

**APPELLANT REQUESTS  
ORAL ARGUMENT**

**B251854**

---

IN THE COURT OF APPEAL  
OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION THREE

---

MARY CUMMINS,  
Plaintiff and Appellant,

v.

AMANDA LOLLAR,  
Defendant and Appellee

---

Appeal from Order of Los Angeles Superior Court  
Case No. BS143169, Honorable Carol Boas Goodson

---

**APPELLANT'S OPENING BRIEF**

---

Mary Cummins  
Petitioner, Plaintiff, Appellant In Pro Per  
645 W. 9th St. #110-140  
Los Angeles, CA 90015-1640  
(310) 877-4770  
(310) 494-9395 Fax  
[mmmaryinla@aol.com](mailto:mmmaryinla@aol.com)



**APPELLANT REQUESTS  
ORAL ARGUMENT**

**B251854**

---

IN THE COURT OF APPEAL  
OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION THREE

---

MARY CUMMINS,  
Plaintiff and Appellant,

v.

AMANDA LOLLAR,  
Defendant and Appellee

---

Appeal from Order of Los Angeles Superior Court  
Case No. BS143169, Honorable Carol Boas Goodson

---

**APPELLANT'S OPENING BRIEF**

---

Mary Cummins  
Petitioner, Plaintiff, Appellant In Pro Per  
645 W. 9th St. #110-140  
Los Angeles, CA 90015-1640  
(310) 877-4770  
(310) 494-9395 Fax  
[mmmaryinla@aol.com](mailto:mmmaryinla@aol.com)

**Court of Appeal  
State of California  
Second Appellate District**

**CERTIFICATE OF INTERESTED ENTITIES OR PERSONS**

Court of Appeal Case Number: B251854

Case Name: Cummins v Lollar

Please check the applicable box:

- There are NO interested entities or parties to list in this certificate pursuant to California Rules of Court rule 8.208(d).

Interested entities or parties are listed below:

None



Dated: April 2, 2014

Signature of Party Submitting Form

Printed Name: Mary Cummins

Party Represented: Petitioner

## IDENTITY OF PARTIES AND COUNSEL

### APPELLANT:

**Mary Cummins**

In Pro Per

645 W. 9th St. #110-140

Los Angeles, CA 90015-1640

(310) 877-4770 Direct

(310) 494-9395 Fax

[mmmaryinla@aol.com](mailto:mmmaryinla@aol.com)

### APPELLEE:

**Amanda Lollar**

Dean Rocco

Wilson Elser Moskowitz Edelman & Dicker LLP

555 S. Flower Street - Suite 2900

Los Angeles, CA 90071-2407

(213) 330-8922 Direct

(213) 443-5100 Main

(213) 443-5101 Fax

[dean.rocco@wilsonelser.com](mailto:dean.rocco@wilsonelser.com)

<b>TABLE OF CONTENTS</b>	Page
Certificate of Interested Entities or Persons	i
Identity of Parties and Counsel	ii
Index of Authorities	iv
Statement of the Case	1
Statement Regarding Oral Argument	1
Factual and Procedural Background	2
Argument	11
I. Claim of Bias In Violation of Constitutional Due Process	11
II. Errors Alleged to Justify a New Trial Under § 657	13
A. Irregularities in the § 527.6 Proceeding	14
B. Judge should have been recused	21
III. Errors In Law	23
Conclusion	27
Certificate of Compliance	29
Certificate of Service	30
Appendix	31

<b>Case Law</b>	<b>INDEX OF AUTHORITIES</b>	<b>Pg</b>
<i>ABF Capital Corp. v. Berglass</i> (2005) 130 Cal.App.4th 825, 832.		20
<i>Americans for Safe Access v. County of Alameda</i> (2009) 174 Cal.App.4th 1287, 1295;		19
<i>Caperton v. A.T. Massey Coal Co.</i> (2009) 556 U.S. __, 129 S.Ct. 2252, 2257		19
<i>Church of Scientology v Wollersheim</i> (1996) 42 CA4th 628, 655–656, 49 CR2d 620		28
<i>Cindy Beck v Veronica Roberts</i> (2013) BS140742		33
<i>Conservatorship of Pamela J.</i> (2005) 133 Cal.App.4th 807, 827		19
<i>Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Bd.</i> (2006) 40 Cal.4th 1, 17, fn.		19
<i>County of Los Angeles v Hashim Mwamba Bomani</i> (2013) BS141503		33
<i>Develop–Amatic Engineering v. Republic Mortgage Co.</i> (1970) 12 Cal.App.3d 143, 150		20
<i>Estate of Friedman</i> (1918) 178 Cal. 27, 39		20
<i>Freeman</i> supra, 47 Cal.4th at p. 996, quoting <i>Caperton v. A.T.</i>		19
<i>Haluck v. Ricoh Electronics, Inc. (2007)</i> supra, 151 Cal.App.4th at p. 1003		27 28

