rptr. 165, 682 P.2d 360; United Farm Workers of America v. Superior Court (1975) 14 Cal.3d 902, 907, fn. 3, 122 Cal.Rptr. 877, 537 P.2d 1237; Condor Enterprises, Ltd. v. Valley View State Bank (1994) 25 Cal.App.4th 734, 741-742, 30 Cal.Rptr.2d 613; Zal v. Steppe (9th Cir.1992) 968 F.2d 924, 927; see also 7 Witkin, Summary of Cal.Law (9th ed. 1988) Constitutional Law, § 84, p. 134; 6 Witkin, Cal. Procedure, supra, Provisional

Remedies, § 329, pp. 277-278; Note, Defiance of Unlawful Authority, supra, 83 Harv.L.Rev. at p. 633, fn. 48.) (Emphasis added.)

B. The January 8, 2008 Order By Judge Yaffe Requiring Fine to Pay Sanctions, Attorneys Fees, and Costs, the April 15, 2008 Order By Judge Yaffe Requiring Fine to Pay Attorneys Fees and Costs, the June 8, 2008 Order By Supervising Judge Edmon Denying Motion to Void April 15, 2008 Order and to Transfer Motion to Dismiss January 8, 2008 Order, and the June 15, Order by Commissioner Gross to Produce Documents and Answer Questions Are All Void as Judges Yaffe, Edmon and Commissioner Gross Did Not Have Jurisdiction to Enter the Orders.

Sturgeon, supra, at pages 1-3 shows that all LA Superior Court judges are paid unconstitutional "local judicial benefits" from LA County. Under *Sturgeon*, supra, the voluntary payments of "local judicial benefits" by LA County to the LA Superior Court judges who are State employees and State elected constitutional officers are not "compensation". These payments disqualify all LA Superior Court judges from deciding any case in which LA is a party due to the illegality of the payment to the judge in the case as he/she is receiving a "gift" from a party. CCP § 170.9 prohibits the acceptance of any gift from any source in an amount greater than $250.00 in any calendar year.

Judge Yaffe did not have the jurisdiction to make the January 8, 2008 Order or any subsequent order. Additionally, Judge Edmon did not have the jurisdiction to make the June 8, 2008 Order, in which she refused to void Judge Yaffe's illegal January 8, 2008 and April 15, 2008 orders. Commissioner Gross who was also receiving "local judicial benefits" and not

reporting such, did not have the jurisdiction to make the June 15, 2008 order, as the underlying January 8, 2008, April 15, 2008 and June 8, 2008 orders were void. Additionally, no order has been presented showing that Commissioner Gross has been appointed as a referee in this case. Nothing in the Transcript of June 18, 2008 shows an order that Commissioner Gross is appointed as a "referee" in the case, or a "referee" regarding the enforcement of judgments. Nothing in the transcript showed that anyone stipulated to Commissioner Gross as a "temporary judge" and Fine objected to him at page 11, ln. 18-20. Fine also filed his objections to the subpoena and Demand to Produce Documents and Interrogatories at page 13, ln. 3-12 and page 14, ln. 17-22 where he also objected to Commissioner Murray Gross acting under CCP § 708.140. Such objection was continued at page 17, ln. 11- page 20, ln. 1. At page 41, ln. 14- page 43 ln. 25 it was agreed by everyone that Fine did not stipulate to Commissioner Murray Gross. (See Transcript of June 18, 2008 Hearing Exhibit 9 to Declaration of Joshua L. Rosen)

Exhibit 21 to the Rosen Declaration shows that Judge Yaffe consented under law to be disqualified from the case as of April 7, 2008 for failure to timely respond to the March 25, 2008 CCP § 170.3 Objection, that Judge Yaffe did not serve Fine with his purported "Order Striking Notice of Disqualification" filed March 27, 2008, purportedly "striking" a Notice of Disqualification filed March 25, 2008. (See Proof of Service of March 27, 2008 Order, which is Exhibit 1 to Exhibit 21 to the Declaration of Joshua L. Rosen.). Further, the March 27, 2008 "Order Striking Notice of

Disqualification" refers to a "non existent March 18, 2008 order" and does not mention the March 25, 2008 CCP § 170.3 Objection.

