IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

ELIZABETH RAYMOND, Petitioner,

vs.

DISTRICT COURT OF APPEAL, SECOND APPELLATE DISTRICT, DIVISION ONE, Respondent.
LARRY FLYNT, Deceased, LFP., INC., Real Parties in Interest.

Los Angeles Superior Court Case No. BC300130,
Judge Kenneth Freeman;
Court of Appeal Case No. B216747,
Justice Jeffrey Johnson, Justice Frances Rothschild,
Justice Robert Mallano

AMELIA ENG, Petitioner,

vs.

DISTRICT COURT OF APPEAL, SECOND APPELLATE DISTRICT, DIVISION ONE, Respondent.
MARGARET ENG, SUSAN ENG MADJAR, MICHAEL ENG, JEFFREY ENG, TAYLOR UNGER, JONATHAN LUM, JR., ZHONG PEI WU, Real Parties in Interest.
Los Angeles Superior Court Case No. BP113977,
Judge Daniel Murphy;
Court of Appeal Case Nos. B255829 and B258567, Justice Jeffrey Johnson, Justice Victoria Chaney, Justice Elwood Lui

---

JOINT PETITION FOR WRIT OF PROHIBITION, MANDATE, OR OTHER APPROPIATE RELIEF

Tara J. Licata, Esq. (SBN 266111)
LICATA & YEREMENKO
15303 Ventura Blvd., Suite 600
Sherman Oaks, CA 91403
PH (818) 783-5757
FAX (818) 783-7710
tlicata@LYlegal.net
Attorney for Elizabeth Raymond

Amelia Eng, Esq.
(SBN 80000)
17595 Harvard Ave.
Suite C, No. 121
Irvine, California 92614
(323) 896-1264
englaw.ca80000@gmail.com
Petitioner Pro Se

TABLE OF CONTENTS

Page(s)

TABLE OF AUTHORITIES

Cases **Pages**

Statutes

California Constituton:

California Codes:

Civil Code:

Code of Civil Procedure:

California Code of Judicial Ethics:

Federal

Other Authorities

INTRODUCTION

Two issues of law require this Honorable Court's attention:

1) Whether or not Respondent be commanded to reverse its opinions, issued in Petitioners' respective appeals, under former Justice Jeffrey Johnson's (Justice Johnson) pattern of biased opinions, that were not in compliance with both binding statutory authorities and this Court's binding legal authorities, that resulted in a miscarriage of justice, constituting reversible error, or alternatively, this Honorable Court perform its duty to reverse the opinions, as prayed.

2) Whether or not Respondent be commanded to vacate, or reverse as prayed, its opinions issued in Petitioners' respective appeals, having been divested of the constitutional power, authority and subject matter jurisdiction to conduct itself as a 3-judge court of appeal, that resulted from the judicial disqualification of Justice Johnson.

Petitioners, both women, file this joint petition because of the identity of legal issues and interests in the opinions issued by Respondent in their respective appeals.

Justice Johnson was the first appellate justice found disqualified and removed by the Commission on Judicial Performance (Commission), inter alia, for failing to meet the fundamental expectations of a judge and engaging in substantial and egregious sexual misconduct that would reasonably be perceived as sexual harassment and gender bias of multiple

women from 2009 through 2018, that had occurred during the pendency of Petitioners' respective appeals, in 2010 and in 2016.

By his deceitful and biased actions in violating judicial ethics rules and flagrantly defying both this Court's binding authorities and binding statutory authorities Justice Johnson pledged to uphold, he disregarded that trust. The Commission's removal of Justice Johnson from judicial office was the first step in judicial accountability. The next critical step is to redress the injury and damages to Petitioners, his victims, who directly suffered under his betrayal of the basic principles of law and justice, an affront to the integrity and honesty of our justice system. As is foremost in our justice system, when there is a failure to rectify the harm to a judge's victims, then our justice system has lost sight of what a justice system fundamentally should be all about, and litigants and the public will lose faith in the courts.

The integrity of our judicial officers and the public's right to have redressed a judge's unlawful decisions is of foremost public importance to maintain public confidence in the California judiciary as a public trust. (See Preamble, California Code of Judicial Ethics, par. 1.)

PETITION

Petitioners respectfully petition this Honorable Court for a writ of prohibition and/or mandate, or other appropriate relief, commanding Respondent, or alternatively, this Court perform its duty, to reverse Respondent's opinions and related Trial Court Judgments, and Orders For Attorneys Fees, in Petitioners'

respective appeals, under Justice Johnson's pattern of willful misconduct, in intentional disregard of both binding statutory authorities and this Court's binding authorities that resulted in a miscarriage of justice, constituting reversible error. (Cal. Const. art. 6, §13[1]; *People v. Watson* (1956) 46 Cal.2d 818, 836 (*Watson)*; *People v. Rincon-Pineda* (1975), 14 Cal.3d 864, 872 (*Rincon-Pineda*).)

Moreover, the judicial disqualification of Justice Johnson divested Respondent of the constitutional power, authority and subject matter jurisdiction to conduct itself as a qualified 3-judge court of appeal rendering Respondent's opinions in Petitioners' respective appeals as void, mandating Respondent be commanded to vacate, or reverse as prayed, the opinions. (Cal. Const. art. 6, §§ 1 and 3.)

To these ends, Petitioners allege:

Jurisdiction

1. Jurisdiction of this Court rests in *Kaufman v. Court of Appeal* (1982) 31 Cal.3d 933, 940 (*Kaufman)*; Cal. Const., art. 6, §§ 1, 3, 12 (b), 13; *Watson*, supra, at p. 836 and *Rincon-Pineda*, supra, at p. 872.

Beneficial Interest of Petitioners, Respondents and Real Parties in Interest

2. Respondent is the Second Appellate District Court of Appeal, Division One, who issued opinions as follows:

a) *Raymond v. Flynt; L.F.P., Inc. (Raymond v. Flynt, etal):*

[1] Unless otherwise indicated, all statutory references are to California Statutes.

Petitioner: Elizabeth Raymond ("Petitioner Raymond" or "Raymond"). Real Parties in Interest: Larry Flynt, LFP., Inc.

b) *Eng v. Eng, etal; Estate of Edward J. Eng, Deceased (Eng v. Eng, etal):* Petitioner: Amelia Eng (Petitioner Eng). Real Parties in Interest: Margaret Eng, Susan Eng Madjar, Michael Eng, Jeffrey Eng, Taylor Unger, Jonathan Lum, Jr., Zhong Pei Wu.

Authenticity of Exhibits

3. The exhibits accompanying this petition are believed to be the true and correct copies of the original documents filed with Respondent, except the following: *Inquiry Concerning Justice Jeffrey W. Johnson* (2020) 9 Cal.5th CJP Supp. 1 (*Inquiry Concerning Johnson*) (Exh. 14, pp. 131-208) and *Mayflower Capital Co. v. Patel* (2019), unpublished opinion authored by Justice Johnson (Exh. 15, pp. 209-213).

The exhibits are paginated consecutively from page 1 to page 213. Page references in this petition are to the consecutive pagination.

Timeliness of Petition

4. There is no statute of limitation to file a non-statutory writ and the "extraordinary circumstances" that justify Petitioners' delay, significantly affecting both Petitioners' time and resources in the discovery of Justice Johnson's pattern of judicial disqualification, under the extent and gravity of his misconduct, during his nine continuous years on Respondent court, authoring potentially hundreds of appellate opinions, that is both relevant and material to his judicial disqualification in Petitioners' respective appeals, such as; (a) the significant delay caused by Respondent's concealment and failure to report Justice Johnson's

disqualification and unfitness for judicial office from 2009 (see principal of Equitable Estoppel below), that in turn, affected the Commission's 2018 two-year investigation of Justice Johnson's misconduct, a *confidential* proceeding; (b) the California state mandated 2020 Covid-19 pandemic lockdowns, restrictions and continuing effects of the pandemic from Spring 2020 and continuing and (c) in August 2020, the passing of lead counsel, Marcus A. Mancini, Esq., Deceased, in Petitioner Raymond's arbitration and appeal. (*Volkswagen of America, Inc. v. Superior Court* (2001) 94 Cal. App. 4th 695, 701.)

5. The principle of Equitable Estoppel (see *John R. v. Oakland Unified School Dist* (1989) 48 Cal.3d 438 (*John R*)) should apply to Respondent, from asserting delay in the filing of this petition, by its breach of fiduciary duty, as a public trustee, in failing to disclose to Petitioners, and report to the Commission (Cal. Code of Jud. Ethics, Canon 3D1), Justice Johnson's disqualification and unfitness for judicial office that directly affected his decisionmaking in acting in a judicial capacity in Petitioners' respective appeals, when Respondent had knowledge of Justice Johnson's disqualification since 2009.

In *John R*, supra, under Equitable Estoppel to assert a time limitation to file a claim, this Court determined that a claim against a school district was not foreclosed as untimely, stating at p. 445:

> "It is well settled that a public entity may be estopped from asserting the limitations of the claims statute where its agents or employees have prevented or deterred the filing of a timely claim by some affirmative act... Estoppel most commonly results from misleading statements about the

> need for or advisability of a claim; actual fraud or the intent to mislead is not essential..., it would plainly be inequitable to permit the district to escape liability only because the teacher's threats succeeded in preventing his victim from disclosing the molestation until the time for a claim against the district had elapsed. We conclude that, for purposes of applying equitable estoppel, the time for filing a claim against the district was tolled during the period that the teacher's threats prevented plaintiffs from pursuing their claims."