<i>Hernandez v. Paicius</i> (2003) 109 Cal.App.4th 452, 455	35
<i>Hollingsworth v Superior Court</i> (1987)191 CA3d 22, 27, 236 CR 193	29
<i>Massey Coal Co.</i> (2009) 556 U.S. __, 129 S.Ct. 2252, 2257.	29
<i>McVey v. McVey</i> (1955) 132 Cal.App.2d 120, 123	19
<i>Murr v. Murr</i> (1948) 87 Cal.App.2d 511, 517-521	22 23 24 28
<i>People v. Corrigan</i> (1957) 48 Cal.2d 551, 556	27
<i>People v. Freeman</i> (2010) 47 Cal.4th 993, 1000	19 35
<i>People v. Fudge</i> (1994) 7 Cal.4th 1075, 1108	22
<i>People v. Guerra</i> (2006) 37 Cal.4th 1067, 1111	22
<i>People v. Sturm</i> (2006) 37 Cal.4th 1218, 1237	17 27 35
<i>Pratt v. Pratt</i> (1903) 141 Cal. 247, 252.	18 35
<i>Radha Bharadwaj v William Mears</i> (2011) B222911	17 34
<i>Schraer,</i> supra, 207 Cal.App.3d at p. 730, 733, fn. 6	31
<i>Tudor Ranches, Inc. v. State Comp. Ins. Fund</i> (1998) 65 Cal.App.4th 1422, 1431	30



<i>Urias v Harris Farms, Inc.</i> (1991) 234 CA3d 415, 419, 285 CR 659	28
<b>Constitutional Provisions</b>	
U.S. Const., 14th Amend., §1	19
<b>Statutes and Rules</b>	
Civil Code § 2.33	14 28
Civil Code § 128.7	16 35
Civil Code § 170.3	15 16 17 28
Civil Code § 170.4	28
Civil Code § 170.6	15 17 29
Civil Code § 187	35
Civil Code § 527.6	8 10 11 14 21 22 24 30 18 31 32
Civil Code § 657	14 18 19 20 21 30 35

## **STATEMENT OF THE CASE**

Plaintiff, Petitioner, Appellant Mary Cummins (“Cummins”) appeals from a judgment of the Los Angeles Superior Court Department 75 denying her petition under Code of Civil Procedure § 527.6<sup>1</sup> for an injunction preventing harassment against her by Defendant, Respondent, Appellee Amanda Lollar (“Lollar”). Cummins further appeals the award of attorney fees to Appellee. Cummins contends that during the hearings conducted on her § 527.6 petition the trial Judge Carol Boas Goodson (“Judge Goodson”) exhibited extreme bias against Cummins in violation of her constitutional right to due process and right to a fair hearing. Cummins further argues that the trial judge engaged in acts of judicial misconduct and committed errors of law that deprived Cummins of a fair trial.

## **STATEMENT REGARDING ORAL ARGUMENT**

Plaintiff-Appellant believes that oral argument will significantly aid in clarifying the issues involved in this appeal. This case presents important issues regarding the proper legal standards for determining civil harassment and rights to a fair trial.

///

---

<sup>1</sup> All references to code §§ herein are to the California Code of Civil Procedure.

## **FACTUAL AND PROCEDURAL BACKGROUND**

Cummins met Lollar in Texas in June 2010 (see Clerk's Transcript "CT" Volume 1 page 10 lines 26-27, page 11, lines 1-8) (1 CT 10:26-11:1-8) when Cummins was an intern at Lollar's Bat World Sanctuary. Cummins left the internship early after she witnessed animal cruelty, animal neglect, violations of the Animal Welfare Act, violations of Texas Health Department regulations and other such violations. Cummins returned home and reported Lollar for these violations giving the authorities video and photographic evidence. Lollar was found in violation of these acts and regulations. Lollar lost her USDA permit and was reprimanded by the other agencies.

In retaliation for reporting Lollar to authorities Lollar began a three year long crusade of vicious harassment, stalking, threats, assault and defamation against Cummins, her family, friends, business and non-profit Animal Advocates (1 CR 11:9-12). Lollar made over 300 websites, blogs, Facebook pages devoted solely to attack and defame Cummins stating such false things as Cummins is a "convicted criminal" who "commits animal cruelty" and "kills animals." Lollar's sole purpose is to cause as much harm to Cummins as possible for personal vengeance.