VIII. Counsel For Real Parties In Interest Cannot Prosecute the Contempt on Behalf of the Court

The contempt proceeding is unconstitutional under the case of *Young v. United States ex rel Vuitton et Fils S.A., et al.*, (1987) 481 U.S. 787 (lawyers representing party benefitting from order cannot prosecute contempt charge). The court stated at page 814:

> Between the private life of the citizen and the public glare of criminal accusation stands the prosecutor. That state official has the power to employ the full machinery of the state in scrutinizing any given individual. Even if a defendant is ultimately acquitted, forced immersion in criminal investigation and adjudication is a wrenching disruption of everyday life. For this reason, we must have assurance that those who would wield this power will be guided solely by their sense of public responsibility for the attainment of justice. **A prosecutor of a contempt action who represents the private beneficiary of the court order allegedly violated cannot provide such assurance, for such an attorney is required by the very standards of the profession to serve two masters. The appointment of counsel for Vuitton to conduct the contempt prosecution in these cases therefore was improper.** Accordingly, the judgment of the Court of Appeals is *Reversed.* (Emphasis added.)

The contempt proceeding is brought by Joshua L. Rosen and R.J. Comer acting as lawyers to enforce an order to pay attorneys fees and costs entered by Judge Yaffe without notice or hearing as to Richard I.. Fine on January 8, 2008 in favor of Respondent LA County and their clients, Real Parties in Interest Del Rey Shores Joint Venture and Del Rey Shores Joint Venture North, and actions subsequent thereto. The charges as set forth in

paragraphs 1-8 of the OSC relate to the January 8, 2008 order and actions subsequently related thereto.

IX. CCP § 425.16 Motion to Dismiss Contempt Proceeding

Petitioner made a threshold showing that the proceeding arises out of protected activity defined in the statute as all of the exhibits to the Declaration of Joshua L. Rosen are either pleadings filed in court or transcripts. These are acts "of a person in furtherance of the person's right of petition or free speech under the United States or California Constitution in connection with a public issue".

Neither the Court nor the Real Parties in Interest supplied any affidavit in Opposition to the Motion. Nor did they cite to any specific section of any pleading. Real Parties in interest only claimed that the motion was frivolous without any support.

CCP § 425.16 states in relevant part:

> 425.16. (a) The Legislature finds and declares that there has been a disturbing increase in lawsuits brought primarily to chill the valid exercise of the constitutional rights of freedom of speech and petition for the redress of grievances. **The Legislature finds and declares that it is in the public interest to encourage continued participation in matters of public significance, and that this participation should not be chilled through abuse of the judicial process. To this end, this section shall be construed broadly.**
>
> (b) (1) **A cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the United States or California Constitution in connection with a public issue shall be subject to a special motion to strike,** unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim.

(2) In making its determination, **the court shall consider the pleadings**, and supporting and opposing affidavits stating the facts upon which the liability or defense is based. (Emphasis added)

The burden shifted to the court and Real Parties in Interest, who did not respond.

Conclusion

The facts demonstrate that neither Judge Yaffe nor any other LA Superior Court judge can be fair to Petitioner when they are receiving unconstitutional payments of "local judicial benefits" from LA County who is a party to the case and not disclosed such on their Form 700, when the LA County Supervisors violate the Political Reform Act and the Court does nothing, when the payments from LA County are $43, 438.00 per year and when the financial ties of the developer, the Supervisors and the judges are interdependent. As shown by the LA County Counsel Reports, no one won a case against LA County in 2006-2007 when a LA Superior Court judge made the decision.

Dated: December 18, 2008 Respectfully submitted,

By: _____
Richard I. Fine, Petitioner

CERTIFICATION (CRC Rule 8.504(d))

I hereby certify that the Notice contains 12,255 words according to the word count system of Word Perfect 10 including title page and exclusive of tables.

_____
Richard I. Fine

PROOF OF SERVICE

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 468 North Camden Drive, Suite 200, Beverly Hills, California 90210.