Here, since 2009, Respondent had notice of Justice Johnson's disqualification, through its member Justices, that: (a) Justice Johnson had engaged in conduct that would reasonably be perceived as sexual harassment and gender bias of a member Justice from 2009 through 2018; (b) Respondent had cautioned Justice Johnson about his inappropriate conduct despite his failure to heed these *warnings*; (c) in late 2013 or early 2014, two member Justices had discussed reporting Justice Johnson's sexual harassment and gender bias of a member Justice since 2009; (d) in December, 2017, Justice Johnson had warned a member Justice not to report him for sexual harassment; (e) Justice Johnson was on notice about the impropriety of his behavior, yet continued to engage in such behavior *for years* and (f) in June 2020, the Commission found Justice Johnson "disqualified" having failed to meet the fundamental expectations of a judge, that spanned nine years on the bench. (Exh. 14, pp. 133, 134, 135-147, 196-197, 205-206.)

Petitioners, and the public, reasonably relied on Respondent's representation, as a public trustee, that it had issued opinions in each of Petitioners' appeals by a *qualified* 3-

judge court of appeal. (Cal. Const. art. 6, § 3.) Yet, in spite of its trusted position, Respondent did nothing to protect the public and Petitioners, who were denied their right to a review of their appeals by a qualified 3-judge court of appeal, from 2009 and continuing, under U. S. Const. Amend . XIV, §1; Cal. Const., art. 1, §7 (a), that was a substantial cause of delay.

Remarkably, in likelihood, the filing of this petition and a miscarriage of justice would have been avoided, had Respondent reported Justice Johnson's disqualification when it first had notice in 2009, allowing the Commission to commence an investigation of Justice Johnson, with, at a minimum, a suspension of his judicial decisionmaking duties, given Respondent had issued its opinions in Petitioners' respective appeals in 2010 and in 2016, or otherwise, had Respondent issued an unbiased opinion in Petitioners' respective appeals, in compliance with this Court's binding authorities and binding statutory authorities, avoiding a miscarriage of justice.

Given the extraordinary circumstances for delay was substantially caused by Respondent, as discussed above, Petitioners have filed this joint petition at the "earliest practicable opportunity" (see *Urias v. Harris Farms, Inc.* (1991)234 Cal.App.3d 415, 424-425), after Petitioners became aware that the Commission's disqualification and removal of Justice Johnson, under its factual findings and conclusions of law, was upheld by this Court in January 2021. Although a party has an obligation to act diligently, he or she is not required to launch a search to discover information that a judicial officer [and

Respondent, as a public trustee,] should have disclosed. See *Christie v. City of El Centro* (2006) 37 Cal.Rptr.3d 718, 776-777 (*Christie*).

Moreover, Respondent continues to breach its fiduciary duty to discover whether Justice Johnson's misconduct was "willful misconduct", involving his acting in a "judicial capacity", under any of his opinions, to reasonably make certain that Respondent, as a public trustee, had issued opinions in compliance with both binding statutory authorities and this Court's binding authorities, to avoid a miscarriage of justice (*Rincon-Pineda*, supra, at p. 872), including in Petitioners' respective appeals: (a) in 2009, when it first had notice of Justice Johnson's disqualifying misconduct, (b) in 2018, when it had undertaken to report Justice Johnson's disqualifying misconduct to the Commission and (c) in 2020, after it had notice of the Commission's determination that Justice Johnson was found "disqualified", predicating his removal in June 2020 (Exh 14, pp. 134, 206-207).

The equities lie with Petitioners who were "prevented from pursuing their claims" earlier, under the extraordinary circumstances, as discussed above, and Respondent's continuing failure to discover whether Justice Johnson's opinions had resulted in a miscarriage of justice, which, indeed, had occurred in Petitioners' respective appeals. (*John R*, supra, at p. 445.)

6. This joint petition raises questions of law in each of Petitioners' respective appeals after trial court judgments on the merits were issued in Petitioners' respective underlying cases.

Thus, the evidentiary factual findings, witness' memories and the availability of evidence are *not* in issue. In the event Respondent or the Real Parties in Interest claim laches and/or undue delay in the filing of this petition, a showing of actual prejudice is required. See *Brewer v. Simpson* (1960) 53 Cal.2d 567, 594; *Kloepfer v. Commission on Judicial Performance* (1989) 49 Cal.3d 826, 837.

7. Petitioners' nonstatutory due process claims that an appellate opinion is constitutionally invalid because of judicial bias remain preserved on appeal. (*People v. Brown* (1993) 6 Cal.4th 322, 335 (*Brown*).)

8. The judicial disqualification of Justice Johnson divested Respondent of the constitutional power, authority and subject matter jurisdiction to conduct itself as a *qualified* 3-judge court of appeal (Cal. Const., art. 6, §§ 1 and 3), and accordingly, it's opinions in Petitioners' respective appeals were void and subject to vacatur at any time. *Rochin v. Pat Johnson Mfg. Co* (1998) 67 Cal.App.4th 1228, 1239 (*Rochin)* [Citing *Olivera v. Grace* (1942) 19 Cal.2d 570, 574, a judgment void on its face, because rendered when the court lacked personal or subject matter jurisdiction or exceeded its jurisdiction in granting relief which the court had no power to grant, is subject to collateral attack at any time.]; *Christie*, supra, at p. 776 [Judicial disqualification occurs when the facts creating disqualification arise, not when disqualification is established. The acts of a judge subject to disqualification are void or, according to some authorities, voidable.]

Summary of Relevant Facts and Procedural History

9. Respondent issued opinions in Petitioners' respective appeals as follows:

a) In *Raymond v. Flynt, etal,* in 2006, the arbitrator's awards found Larry Flynt (Flynt) and L.F.P., Inc. (collectively, "Flynt defendants") liable under the Fair Employment and Housing Act (FEHA) for creating and maintaining a hostile workplace environment sexual harassment and acted with malice and oppression, awarding Raymond compensatory and punitive damages. (Exh. 1, pp. 1-11; Exh. 2, pp. 12-16.) In 2009, the trial court issued a Judgment affirming the arbitration awards holding the Flynt defendants' conduct constituted sexual harassment because it was based on Raymond's gender and was severe and pervasive, held that the punitive damages award was properly based on the Flynt defendants' behavior toward Raymond and the amount of the award did not violate due process. (Exh. 3, pp. 17-19.) In light of *Cable Connection, Inc. v. DIRECTV, Inc.* (2008) 44 Cal.4th 1334, on remand by the court of appeal (Exh. 4, pp. 20-25), the trial court granted Raymond's motion to confirm the judgment, as amended. (Exh. 3, pp. 17-19; Exh. 5, pp. 26-29.) In 2010, Respondent issued Justice Johnson's unpublished authored opinion determining that there was legal error under the facts as set forth in the arbitration award that did not establish a claim for hostile work environment sexual harassment and accordingly, reversed the arbitration award. (Exh. 6, pp. 30-52.) In 2011, the trial court issued a Judgment in favor of the Flynt defendants against Petitioner Raymond. (Exh. 7, pp. 53-54.) Petitioner Raymond's Rehearing was denied. In

2010, this Court, Case No. S187963, denied Petitioner Raymond's request for review.

b) In *Eng v. Eng, etal*, Petitioner Eng, a co-executor in her deceased mother's, (Frances) closed estate (in 2007), had filed a petition for breach of contract, in 2009, in her deceased father's (Edward) probate proceeding, seeking quasi-specific performance of: (i) Edward's oral agreement and Edward's witnessed March 26, 2004 Document not to revoke his 2003 will and codicil (March 26, 2004 Document), the main focus of her claims, and related claims, (ii) Edward's breach of fiduciary duty, as her personal attorney, in failing to disclose his 2006 will, that reduced her inheritance and breached the March 26, 2004 Document, Fraud, Conspiracy, Constructive Trust and Attorney Fees. In 2013 and 2014, the trial court issued Statements of Decision (Exh. 8, pp. 55-87; Exh. 10, pp. 92- 111), a Judgment (Exh. 9, pp. 88-91) and Orders for Attorneys Fees (Exh. 11, pp 112-113; Exh. 13, pp. 129-130) against Petitioner Eng on all of her claims. In January 2016, Respondent issued Justice Johnson's unpublished authored consolidated opinion, affirming the trial court Judgments and Orders in full, determining that: (a) the March 26, 2004 Document was not a contract never to revoke Edward's 2003 will, lacking mutual assent and was in the "present tense" and not a future promise; (b) Petitioner Eng's claim against Edward for breach of fiduciary duty, as her personal attorney, in failing to disclose his 2006 will, was time barred and (c) Petitioner Eng's 2004 Declaration showed that prosecution of her claims was

unreasonable warranting attorney fees against her. (Exh. 12, pp. 114-128.) Petitioner Eng's Petition for rehearing was denied. In 2016, this Court, Supreme Court Case No.: S232955, denied Petitioner Eng's Petition for Review.