February 17, 2013 Lollar hired a man in California to trespass onto private property, videotape Cummins against her will and hit her with papers (1 CR 11:13-22). Cummins filed a police report. Lollar then used data she illegally received in discovery including Cummins' social security number, driver's license number, full name, date of birth to try to access Cummins' bank accounts (1 CR 11:23-28). The banks recorded the calls and Lollar was identified as the caller. Another police report was filed. An M-80 and molotov cocktail were found under Cummins' car on two occasions (1 CR 12:1-3). LAPD advised Cummins to get a restraining order on Lollar (1 CR 12:16-22).

May 24, 2013 Cummins sought and was granted a temporary restraining order (TRO) against Lollar based on her application she submitted documenting a number of incidents of harassment, defamation, physical and criminal acts beginning in 2010 and continuing to this day (1 CR 4-8, 12:23-26). Court Commissioner Carol Jane Hallowitz who became an attorney in 1977 signed the order (1 CR 12:23-26).

As required by § 527.6, a hearing was set for several weeks after the date the TRO was issued, the purpose of which was to determine whether a permanent injunction should be issued. During this time Lollar violated

the TRO over 150 times (1 CR13:1-3). Cummins was forced to file police reports for TRO violations. Lollar's attorney Dean Rocco ("Rocco") filed an overly lengthy reply to the TRO application (1 CR 13:16-20). Cummins replied to that reply noting the falsities, perjury, hearsay and fraud in his reply with attached exhibits as proof (1 CR 13:21-24).

That hearing was continued at the last second when Lollar's attorney Rocco realized that Judge Goodson would not be the judge but a different substitute judge would oversee the hearing (1 CR 13:10-12). The TRO was extended by the substitute Judge Marjorie Marenus who is an attorney with 25 years of experience in "Civil Harassment Restraining Orders" (1 CR 13:4-12).

The § 527.6 hearing ultimately took place on July 1, 2013 before Judge Goodson (1 CR 13:21-24). Lollar did not appear in person or by phone at any hearing. Cummins who was not represented by counsel tried to present her case. Before Cummins could utter a word Judge Goodson stated she had already ruled based on the application alone. The final order stated "The court finds that the petition, on its face, does not rise to the level of the issuance of an Injunction" (1 CR 14:3-4, 9). Even though Cummins was instructed by the Civil Harassment Department to bring all

her evidence to the hearing Cummins was not allowed to present any evidence, show the video of the assault, give oral argument or testimony (1 CR 13:26-14:1-4).

Judge Goodson then stated restraining orders are only for people who have been “hit with a two by four” or “stabbed with a knife” (1 CR 15:4-6). Judge Goodson also stated that the acts took place in 2010 which was too long ago (1 CR 14:5-7). Cummins stated that they “started in 2010 and were ongoing to the present.” Judge Goodson stated that she found the application for restraining order “annoying” and she also found Cummins to be “annoying” (1 CR 15:3-4). Cummins then asked “if I had no grounds for a restraining order, why did the police officers, detectives, LAPD lawyer tell me to get a restraining order? Why did the restraining order clinic state that I should get the restraining order and my documents look fine? Why did the Commissioner allow the TRO? Why did the judge pro tem agree for an extension?” (1 CR 15:25-16:1-6). Judge Goodson responded with “The restraining order clinic is run by a bunch of law students who don’t know anything. Commissioners approved the TRO and extension. They approve all TRO’s. They don’t know anything.”

Judge Goodson denied the petition for injunction and awarded \$6,350 in legal fees for Lollar (1 CR 16:7-11). Judge Goodson then stated loudly in a cruel tone about an unrelated issue “you better get out there and start working to pay the judgment! It will follow you for 20 years! 20 YEARS!!!” while sneering at Cummins (1 CR 16:7-10).

Cummins called the court to order the minutes after the hearing and was told they fired the court reporters a few weeks earlier (1 CR 16:12-14).

Cummins filed a MOTION TO RECONSIDER DENIAL OF CIVIL RESTRAINING ORDER, LAWYER’S COSTS AND FEES July 16, 2013 (1 CR 10-22) alleging that respondent did not appear, petitioner was not allowed to give oral argument or show evidence to the court at the hearing, Cummins produced evidence in her application for TRO and can produce more evidence that she is legally entitled to a restraining order.

Cummins gave notice in that motion that she will audio and/or video record the proceedings because there are no court reporters (1 CR 19: 18-19).