On December 19, 2008, I served the foregoing document described as PETITION FOR WRIT OF MANDATE, PROHIBITION OR OTHER APPROPRIATE RELIEF; MEMORANDUM OF POINTS AND AUTHORITIES [EXHIBITS IN SUPPORT THEREOF IN SEPARATE BINDER] IMMEDIATE STAY OF CONTEMPT TRIAL SET FOR DECEMBER 22, 2008 IN THE LOS ANGELES SUPERIOR COURT BEFORE JUDGE DAVID P. YAFFE REQUESTED on the interested parties in this action by placing a true and correct copy thereof enclosed in a sealed envelope addressed as follows:

Raymond G. Fortner, Jr.
Elaine M. Lemke
648 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, CA 90012-2713
FACSIMILE: (213) 687 7337

Rose M. Zoia
50 Old Courthouse Square, Suite 401
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Judge David P. Yaffe
111 North Hill Street
Los Angeles, CA 90012

Armbruster & Goldsmith LLP
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Los Angeles, CA 90024
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Joshua L. Rosen
5905 Sherbourne Drive
Los Angeles, CA 90056
FACSIMILE: (310) 410-7227

☒ BY MAIL. __BY EXPRESS MAIL /FED EX As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or meter date is more than one day after the date of deposit for mailing in affidavit.

BY PERSONAL SERVICE: By delivering a copy to the above mentioned persons at:

☒ STATE: I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed December 19, 2008 at Los Angeles, California.

RICHARD I. FINE

TO BE FILED IN THE COURT OF APPEAL

APP-008

COURT OF APPEAL, **APPELLATE DISTRICT, DIVISION**	Court of Appeal Case Number:
ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, State Bar number, and address)*: Richard I. Fine SBN 055259 468 North Camden Drive, Suite 200 Beverly Hills, CA 90210 TELEPHONE NO.: 310-277-5833 FAX NO *(Optional)*: 310-277-1543 E-MAIL ADDRESS *(Optional)*: ATTORNEY FOR *(Name)*:	Superior Court Case Number: BS 109420 ***FOR COURT USE ONLY***
APPELLANT/PETITIONER: Richard I. Fine RESPONDENT/REAL PARTY IN INTEREST: LA Sup. Ct./ County of LA	

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

(Check one): ☑ INITIAL CERTIFICATE ☐ SUPPLEMENTAL CERTIFICATE

Notice: Please read rules 8.208 and 8.490(i) before completing this form. You may use this form for the initial certificate in a civil appeal when you file your brief or a prebriefing motion, application, or opposition to such a motion or application in the Court of Appeal, and when you file a petition for an extraordinary writ in a civil case. You may also use this form as a supplemental certificate when you learn of changed or additional information that must be disclosed.

1. This form is being submitted on behalf of the following party (*name*): Richard I. Fine

2. a. ☐ There are no interested entities or persons that must be listed in this Certificate under rule 8.208.

   b. ☑ Interested entities or persons required to be listed under rule 8.208 are as follows:

Full name of interested entity or person	Party (Check one):	Nonparty (Check one):	Nature of interest *(Explain):*
(1) Richard I. Fine	☑	☐	Petitioner
(2) County of Los Angeles	☑	☐	Real Party in Interest
(3) Los Angeles Superior Court	☑	☐	Respondent
(4) Del Rey Shores Jnt. Vnt. & Jnt. Vnt No	☑	☐	Real Party in Interest in lower case
(5) Jerry B. Epstein	☐	☑	Owner - Del Rey Shores JV

☐ Continued on Attachment 2.

The undersigned certifies that the above-listed persons or entities (corporations, partnerships, firms, or any other association, but not including government entities or their agencies) have either (1) an ownership interest of 10 percent or more in the party if it is an entity; or (2) a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves, as defined in rule 8.208(e)(2).

Date: 12/18/08

Richard I. Fine
(TYPE OR PRINT NAME)

▶ _____
(SIGNATURE OF PARTY OR ATTORNEY)

Form Approved for Optional Use
Judicial Council of California
APP-008 [New January 1, 2008]

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

Cal. Rules of Court, rules 8.208, 8.490(i)
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