10. In January 2021, this Court upheld the Commission's *Inquiry Concerning Johnson*, supra.

Basis for Relief

11. A fair trial in a fair tribunal is a basic requirement of due process. (*In re Murchison* (1955) 349 U.S. 133, 136; U. S. Const. Amend . XIV, §1; Cal. Const., art. 1, §7 (a).) Both federal and state courts have long held that a party has a right to an impartial judge. (*Arizona v. Fulminante* (1991) 499 U.S. 279, 309-310; *Brown*, supra, at p. 332.)

12. Justice Johnson was judicially disqualified in Petitioners' respective appeals based upon his (a) predetermined disposition to rule against each Petitioner, as individuals and as women, as members of a class of women, based upon their gender, and failing to meet the fundamental expectations of a judge, his dishonesty and lack of integrity, that amounted to actual bias, rendering fair judgment impossible, that was demonstrated under his pattern of willful misconduct in intentional disregard of this Court's binding authorities and binding statutory authorities, and unequal application of this Court's binding authorities, that objectively, would reasonably be perceived as partiality and bias against each Petitioner, and his pattern of refusing to comply with both binding statutory authorities and this Court's binding authorities, that resulted in a miscarriage of justice, constituting

reversible error, obliging this Court to reverse the opinions (Cal. Const. art. 6, §13; *Watson*, supra, at p. 836; *Rincon-Pineda*, supra, at p. 872), that, taken in combination, established his participation in Petitioners' respective appeals was illegal and prejudicially unfair (*Kaufman,* supra, at p. 940), and were circumstances such that a reasonable person aware of these facts, would doubt his ability to be impartial, and accordingly, judicially disqualified him in Petitioners' respective appeals. (Cal. Code of Jud. Ethics, Canon 3E (4)(c), (Canon 3E(5)(f)(iii); *Housing Authority of Monterey County v. Jones* (2005) 130 Cal.App.4th 1029, 1040 (*Housing Authority*).)

13. The judicial disqualification of Justice Johnson in Petitioners' respective appeals divested Respondent of the constitutional power, judicial authority and subject matter jurisdiction to conduct itself as a qualified 3-judge court of appeal (Cal. Const. art. 6, §§ 1 and 3), a structural error, that deprived Petitioners of their right to a qualified 3-judge court of appeal, that is fundamental to due process, obliging Respondent to vacate, or reverse as prayed, the void opinions in each of Petitioners' respective appeals.

Absence of Other Remedies and Irreparable Harm

14. Respondent issued opinions in Petitioners' respective appeals that are not appealable orders. (Code of Civ. Proc., §904.1.) Thus, Petitioners have no plain, speedy and adequate remedy in the ordinary course of law, other than to petition this Honorable Court for nonstatutory writ relief. (*Omaha Indemnity Co. v. Superior Court* (1989) 209 Cal.App.3d 1266, 1274.)

15. Writ relief is the proper remedy to test whether a judge is disqualified. (*Keating v. Superior Court of the City and County of San Francisco* (1955) 45 Cal.2d 440, 443 (*Keating*).)

To maintain public confidence in the California judiciary as a public trust, the integrity of our courts and its judicial officers is of foremost public importance and of public interest in the administration of justice.

16. To reiterate, Respondent, a judicial office, is a public trustee, and the public's confidence in the integrity, honesty and ethics of those who are entrusted with judicial power is an issue of significant public importance. Our legal system can function only so long as the public, having confidence in the integrity of its judges, accepts and abides by judicial decisions.

17. Judges cannot be advocates for the interests of any parties; they must be, and be perceived to be, neutral arbiters of both fact and law who apply the law uniformly and consistently. There is a compelling public interest in maintaining a judicial system that both is in fact and is publicly perceived as being fair, impartial, and efficient. (*Broadman v. Commission on Judicial Performance* (1998) 18 Cal.4th 1079, 1100, 1103 (*Broadman*).

The judicial disqualification of an appellate justice for gender bias is an issue of first impression for this Honorable Court.

18. Discretionary writ review may be appropriate where it is necessary to resolve an issue of first impression promptly and to set guidelines for bench and bar. (*Rodrigues v. Superior Court* (2005) 127 Cal.App.4th 1027, 1032.)

Here, Justice Johnson is the first, but may not be the last,

appellate justice whose opinions were gender biased, presenting an issue of first impression for this Honorable Court, that has not yet been squarely faced or answered by a California state court, in a published opinion, in this context (*Yamaha Motor Co. v. Superior Court* (2009) 174 Cal.App.4th 264), and involves both a public interest and the due administration of justice. (*Catchpole v. Brannon* (1995) 36 Cal.App.4th 237, 246 (*Catchpole*).)

PRAYER

Petitioners pray that this Honorable Court:

1. In performance of its duty, reverse the opinions issued by Respondent in Petitioners' respective appeals, not in compliance with both binding statutory authorities and this Court's binding authorities, that resulted in a miscarriage of justice, specifically:

(a) Reverse, in full, Respondent's September 28, 2010 opinion and the related July 26, 2011 Trial Court Judgment in *Raymond v. Flynt, etal*, and

(b) Reverse, in part, Respondent's January 29, 2016 opinion, the February 21, 2014 Trial Court Judgment, the August 11, 2014 Trial Court Order and the July 29, 2016 Trial Court Order for attorneys fees in *Eng v. Eng, etal*, express, that; (i) the March 26, 2004 Document was Edward's valid and enforceable contract never to revoke his 2003 will; (ii) Petitioner Eng's breach of fiduciary claim against Edward in failing to disclose his 2006 will was timely and (iii) Petitioner Eng prosecuted her claims with reasonable cause and no attorneys fees should have been awarded

against Petitioner Eng; or

2. Issue a peremptory writ of prohibition and/or mandate in the first instance under the seal of this Court commanding Respondent to grant the relief specified in paragraph 1(a)-(b) of this prayer; or

3. Should it deem such action necessary and appropriate, issue an alternative writ directing Respondent either to grant the relief specified in paragraph 1(a)-(b) of this prayer or to show cause why it should not be ordered to do so, and upon the return of the alternative writ, issue a peremptory writ as set forth in paragraph 1(a)-(b) of this prayer;

4. Award each Petitioner; Petitioner Raymond and Petitioner Eng, costs under California Rules of Court, rule 8.493; and

5. Grant such other relief as may be just and proper.

Dated: May 22, 2023

Respectfully submitted,

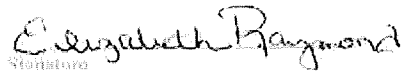
/s/
Tara J. Licata, Esq.
LICATA & YEREMENKO
Attorney for Elizabeth Raymond

/s/
Amelia Eng, Esq.
Pro Se

VERIFICATIONS

I am the petitioner in *Raymond v. Flynt, etal* and have read the foregoing Joint Petition for Writ of Prohibition, Mandate, or Other Appropriate Relief and know its contents. The facts alleged in this joint petition pertaining to my appeal are within my own personal knowledge, and I know these facts to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this verification was executed on May 22, 2023, at Sherman Oaks, California.



ElizabethRaymond

I am the petitioner in *Eng. v. Eng, etal* and have read the foregoing Joint Petition for Writ of Prohibition, Mandate, or Other Appropriate Relief and know its contents. The facts alleged in this joint petition pertaining to my appeal are within my own personal knowledge, and I know these facts to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this verification was executed on May 22, 2023, at Irvine, California.

Amelia Eng

MEMORANDUM OF POINTS AND AUTHORITIES

I.

THIS HONORABLE COURT IS OBLIGED TO REVERSE RESPONDENT'S OPINIONS IN PETITIONERS' RESPECTIVE APPEALS, AUTHORED BY JUSTICE JOHNSON, UNDER HIS PATTERN OF REVERSIBLE ERRORS THAT RESULTED IN A MISCARRIAGE OF JUSTICE.

A. Judicial Reversible Error.

This Court made clear that its statements of law remain binding on the trial and appellate courts of this state (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455-456 (*Auto Equity*)), and must be applied wherever the facts of a case are not fairly distinguishable from the facts of the case in which this Court has declared the applicable principle of law. (*People v. Triggs* (1973) 8 Cal.3d 884, 890-891 (*Triggs*), disapproved on other grounds.)

A miscarriage of justice should be declared only when the court, after an examination of the entire cause, including the evidence, is of the opinion that it is reasonably probable that a result more favorable to the appealing party would have been reached in the absence of the error. (*Watson*, supra, at p. 836.)

In *Rincon-Pineda*, supra, while affirming the judgment below for non-prejudicial error, where the defendant was accorded plenary due process and nevertheless was found by a jury on the basis of substantial evidence to have committed the rape and related sexual assaults testified to by the victim, this Court stated at p. 872, citing *Auto Equity*, supra, at pp. 455-456 and *Triggs*, supra, at pp. 890-891:

> "Defendant was entitled to have his trial conducted in accordance with the law prevailing at that time, and if it were 'reasonably probable that a result more favorable to (defendant) would have been reached in the absence of the error', [*Watson*, supra, at p. 836], it would be our duty to reverse the judgment against defendant."