Cummins filed AMENDED MOTION TO RECONSIDER DENIAL OF CIVIL RESTRAINING ORDER, REQUEST FOR NEW TRIAL BEFORE A DIFFERENT JUDGE (1 CR 25-44) along with AFFIDAVIT OF PREJUDICE

PEREMPTORY CHALLENGE TO JUDICIAL OFFICER (1 CR 45) August 15, 2013. The motion stated that a new trial may be taken from a § 527.6 hearing (1 CR 31:26-32:1-6). Cummins made a claim of bias in violation of constitutional due process (1 CR 32:7-33:1-7), errors alleged to justify a new trial under Cal. Code of Civ. Proc. § 657 (1 CR 33:8-25), irregularities in the § 527.6 proceeding (1 CR 33:26-38:1-15) and errors in law (1 CR 38:16-27-41:1-20).

August 16, 2013 the case was called and Cummins placed an audio recorder on the table in plain view. Judge Goodson said “is that a recording device?” Cummins answered “yes, I gave notice that I would record. There is no court reporter.” Cummins quoted the law which states that parties are allowed to audio record hearings with notice. Judge Goodson then ordered the bailiff to take Cummins’ phone and he did. Cummins was only allowed to record the first 20 seconds and included a link to this in her motion to recuse<sup>2</sup> (2 CR 260:4-13).

Judge Goodson again did not allow petitioner to show any old or new evidence, give oral testimony or argue her case (2 CR 260:14-19). Judge ruled against Cummins at the hearing stating “The court finds that the

---

<sup>2</sup> [http://www.marycummins.com/judge\\_carol\\_boas\\_goodson.mp3](http://www.marycummins.com/judge_carol_boas_goodson.mp3)



petitioner did not provide new or different facts, circumstances, or law to substantiate a reversal of this court's order" (1 CR 67). Judge Goodson did not mention or rule on the filed § 170.6.

Respondent filed motion to deem petitioner Cummins a vexatious litigant August 8, 2013 (1 CR 68-78). Cummins filed a response also requesting sanctions under § 128.7 because Respondent committed fraud upon the court and committed perjury (2 CR 296-312). Cummins proved that in no way does Cummins meet the definition of a vexatious litigant having filed and lost only one case in the last seven years and not six as Respondent falsely misrepresented. Respondent pulled up every single case by anyone named "Cummins" in California then falsely stated Petitioner Cummins was all of those people when she is not. Respondent also misquoted their own exhibits (2 CR 311:4-16). Respondent stated that Cummins stated that attorney Randy Turner placed a bomb under her car. Cummins never stated that ever! The minutes attached as exhibit clearly show Cummins never said that. Respondent lost their motion (2 CR 313) September 27, 2013. Judge stated "The court, after review of the moving papers, finds that there is not enough evidence, at this time, to declare the petitioner a vexatious litigant."

Cummins filed a MOTION TO RECUSE, DISQUALIFY JUDGE CAROL BOAS GOODSON CCP §170.3(c)(1); MOTION FOR SANCTIONS CCP §128.7 (2 CR 254-273) September 19, 2013. Cummins argued Judge had the duty to be impartial (2 CR 263:4-11), there were grounds for disqualification (2 CR 263:12-265:1-17) and motion to recuse, disqualify Judge is timely (2 CR 265:18-266:1-17).

Cummins stated and showed that Judge Goodson has a long history of bias toward certain parties and improper courtroom decorum (2 CR 261:23-263:1-2). Cummins quoted "California Courts and Judges, Volume 1<sup>3</sup> review of Judge Goodson,

"GOODSON, Carol. Boas. JUDGE SUPERIOR COURT, Los Angeles County. Appointment/Election: Appointed by Governor Brown Jr. Jan. 11, 1981 (date of oath Jan. 13, 1981), elected in 1982, and reelected in 1988, 1994, and 2000: "A lawyer who represents tenants said that in one trial, she treated his client so harshly that the client suffered a seizure right outside the courtroom, collapsed on the floor, and had to be carried out..." Lawyers who represent tenants in disputes with landlords said they think Judge Goodson is "nasty," "heavy-handed," "horrible," and ..."Her fiercest critic among interviewees said, "She doesn't belong [on the bench]. I think she belongs in a prison guarding violent prisoners. That fits her personality. She is that vicious." Two attorneys recounted instances in which Judge Goodson called them liars in open court even though they said she had no basis for making the accusation. Even defense attorneys, who are much more favorably disposed toward her, agreed that her temperament is

---

<sup>3</sup> "California Courts and Judges, Volume 1." Authors: Helen Y. Chang, Kathy Morris Wolf, Kenneth James Arnold, 1996, 1998, pg 370.