B. Judicial willful misconduct.

Willful misconduct, the most serious type of misconduct, consists of (1) unjudicial conduct, (2) committed in bad faith, (3) by a judge acting in a judicial capacity. *Broadman*, supra, at p. 1091. The Commission found Judge Broadman had acted in excess of judicial power by the use of deception in "tricking" defense counsel, by concealing material information to obtain an agreement to a time waiver, that was "an abuse of the judicial process" constituting willful misconduct." Id., at p. 1092.

A judge's legal error can constitute misconduct if it involves bad faith, bias, abuse of authority, disregard for fundamental rights, intentional disregard of the law or any purpose other than the faithful discharge of judicial duty. *Oberholzer v. Commission on Judicial Performance* (1999) 20 Cal.4th 371, 396 (*Oberholzer*). A judge's ruling made in the face of directly contrary binding authority cited to him or her might be evidence of intentional disregard for the law providing no arguable grounds for distinguishing the precedent or reasonably arguable merit. Id, at pp. 401-402 [conc. opn. of Werdegar, J.]

Conceptually, the unequal application of binding legal authority objectively, can reasonably be perceived as partiality and bias, similar to the accepted principle that an unequal

enforcement of a valid statute is protected under the due process clauses that guard against discrimination against those similarly situated, resulting from the unequal application of the law, for which there is no a rational basis or legal justification. See U. S. Const. Amend . XIV, §1; Cal. Const., art. 1, §7 (a); *City of Banning v. Desert Outdoor Advertising, Inc.* (1962) 209 Cal.App.2d 152, 154, 156 (*City of Banning*); *Yick Wo v. Hopkins,* 118 U.S. 356, 373 (1886) (*Yick Wo*).

C. Under Respondent's opinion in *Raymond v. Flynt, etal,* Justice Johnson's willful misconduct and reversible error, that resulted in a miscarriage of justice, obliges this Court to reverse the opinion in full, or to so direct Respondent.

The arbitration awards found in favor of Petitioner Raymond. The Flynt defendants sought appellate review for legal error under the arbitration awards, the sole record under review. (Exh. 1, pp. 1-11, Exh 2, pp. 12-16, Exh. 6, pp. 30-52.)

Under his review of the arbitration award, Justice Johnson acknowledged and concluded the following:

> "Mr. Flynt also had a *habit* of making sexually-oriented remarks to Ms. Raymond *and* the other executive assistants that *were well known, e.g.*, asking an LFP executive in [Raymond's] presence at a meeting if [Raymond]was the woman 'he was fucking', 'telling the juvenile 'sticky panties' joke to [Raymond] in the presence of others, requesting a hug from [Raymond], commenting about the attributes of his 'special guests' on *several* occasions to his executive assistant after the completion of their visits, or that he was 'wearing an erection'." (Italics added.) (Exh. 1, p. 7, Exh. 6, p. 39.)
>
> "The Flynt defendants argue that the arbitrator's statement that Flynt 'had a *habit* of making sexually- oriented remarks to Ms. Raymond and the other executive

> assistants' (italics added), and the arbitrator's use of the abbreviation 'e.g' before listing Flynt's remarks, require us to presume that there were many other sexually harassing statements to support the arbitrator's finding of a hostile work environment. First, we note that the arbitrator stated that Flynt's 'habit' targeted the other executive assistants as well as Raymond. There is no factual finding regarding how many (if any) additional remarks were directed at Raymond, or how many additional remarks she witnessed. As we have explained, remarks made to others outside of Raymond's presence of which Raymond had no knowledge cannot affect her perception of the hostile nature of the work environment, and we assume that she did not know of the remarks in the absence of a finding to the contrary. (Citations) Although the arbitration award also states that Flynt's habit was 'well known', there is no indication to whom, or whether his 'habit' was known to Raymond. The arbitration award made no factual finding that Raymond was the target of, witnessed, or knew of, other harassing remarks beyond the three remarks described above. After applying California sexual harassment law to the factual findings as stated in the arbitration award, we are left with only three incidents of harassing conduct over a more than two-year period. These few incidents are not sufficient to show that a reasonable person in Raymond's position would find the harassment severe or pervasive." (Exh. 6, p. 50.)

Justice Johnson's findings and conclusions were *not* based upon factual findings in the arbitration award. Specifically, the word "habit" is defined as "a behavior pattern acquired by frequent repetition. . . that shows itself in regularity . . . A settled tendency or usual pattern of behavior." (Merriam-Webster's Collegiate Dictionary (11th ed. 2007), p. 559), and "e.g." means "for example."(Id., at p. 398.) Thus, by definition, the arbitrator's three examples of Flynt's habit were plainly words of description

and not limitation and certainly, *not* a complete record on all of the evidence of Flynt's habit. Moreover, his *assumption* that Petitioner Raymond had no personal knowledge of Flynt's habit of commenting about the attributes of his special guests on several occasions to his executive assistant after the completion of their visits, or that he was wearing an erection, was *not* found by the arbitrator when Flynt's habit was "well known", the words, "well-known" is an adjective defined as "fully or widely known." (Merriam-Webster's Online Dictionary, May 1, 2023.)

1. Under Justice Johnson's unpublished authored opinion in *Mayflower Capital Co. v. Patel* (2019) *(Mayflower)* (Exh. 15, pp. 209-213), not cited for the law of the case, but rather to show knowledge, under his statement, citing *In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, at p. 1133 (*Arceneaux*), that, "the most fundamental rule of appellate law is that the judgment [or order] challenged on appeal is presumed correct." Thus, he knew that he could *not* make an affirmative showing of error under the arbitration award that was silent on *all* of the evidence of the frequency of Flynt's habit of making sexually-oriented remarks to Raymond under his recognition that, "There is no factual finding regarding how many (if any) additional remarks were directed at Raymond, or how many additional remarks she witnessed", and Flynt's "commenting about the attributes of his special guests on several occasions to his executive assistant after the completion of their visits, or that he was wearing an erection" was among Flynt's "well known" habits, and thus, were "fully known" to Raymond and the other executive assistants.

In *Denham v. Superior Court* (1970) 2 Cal.3d 557 (*Denham*), Denham's writ of mandate alleging plaintiffs' failure to diligently prosecute was denied after the motion to dismiss plaintiffs' amended complaint, for lack of a showing of good cause, under filed affidavits and *without a record of the transcript of the hearing on the motion,* was denied. Without an affirmative showing of error, this Court presumed that plaintiffs had shown good cause, where there had been various changes in attorneys and in the law firm representing plaintiffs, stating at p. 564:

> "it is settled that: 'A judgment or order of the lower court is [p]resumed correct. All intendments and presumptions are indulged to support it on matters as to which the record is silent, and error must be affirmatively shown. This is not only a general principle of appellate practice but an ingredient of the constitutional doctrine of reversible error.'"

Here, without an affirmative showing of error, by citing to factual findings in the arbitration award to rebut the presumption of correctness of the lower court judgment, Justice Johnson's reversal of the arbitration award was willful misconduct, in intentional disregard of this Court's binding authority under *Arceneaux,* supra, at p. 1133 and *Denham,* supra, at p. 564, providing no arguable grounds for distinguishing the precedents or reasonably arguable merit, (*Oberholzer*, supra, at pp. 396, 401-402), and in bad faith, by deceit, in concealing his knowledge of the presumption of correctness of the lower court judgment under *Arceneaux,* supra, at p. 1133, cited in *Mayflower*, supra, that was material to his determination of legal error in Petitioner Raymond's appeal, and therefore, was an "an abuse of the judicial

process." (*Broadman*, supra, at p. 1092.)

2. Justice Johnson's intentional unequal application of the presumption of correctness under *Arceneaux*, supra, at p. 1133 in in *Mayflower*, supra, but not in *Raymond v. Flynt, etal*, when the parties in both appeals were similarly situated in seeking the determination of an affirmative showing of error on appeal, and without a rational basis or legal justification for the difference in treatment, was willful misconduct (*Oberholzer*, supra, at p. 396), in intentional unequal application of the law under *Arceneaux*, supra, at p. 1133, that, objectively, would reasonably be perceived as Justice Johnson's partiality and bias against Petitioner Raymond. (U. S. Const. Amend . XIV, §1; Cal. Const., art. 1, §7 (a); *City of Banning*, supra, at pp.154, 156; *Yick Wo*, supra, at p. 373.)

3. More importantly, Justice Johnson's willful misconduct, as discussed above, demonstrated his intentional defiance in complying with this Court's controlling precedents in accordance with the law prevailing at that time, under *Arceneaux*, supra, at p. 1133 and *Denham*, supra, at p. 564, where the facts in this case are not fairly distinguishable from the facts in those cases, in which this Court has declared the applicable principle of law. (*Triggs*, supra, at pp. 890-891.)

After an examination of the entire cause, Petitioner Raymond was entitled to have her appeal conducted in accordance with the law prevailing at that time, had Justice Johnson complied with this Court's controlling precedents, by citing to factual findings in the arbitration award to affirmatively show error

under *Arceneaux*, supra, at p. 1133 and *Denham*, supra, at p. 564, it was reasonably probable that the judgment affirming the arbitration awards would stand, as a result more favorable to Petitioner Raymond and thus, would have avoided a miscarriage of justice (*Watson*, supra, at p. 836), obliging this Court to perform its duty to reverse, in full, Respondent's opinion and the trial court judgment against Petitioner Raymond in *Raymond v. Flynt, etal*, or to so direct Respondent. (*Rincon- Pineda*, supra, at p. 872.)

D. Under Respondent's opinion in *Eng v. Eng, etal*, Justice Johnson's pattern of willful misconduct and pattern of reversible errors, that resulted in a miscarriage of justice, obliges this Court to reverse, in part, Respondent's opinion, the underlying Judgment, and Orders for attorneys fees, or to so direct Respondent.

1. Justice Johnson's pattern of willful misconduct.

a. Justice Johnson knew that the March 26, 2004 Document was a contract never to revoke Edward's 2003 will but in bad faith, he denied mutual assent and interpreted the document in the present tense and not as a future contract.

Mutual Assent to the March 26, 2004 Document

Justice Johnson knew that his reliance on the parties' post-contractual subjective beliefs in the legal merits and the legal tenability of the March 26, 2004 Document, and the Real Parties in Interests' post-contractual subjective disputes, that had occurred months and even years after the "bargain" had occurred between the parties on March 26, 2004, the time of contracting, was in intentional disregard of his quotation of the law under *Donovan v. RRL Corp.* (2001) 26 Cal.4th 261 (*Donovan*), albeit materially omitting the "bargain" element, and was not

substantial evidence to deny mutual assent to the March 26, 2004 Document. (Exh. 12, pp. 115-116, 119-122.)

In *Donovan*, supra, a car dealer's advertisement, that had reflected an objective manifestation of its intention to make an offer for the sale of the vehicle at the stated price, that was accepted by plaintiff's tender of the advertised price, resulting in a contract, this Court explained the elements of mutual assent to a contract at pp. 270-271, as misquoted by Justice Johnson, materially omitting the following: "An offer is the manifestation of willingness to enter into a bargain, so made as to justify another person in understanding that his assent to that bargain is invited and will conclude it" (Exh. 12, pp. 119-120), for his deceitful purpose of intentionally disregarding de novo review of the undisputed and uncontroverted decisive facts of the parties' conduct at their meeting on March 26, 2004 (*Ghirardo v. Antonioli* (1994) 8 Cal.4th 791, 799 (*Ghirardo*) [When the decisive facts are undisputed, we are confronted with a question of law and are not bound by the findings of the trial court.]) (Exh. 12, pp. 115-116), because Justice Johnson knew, under *Donovan*, supra, at pp. 270-271, the "date of contracting" was on March 26, 2004, when a bargain was entered into between Edward and the Executors of Frances' estate (Frances' and Edward's three of five children, who were Petitioner Eng and her two siblings, Susan and Michael).

The undisputed and uncontroverted facts on March 26, 2004, as accounted by Justice Johnson, under Edward's overt actions in drafting and having his signature witnessed on the

March 26, 2004 Document, objectively manifested Edward's intent and willingness to enter into a bargain with the Executors, by its clear and explicit language and under its plain and ordinary meaning, offering to probate Frances' estate, waive his attorney fees, relinquish his right to revoke his 2003 will (and codicil) and the distribution to his children [would] remain as written.

Objectively, the Executors had reason to believe their acceptance of the March 26, 2004 Document was invited, as the document was specifically addressed to them, and was consideration for their agreement to allow Edward to act as their attorney. The Executors objectively manifested their assent to his offer by their allowing Edward to become their attorney. (See *Shannon v. Superior Court* (1990) 217 Cal.App.3d 986, 993 [An executor retains the absolute right to secure the services of a lawyer who acts not as the attorney for the estate but instead as the personal counsel for the executor, citing *In re Ogier* (1894) 101 Cal. 381, 385.])

In *Patel v. Liebermensch* (2008) 45 Cal.4th 344, 347 (*Patel*), this Court determined that a straightforward real estate option contract was not significantly uncertain, allowing a reasonable time for payment and the manner of payment may be supplied by implication, and it was *improper* to rely on the parties' conduct after their dispute arose to conclude that they had failed to reach a binding agreement.

Here, under de novo review, mutual assent to the March 26, 2004 Document was established under the objective

manifestation of the parties' intentions at the time of the bargain, on March 26, 2004, when Edward, by his actions and the language of the March 26, 2004 Document, addressed to the Executors, who had objectively manifested his intent to enter into a bargain with the Executors, under the March 26, 2004 Document, and the Executors who had reasonably so believed, that their acceptance of the March 26, 2004 Document was invited, and for which they objectively manifested their assent to the March 26, 2004 Document by allowing Edward to become their attorney. (*Donovan*, supra, at pp. 270–271; *Patel,* supra, at p. 347.)

Moreover, Justice Johnson knew under his citation of "Probate Code 21700, which governs contracts not to revoke a will" (Exh. 12, p. 118), subsection (a)(3,), required only Edward's signature on the March 26, 2004 Document, a contract not to revoke a will (*Estate of Ziegler* (2010) 187 Cal.App.4th 1357, at pp. 1365-1366).

Interpretation of the March 26, 2004 Document

Justice Johnson's de novo interpretation of an insurance contract under the objective theory of contracts and the general rules of contract interpretation, stating, "Insurance policy terms will be given the objectively reasonable meaning a lay person would ascribe to them. Interpretation of an insurance policy is a question of law and follows the general rules of contract interpretation", under his authored opinion in *Regional Steel Corp. v. Liberty Surplus Ins. Corp.* (2014) 226 Cal.App.4th 1377, 1389-1393 (*Regional Steel*), revealed his knowledge that his

interpretation of the March 26, 2004 Document, *solely* under Edward's words, "I *am* not revoking" and *solely* under Civ. Code, §1644, to construe only Edward's purported intent in the "present" tense, as "not an offer by Edward never to revoke his 2003 will", and in reliance on the parties' post-contractual subjective beliefs in the legal merits and the legal tenability of the March 26, 2004 Document, and the Real Parties in Interests' post-contractual subjective disputes at trial, that had occurred months and even years after the time of contracting on March 26, 2004 (Exh. 12, pp. 120-122), was in intentional disregard of this Court's binding authorities to interpret a contract, under the objective theory of contracts (*Brant v. California Dairies, Inc.* (1935) 4 Cal.2d 128, 133 (*Brant*)) and de novo review of the mutual intent of the parties under the canons of contract interpretation (*Parsons v. Bristol Development Co.*(1965) 62 Cal. 2d 861 (*Parsons*) and *City of Manhattan Beach v. Superior Court* (1996) 13 Cal. 4th 232, 238, 252 (*City of Manhattan Beach*).

In *Brant*, supra, this Court found a contract to distribute milk where the terms of plaintiff's proposal were stated clearly and explicitly, was accepted by correspondence, and testimony of what defendant "personally believed the agreement of the parties to be" was contrary to this Court's determination, at pp. 133-134:

> "[T]he settled principle of the law of contract that the undisclosed intentions of the parties are, in the absence of mistake, fraud, etc., immaterial; and that the outward manifestation or expression of assent is controlling. This is the 'objective' standard, established by the modern decisions and approved by authoritative writers and... where the terms of an agreement are set forth in writing, and the words are not equivocal or ambiguous, the writing or

> writings will constitute the contract of the parties, and one party is not permitted to escape from its obligations by showing that he did not intend to do what his words bound him to do."

In *Parsons*, supra, this Court found a contract between an architect and an owner of a lot to construct a building, after the owner abandoned the project, having failed to qualify for the contingent construction loan financing, stating at pp.865-866:

> "The interpretation of a written instrument... is essentially a judicial function to be exercised according to the generally accepted "canons of interpretation" so that the purposes of the instrument may be given effect. (See Civ.Code, §§ 1635-1661; Code Civ.Proc., §§ 1856-1866)."

Accord, *City of Manhattan Beach*, supra, in interpreting a written instrument (deed), this Court stated at pp. 238, 252:

> "...[t]he primary object of all interpretation is to ascertain and carry out the intention of the *parties. All* the rules [or canons] of interpretation *must be considered and each given its proper weight*, where necessary, in order to arrive at the true effect of the instrument" and "[i]interpretation of a [deed] ordinarily is *a question of law* that we undertake *de novo*." (Italics added.)

Here, to give effect to the objective mutual intention of the parties, as it existed on March 26, 2004, date of contracting, (Civ. Code, §1636), when Edward had objectively manifested his intent, offering to probate Frances' estate, waive attorney fees, relinquish his right to revoke his 2003 will (and codicil) and the distribution to his children [would] remain as written [upon his death] under it's clear and explicit terms and its plain and ordinary meaning (Civ. Code, §§ 1638, 1644), and by reference to the circumstances

at that time, when Edward's objective purpose in creating the March 26, 2004 Document was to secure the Executors' assent to his acting as their attorney to probate Frances' estate, one-half of the community property, that he had been disinherited from under Frances' will (Civ. Code, §1647; Code of Civ. Proc., §1860), and that was objectively believed by Edward and reasonably understood by the Executors (Civ. Code, §1649), for which they objectively manifested their assent by allowing Edward to act as their attorney. It was reasonable for the Executors to believe that the March 26, 2004 Document would be legally enforceable at Edward's death, when there is no difference between a promise to make a future distribution from Edward's estate and a present promise to convey assets of Edward's estate, that could not have been performed until after Edward's death (see *Estate of Ziegler*, supra, at pp. 1360, 1365-1366), and as a *witnessed* document, it would be enforceable in the future. The March 26, 2004 Document is interpreted *against* Edward, the drafter (Civ. Code, §1654), and most favorable to the Executors and for the benefit of his children and in whose favor Edward had made the document when they allowed Edward to become their attorney. (Code of Civ. Proc., §1864.) (Exh. 12, pp.115-116, 120-122.)

Accordingly, interpretation of the March 26, 2004 Document, under the undisputed and uncontroverted facts, that objectively manifested the mutual intention of the parties *on* March 26, 2004 (*Brant*, supra, at p. 133; (Civ. Code, §1636)) and under the applicable canons of interpretation (*Parsons*, supra, at pp. 865-866 and *City of Manhattan Beach*, supra, at pp. 238, 252),

had established the March 26, 2004 Document as a contract never to revoke Edward's 2003 will.

b. Justice Johnson knew, under his authored opinion in *Prakashpalan v. Engstrom, Lipscomb & Lack* (2014) 223 Cal.App.4th 1105, 1121-1122 (*Prakashpalan*), that Petitioner Eng's claim against Edward, as her personal attorney, for breach of fiduciary duty by failing to disclose his 2006 will, was tolled until she sustained actual injury under the tolling provision of Code of Civ. Proc. §340.6 (a)(1). (Exh. 12, pp. 122-124.)

In *Prakashpalan*, supra, at pp. 1121-1122, citing Code of Civ. Proc. §340.6 (a)(1) and *Jordache Enterprises, Inc. v. Brobeck, Phleger & Harrison* (1998) 18 Cal.4th 739, 743 (*Jordache*), Justice Johnson barred Prakashpalan's legal malpractice and breach of fiduciary duty claims, as untimely, finding Prakashpalan had sustained actual injury by suffering a loss or injury legally cognizable as damages when Engstrom, etal, wrongfully withheld certain settlement funds.

In *Jordache*, supra, a case to determine whether actual injury, necessary to commence an action arising from the law firm's failure to tender the defense, occurred upon settlement of the subsequent coverage action, this Court held that the determination requires an analysis of the claimed error and its consequences, and explained at pp. 743-744, that a client sustains actual injury when the client suffers legally cognizable damages compensable in a legal malpractice action...the loss or diminution of a right or remedy constitutes injury or damage.

In *Ludwicki v. Guerin* (1961) 57 Cal.2d 127, (*Ludwicki*), an

action to compel enforcement of a contract to make a will, [which is in effect the same as an agreement not to revoke an existing will. (*Shive v. Barrow* (1948) 88 Cal.App.2d 838, 843)], by a decedent filed more than seven years after the decedent's death, this Court stated at p. 130:

> "Since the making of a will cannot be compelled, there can be no specific performance of such a contract in the strict sense, but under certain circumstances equity will give relief equivalent to specific performance by impressing a constructive trust upon the property which decedent had promised to leave to plaintiff... A contract to make a will is breached only if it has not been complied with at the time of the promisor's death, and for this reason the cause of action for the breach does not ordinarily accrue or the period of limitation commence to run until the promisor dies."

Here, Petitioner Eng's breach of fiduciary claim against Edward, as her personal attorney (*In re Ogier*, supra, at p.385), for failing to make a full and fair disclosure of his 2006 will, that revoked his 2003 will, in breach of the March 26, 2004 Document (*Ludwicki*, supra, at p. 130), and materially diminished her inheritance under his 2003 will (*Neel v. Magana, Olney, Levy, Cathcart & Gelfand* (1971) 6 Cal.3d 176, 188-189 (*Neel*)), did not accrue or the period of limitation commence to run, until Edward's death, when she sustained actual injury, by suffering loss and an injury legally cognizable as damages (materially diminished inheritance). The trial court made *no* finding that Petitioner Eng's testimony, that she learned of Edward's 2006 will until after Edward's death in 2008, was not believable (Exh. 8, pp. 83-86), and therefore, Petitioner Eng's breach of fiduciary claim against Edward for failing to disclose his 2006 will, was

timely filed in 2009, within one year from the date of his death in 2008. (Exh. 12, pp. 117-118). (Code of Civ. Proc. §340.6 (a)(1); *Jordache*, supra, at pp. 743-744; *Ludwicki*, supra, at p. 130.)

c. Justice Johnson knew that Petitioner Eng had reasonable and probable cause to prosecute her claims and no attorneys fees should have been awarded against her under his citation of *Kobzoff v. Los Angeles County Harbor / UCLA Medical Center* (1998) 19 Cal.4th 851, 857 (*Kobzoff*) and *Carroll v. State of California* (1990), 217 Cal.App.3d 134 (*Carroll*) (Exh. 12, pp. 127-128)), when *Carroll*, at pp. 141-142 , cites and discusses the applicable law under *Sheldon Appel Co. v. Albert & Oliker* (1989) 47 Cal.3d 863, 879, 881 (*Sheldon Appel*).

Under *Sheldon Appel, supra,* at pp. 879, 881, reasonable cause to pursue a claim is determined *by the court*, and therefore, Justice Johnson knew that his reliance on Petitioner Eng's post-contractual *subjective belief* in the *legal merits* and the *legal tenability* of the March 26, 2004 Document, under her December 2004 Declaration, was not relevant to determine reasonable cause to pursue her claims (Exh. 12, pp. 125-128).

Thus, Petitioner Eng had reasonable and probable cause to prosecute her claims that raised justiciable issues under the facts and law (see ID1a-c, ante) and no attorneys fees should have been awarded against Petitioner Eng.

Summary of Justice Johnson's Willful Misconduct

(1) Providing no arguable grounds for distinguishing the binding authorities or reasonably arguable merit (*Oberholzer*, supra, at pp. 396, 401-402), Justice Johnson committed willful

misconduct, as follows:

(a) Justice Johnson knew that his denial of mutual assent to the March 26 2004 Document under substantial evidence review was in intentional disregard of this Court's binding authorities under *Donovan*, supra, at pp. 270–271, *Patel*, supra, at pp. 347 and *Ghirardo*, supra, at p. 799, and in intentional disregard of his citation of Probate Code 21700, and in bad faith, by deceit, under his misquotation of the law, by omitting the bargain element to mutual assent under *Donovan*, supra, at pp. 270-271, that was material to his determination of mutual assent to the March 26, 2004 Document, and therefore, was an "an abuse of the judicial process." (*Broadman*, supra, at p. 1092.) (See ID1a, ante.)

(b) Under his opinion in *Regional Steel*, supra, at pp. 1389-1393, Justice Johnson knew that his interpretation of the March 26, 2004 Document in the present tense, as not a contract never to revoke Edward's 2003 will, was in intentional disregard of this Court's binding authorities, and in bad faith, by deceit, in concealing his knowledge of the law that contracts are interpreted under the objective theory of contracts (*Brant*, supra, at p. 133), under de novo review and under the applicable canons or general rules of contract interpretation (*Parsons*, supra, at pp. 865-866 and *City of Manhattan Beach*, supra, at pp. 238, 252), that was material to his interpretation of the March 26, 2004 Document, and therefore, was an "an abuse of the judicial process." (*Broadman*, supra, at p. 1092.) (See ID1a, ante.)

(c) Under his opinion in *Prakashpalan*, supra, at pp 1121-1122, Justice Johnson knew that barring Petitioner Eng's breach

of fiduciary claim against Edward, as her personal attorney, for failing to make a full and fair disclosure of his 2006 will, in intentional disregard of both binding Code of Civ. Proc. §340.6 (a)(1) and this Court's binding *Jordache*, supra, at p. 743, and in bad faith, by deceit, in concealing his knowledge of the tolling provision under Code of Civ. Proc. §340.6 (a)(1), and this Court's binding legal authority under *Jordache*, supra, at p. 743, that was material to his barring of Petitioner Eng's breach of fiduciary claim against Edward, as her personal attorney, for failing to make a full and fair disclosure of his 2006 will, and therefore, was an "an abuse of the judicial process." (*Broadman*, supra, at p. 1092.) (See ID1b, ante.)

(d) Under his citation of *Kobzoff*, supra, at p. 857 and *Carroll*, supra, at pp. 141-142, that cites *Sheldon Appel*, supra, pp. 879, 881, Justice Johnson knew that reasonable cause to pursue a claim is determined *by the court* and *not* by Petitioner Eng under her subjective belief in the legal merits and the legal tenability of the March 26, 2004 Document, in intentional disregard of this Court's bindings authorities, and in bad faith, by deceit, in concealing his knowledge that reasonable cause to pursue a claim is determined *by the court* under *Sheldon Appel*, supra, at pp. 879, 881, and therefore, was "an abuse of the judicial process." (*Broadman*, supra, at p. 1092.) (See ID1c, ante.)

(2) Justice Johnson's intentional unequal application of both binding statutory authority and this Court's binding authorities (*Oberholzer*, supra, at p. 396), as discussed above, that objectively, would reasonably be perceived as Justice Johnson's partiality and

bias against Petitioner Eng, when the parties in both appeals were similarly situated and without a rational basis or legal justification for the difference in treatment (U. S. Const. Amend . XIV, §1; Cal. Const., art. 1, §7 (a); *City of Banning*, supra, at pp.154, 156; *Yick Wo*, supra, at p. 373) in the following:

(a) Justice Johnson's application of de novo review to interpret a contract under the objective theory of contracts and under the applicable canons or general rules of contract interpretation in *Regional Steel*, supra, at pp. 1389-1393, in contrast to his refusal to so apply to the March 26, 2004 Document, in Petitioner Eng's appeal, under *Eng v. Eng, etal.* (See ID1a, ante.)

(b) Justice Johnson's application of Code of Civ. Proc. § 340.6, subd. (a)(1) and *Jordache*, supra, at pp. 743-744 in *Prakashpalan*, supra, at pp. 1121-1122 , in contrast to his refusal to so apply to Petitioner Eng's claim against Edward for breach of fiduciary duty, under *Eng v. Eng, etal.* (See ID1b, ante.)

2. Justice Johnson's Pattern of Reversible Errors.

More importantly, Justice Johnson's willful misconduct in intentional disregard of this Court's binding authorities and binding statutory authorities, as discussed in ID1a-c, ante, were not isolated incidents but rather, displayed a course of conduct and pattern (*Fletcher v. Commission on Judicial Performance* (1998) 19 Cal.4th 865, 918 (*Fletcher*)), that demonstrated his intentional defiance in refusing to comply with both this Court's binding authorities and binding statutory authorities, that must be applied wherever the facts of this case are not fairly distinguishable from the facts of those cases, in which this Court

has declared the applicable principle of law under this Court's binding authorities and binding statutory authorities. (*Auto Equity*, supra, pp. 455-456; *Triggs,* supra, at pp. 890-891.)

After an examination of the entire cause, Petitioner Eng was entitled to have her underlying case and her appeal conducted in accordance with the law prevailing at that time, had Justice Johnson and the trial court complied with both this Court's controlling precedents and binding statutory authorities, it was reasonably probable that a result more favorable to Petitioner Eng would have been reached in the absence of Justice Johnson's and the trial court's pattern of willful misconduct in defiance of this Court's binding authorities and binding statutory authorities, that would have avoided a miscarriage of justice [*Watson*, supra, at p. 836], obliging this Court to perform its duty, or to so direct Respondent, to reverse, in part as prayed, Respondent's opinion, the Trial Court Judgment and subsequent Orders for Attorneys Fees, in *Eng v. Eng, etal*, specifically; (a) the March 26, 2004 Document was an enforceable contract never to revoke Edward's 2003 will (and codicil), (b) Petitioner Eng's breach of fiduciary claim against Edward was timely and (c) Petitioner Eng prosecuted her claims with reasonable cause and no attorneys fees should have been awarded against Petitioner Eng. (*Rincon-Pineda*, supra, at p. 872.)

II.

RESPONDENT WAS DIVESTED OF THE CONSTITUTIONAL POWER, AUTHORITY AND SUBJECT MATTER JURISDICTION TO CONDUCT ITSELF AS A 3-JUDGE COURT OF APPEAL, SO CONSTITUTED, OBLIGING RESPONDENT TO VACATE THE VOID, OR

REVERSE AS PRAYED, THE OPINIONS, AND RELATED TRIAL COURT JUDGMENTS AND ORDERS, IN PETITIONERS' RESPECTIVE APPEALS.

A. The law governing the judicial disqualification of an appellate justice.

Disqualification of an appellate justice is governed by Canon 3E (4) of the California Code of Judicial Ethics (*Housing Authority*, supra, at p. 1040) and subsection (c) provides disqualification when "the circumstances are such that a reasonable person aware of the facts would doubt the justice's ability to be impartial." Disqualification is also required when a justice "has a personal bias or prejudice concerning a party or a party's lawyer." (Canon 3E(5)(f)(iii).) In *Kaufman,* supra, at p. 940, whether a justice should be disqualified, this Court stated the sole question: "Because of his bias, did the appellate proceeding wherein a justice participated become illegally and prejudicially unfair?"

In *Evans v. Superior Court* (1930) 107 Cal.App. 372, 379-385 (*Evans*), as a matter of law, the trial judge was disqualified because he had admittedly expressed an opinion as to the lack of credibility in prejudgment of the petitioners, the words "bias" and "prejudice" refer to the mental attitude or disposition of the judge towards a party to the litigation, and not to any views that he may entertain regarding the subject matter involved. Accord, *Briggs v. Superior Court* (1932) 215 Cal. 336, 338-346 (*Briggs*), citing *Evans*, supra, where a trial court judge's charge that petitioners had deliberately misstated the truth in their affidavit, this Court reasoned that it was not humanly possible for the

judge to pass upon their credibility with an impartial mind. Accord, *Keating v. Superior Court of the City and County of San Francisco* (1955) 45 Cal.2d 440, 444 (*Keating*), where a peremptory writ of prohibition issued restraining the trial judge from hearing a retrial of the action, after having stated during the course of the prior trial that he believes a party has willfully sworn falsely. In finding the trial judge disqualified from retrying the case, this Court stated at p. 445:

> "it is 'the right of a litigant to have his cause tried by one who has no preconceived opinion against his veracity which may preclude a full and a fair consideration of the facts and the law which are involved therein... When there is uncontradicted evidence that the trial judge entertains a fixed opinion that a party to an action has deliberately perjured himself upon a material issue or that he is unworthy of belief, and frankly admits he possesses that frame of mind, the law entitles the litigant to the privilege of a trial before some other judge. Under such circumstances the question regarding the existence of bias or disqualification becomes one of law.'"

A judge's impartiality is evaluated by an objective, rather than subjective, standard. The question becomes whether "a reasonable man [or woman] would entertain doubts concerning the judge's impartiality" (*Catchpole,* supra, at p. 246). Gender bias must not be countenanced in any case, but if there is any type of proceeding that might call for more rigorous review ... because judicial gender bias appears most likely to arise in litigation in which gender is material, such as sexual harassment and discrimination cases. Id., at p. 248.

An explicit ground for judicial disqualification in

California's statutory scheme is a public perception of partiality, that is, the appearance of bias. The trial court's behavior in *Catchpole*, supra, (based on stereotyped thinking about the nature and roles of women and myths and misconceptions about the economic and social realities of women's lives, at pp. 249, 262), and *In re Marriage of Iverson* (1992) 11 Cal.App.4th 1495 (the judge used language indicating gender bias, but also rendered judgment on the basis of gender-based stereotypes, at pp. 1499–1501), amounted to a showing of actual bias based on comments by the judges because it involved "a pattern of conduct that rendered a fair trial impossible." *People v. Freeman* (2010) 47 Cal.4th 993, 1000-1001, 1006-1007, fn. 4 (*Freeman*), disapproving *Catchpole*, supra, and *Iverson*, supra, on other grounds; *People v. Nieves* (2021) 11 Cal.5th 404, 499 (*Nieves*).

Gender bias can be expressed toward women, as a class or a group to which a woman belonged, in cases where a trial judge made inappropriate comments about women in cases decided against women. (*Nieves*, supra, at p. 499; Accord, *Haworth v. Superior Court* (2010) 50 Cal.4th 372, 389 (*Haworth*) [Impartiality entails the absence of bias or prejudice in favor of, or against, particular parties or classes of parties.].)

B. The Commission's factual findings and conclusions of law objectively, would reasonably be perceived as Justice Johnson having a predetermined disposition to rule against women, as a class, based upon their gender, by not upholding the law, that made fair judgment impossible.

Inquiry Concerning Johnson, supra, states in pertinent part (Exh. 14, at pp. 206-207):

"Judges are expected to be honest, have integrity, uphold

> high personal standards, and treat everyone with dignity and respect, on or off the bench. Justice Johnson's conduct before, and during, this proceeding demonstrates that he does not meet these fundamental expectations. He committed 18 acts of prejudicial misconduct and was found to engaged in conduct that would reasonably be perceived as sexual harassment of seven women at his court, to have misused the prestige of his position and demeaned his judicial office by attempting to develop personal relationships with three other young women, and to have further demeaned his office by his offensive conduct toward a fourth woman, as well as by multiple incidents of undignified conduct while intoxicated. Justice Johnson's refusal to admit to serious misconduct, intoxication, coupled with his failure to be truthful during the proceedings, compels us to conclude that he cannot meet the fundamental expectations of his position as a judge. Fulfilling the commission's mandate—particularly with respect to maintaining public confidence in the integrity of the judiciary—can only be achieved by removing him from the bench... we hereby remove Justice Jeffrey W. Johnson from office and disqualify him from acting as a judge."

The Commission's factual findings and conclusions of law found that Justice Johnson had engaged in a pattern of substantial and egregious misconduct, that would reasonably be perceived as sexual harassment and gender bias on multiple women for nine years, from 2009 through 2018, committing numerous physical assaults on multiple women and made statements that were gender-based stereotyping of two women colleagues as "nasty ass bitches", the word "bitch" is a derogatory term commonly referring to women. Objectively, his misconduct, showing disrespect, degradation, disparagement, disdain, and hostility toward women, and in combination with his stereotyping of his women victims as liars, not credible, were

improperly influenced by third parties and the "Me Too Movement" (gender-based), and as racists, none of which the Commission found were supported by the evidence, objectively, would reasonably be perceived as having a mental attitude and disposition of bias against women, as a class, based upon their gender, as a "gender bias". Moreover, his attempt to shift blame to his women victims to hold them culpable for his own misconduct, was fundamentally at odds with his role of a judge, and showed the same lack of candor, as Judge Spitzer (see *Inquiry Concerning Spitzer* (2007) 49 Cal.4th CJP Supp. 254, 287 (*Spitzer*)), by not upholding the law, that would render fair judgment impossible. (Exh. 14, pp. 132-133, 135-147, 152-186, 188-189, 190-200, 202- 205.) (*Freeman*, supra, at pp. 1001-1001, 1006-1007, fn. 4; *Nieves*, supra, at p. 499; *Haworth*, supra, at p. 389.)

As to his admitted sexual misconduct, that the Commission found would reasonably be perceived as a pattern of sexual harassment and gender bias, Justice Johnson claimed, "he did not know it was wrong." (Exh. 14, pp. 133, 161.)

C. Justice Johnson's bias in prejudging the outcome of Petitioner Raymond's appeal in *Raymond v. Flynt, etal,* made fair judgment impossible.

In judging Petitioner Raymond's appeal, when gender was material to his determination of sexual harassment (*Catchpole*, supra, at p. 248), objectively, Justice Johnson would reasonably be perceived as having a bias against Petitioner Raymond, by his "link" by subject matter and time (*Haworth*, supra, at p. 391), to his own disqualification and removal from office for a pattern of

substantial and egregious sexual misconduct for nine years, from 2009 through 2018 (see IIB, ante), that had occurred during the pendency of Petitioner Raymond's appeal in 2010, and in combination with his confessed disqualification under his claim that he did not know that his admitted sexual misconduct, that the Commission found was reasonably be perceived as sexual harassment, was wrong, provided him with a personal interest in prejudging the outcome of Petitioner Raymond's appeal that, objectively, would reasonably be perceived as having a predetermined disposition to rule against Petitioner Raymond, rendering fair judgment impossible, that was demonstrated by his willful misconduct and reversible error (see IC, ante). (*Freeman*, supra, at pp. 1001-1001, 1006-1007, fn. 4; *Nieves*, supra, at p. 499.)

D. Justice Johnson's biased preconceived fixed opinion and frame of mind in prejudging Petitioner Eng's overall veracity as a liar under his opinion in *Eng v. Eng, etal,* made fair judgment impossible.

While the trial court rejected Petitioner Eng's testimony as "not believable", specifically regarding Edward's *oral* promises not to revoke his 2003 will, that may have resulted from consideration of Petitioner Eng's observation or recall (*Keating*, supra, at pp. 443- 444), Justice Johnson's statement, "The trial court found that [Petitioner Eng's] testimony was not credible", was *not* found by the trial court, that her testimony of when she learned of Edward's 2006 will was not believable (Exh. 8, pp. 83-86), and Justice Johnson's statement, "As a lawyer herself, [Petitioner Eng] would have been aware of Edward's duties and would *immediately* have been aware of *any* breach" (Italics

added), were undeniable attacks on Petitioner Eng's credibility, that she lacked overall veracity and was fully aware of *all* of Edward's misconduct at *all* times (Exh. 12, pp. 122-123). These attacks were an admission that he had a preconceived "fixed opinion" and "frame of mind" in prejudging Petitioner Eng's overall veracity as a liar, not found by the trial court, that precluded his full and a fair consideration of all facts and the law, which were involved in Petitioner Eng's appeal, that, as a matter of law, disqualified him. (*Evans*, supra, at pp. 379-385; *Briggs*, supra, at pp. 345-356; *Keating*, supra, at pp. 444-445.)

Moreover, impugning the credibility of women, as a class, is indicative of Justice Johnson's pattern of stereotyping women as liars (see IIB, ante), in his attempt to blame Petitioner Eng for Edward's misconduct, as Justice Johnson had attempted to blame his women victims for his own misconduct, exhibiting his lack of candor (*Spitzer*, supra, at p. 287), that was fundamentally at odds with the role of a judge, who is sworn to uphold the law, and objectively, would reasonably be perceived as a predetermined disposition to rule against Petitioner Eng, based upon his prejudging Petitioner Eng's overall veracity as a liar, that made fair judgment impossible, that was demonstrated by his pattern of willful misconduct and pattern of reversible errors (see ID, ante). (*Freeman*, supra, at pp. 1001-1001, 1006-1007, fn. 4; *Nieves*, supra, at p. 499.)

E. Justice Johnson's bias against each Petitioner was demonstrated under his pattern of willful misconduct and pattern of reversible errors that judicially disqualified him in Petitioners' respective appeals.

Because of Justice Johnson's predetermined disposition to rule against each Petitioner under: (a) his biased personal interest in prejudging the outcome of Petitioner Raymond's appeal (see IIC, ante) and his biased preconceived fixed opinion and frame of mind in prejudging Petitioner Eng's overall veracity as a liar, that precluded a full and a fair consideration of all facts and the law, which were involved in Petitioner Eng's appeal (see IID, ante) and (b) his predetermined disposition to rule against each Petitioner, both women and a members of a class of women, based upon their gender, and his failing to meet the fundamental expectations of a judge, his dishonesty and lack of integrity (see IIB, ante) that, objectively, amounted to a pattern of actual bias, rendering fair judgment impossible (*Freeman*, supra, at pp. 1001-1001, 1006-1007, fn. 4; *Nieves*, supra, at p. 499), that was demonstrated under his pattern of willful misconduct, in intentional disregard of and unequal application of this Court's binding authorities and statutory authorities, that objectively, would reasonably be perceived as partiality and bias against Petitioner Raymond and Petitioner Eng, and his pattern of reversible errors (see IC and ID, ante, respectively), his participation in Petitioners' respective appeals were illegal and prejudicially unfair (*Kaufman,* supra, at p. 940), and are circumstances, such that a reasonable person aware of these facts, would doubt his ability to be impartial (Cal. Code of Jud. Ethics, Canons 3E (4)(c), 3E(5)(f)(iii); *Housing Authority,* supra, at p. 1040), that judicially disqualified him under his pattern in Petitioners' respective appeals. (*Fletcher,* supra, at p. 918.)

F. **The judicial disqualification of Justice Johnson divested Respondent of the constitutional power, judicial authority and subject matter jurisdiction to conduct itself as a 3-judge court of appeal to issue the opinions in Petitioners' respective appeals, rendering the opinions as void.**

The judicial disqualification of Justice Johnson in Petitioners' respective appeals (see IIE, ante) divested Respondent of the constitutional power, authority and subject matter jurisdiction to conduct itself as a 3-judge court of appeal, so constituted, under Cal. Const., art. 6, §§ 1 and 3 (*Moles v. Regents of University of California* (1982) 32 Cal.3d 867, 870, 874 fn. 2 [a judge who has not participated in all the stages of the decision-making process may not be permitted to participate in the final decision and sign the opinion issued by that panel... Cal. Const., art. 6, §3, provides only that a Court of Appeal shall conduct itself as a three-judge court.]), a structural error, and as a result, Respondent's opinions in Petitioners' respective appeals were void and subject to vacatur at any time, and obliging this Court to command Respondent to vacate, or reverse as prayed, the void Respondent's opinions in Petitioners' respective appeals. (*Rochin*, supra, at p. 1239; *Ex parte Metropolitan Water Co. of West Virginia*, 220 U. S. 539, 545-46 (1911) [a writ of mandamus was granted to vacate a void ruling where a single judge had acted without subject matter jurisdiction, in deciding the merits of an application for an interlocutory injunction, which should have been considered and determined by a tribunal consisting of three judges, constituted as provided in the statute.]; *Williams v. Pennsylvania* , 136 S.Ct. 1899, 1909 (2016) [A disqualified co-

panel judge's failure to recuse constitutes a structural error, even if the judge in question, did not cast a deciding vote.].)

III. CONCLUSION

As a matter of law, justice, equity and the accountability of our judicial officers, which is of the utmost public importance to maintaining integrity and public confidence in the California judiciary, this Honorable Court is obliged to perform its duty, or to so direct Respondent, to reverse, as prayed, Respondent's opinions, related Judgments and Orders for Attorney Fees in Petitioners' respective appeals, that resulted in a miscarriage of justice, and were devoid of Respondent's constitutional power to issue the opinions.

CERTIFICATE OF WORD COUNT

The undersigned certifies that the text of the preceding Joint Petition, exclusive of the tables, any attachment, and this certificate, contains 12,205 words, based upon the computerized word count function of Microsoft Word for Windows 10.

Dated: May 22, 2023

Respectfully submitted,

/Signed/

Tara J. Licata, Esq.
LICATA & YEREMENKO
Attorney for Elizabeth Raymond
Sherman Oaks, California

/Signed/

Amelia Eng, Esq.
Pro Se

Irvine, California