"questionable," and "on the strong side," "stern," and "critical." Lawyers said she can be quick to impose stiff sanctions."

Online review by lawyer<sup>4</sup>, "Now if you get a limited civil case downtown, your choices are so limited. If you ding Carol Boas Goodson, the most evil, biased judge I've ever seen, you may get this ding bat."

Online review by lawyer<sup>5</sup> "Her husband is Mark Goodson of tv fame. She is pro large corporate parties and very anti-underdog. She will try to set you up and play games. She is lazy and should not have anything to do with the law. She will not entertain oral argument unless you push hard or cite a statute requiring oral argument on that particular type of hearing. You will be forced to tell your argument to the law clerk (I think his name is John) who goes back into Chambers to see the Wizard (Judge). The law clerk comes out again and says sorry, tentative stands. I think I saw her sanction an attorney \$100 who insisted on oral argument before the Judge. File your 170.6 as to this woman."

Cummins stated an identical case to show Judge Goodson's history of extreme bias, i.e. Radha Bharadwaj v William Mears, Case # B222911<sup>6</sup> (2011) (2 CR 259:13-17). In this case Judge Goodson made fun of the petitioner's Indian accent, refused to allow petitioner to call witnesses, offer evidence or give oral argument. The appeals court ruled "the cumulative effect of the trial judge's conduct requires reversal." (People v. Sturm, supra, 37 Cal.4th at p. 1243.) "The trial of a case should not only be fair in fact, but it should also appear to be fair. And where the contrary appears,

---

<sup>4</sup> <http://www.underdoglaw.com/showthread.php?183-Judge-Ray-L.-Hart-Dept.-10-Stanley-Mosk-Courthouse>

<sup>5</sup> <http://www.underdoglaw.com/showthread.php?21-Carol-B.-Goodson-LASC-Dept.-75>

<sup>6</sup> <http://caselaw.findlaw.com/ca-court-of-appeal/1575708.html>

it shocks the judicial instinct to allow the judgment to stand.” (Pratt v. Pratt (1903) 141 Cal. 247, 252.) We therefore reverse the judgment and remand the matter to the superior court for a new trial before a different judge” (2 CR 259:27). Judge Goodson struck Cummins’ motion (2 CR 313-314). Cummins filed notice of appeal September 30, 2013 (2 CR 316-317).

## **ARGUMENT**

Appellant argues that Judge Goodson showed extreme bias in violation of her Constitutional right to due process, errors were made to justify a new trial under CCP § 657, there were irregularities in the § 527.6 proceeding, Judge Goodson should have recused herself and there were errors in law.

### **I. Claim of Bias In Violation of Constitutional Due Process**

Cummins’ federal constitutional rights to due process were violated because the trial judge was biased against her as evidenced by the Judge’s behavior during the hearing. Judge Goodson was hostile towards Cummins, interfered with her attempt to give oral argument, ridiculed her, questioned her argumentatively and admonished her about another unrelated case. The Judge’s behavior demonstrated that the judge was biased against her in violation of her constitutional rights to due process.

“ ‘A fair trial in a fair tribunal is a basic requirement of due process.’  
[Citation.]” (People v. Freeman (2010) 47 Cal.4th 993, 1000 (Freeman ).)  
The federal due process clause requires reversal based on judicial bias  
where there exists “ ‘the probability of actual bias on the part of the judge  
or decision maker [that] is too high to be constitutionally tolerable.’ ”  
(Freeman, supra, 47 Cal.4th at p. 996, quoting Caperton v. A.T. Massey  
Coal Co. (2009) 556 U.S. \_\_\_, 129 S.Ct. 2252, 2257.) It is only “the  
exceptional case presenting extreme facts where a due process violation  
will be found.” (Freeman, supra, 47 Cal.4th at p. 1005.)

It is not necessary to show that Cummins’ constitutional due process  
rights were violated as a result of the trial judge's alleged bias against her.  
“It is a well-settled rule that if statutory relief is adequate, it is unnecessary  
and inappropriate for a court to reach constitutional issues.” (Americans  
for Safe Access v. County of Alameda (2009) 174 Cal.App.4th 1287, 1295;  
see Department of Alcoholic Beverage Control v. Alcoholic Beverage  
Control Appeals Bd. (2006) 40 Cal.4th 1, 17, fn. 13 [“As a prudential  
matter, we routinely decline to address constitutional questions when it is  
unnecessary to reach them.”].) Such judicial restraint is warranted here,  
because, as further discussed below, a new trial is mandated under § 657  
and a new judge should preside over the retrial. There are grounds for

granting a new trial (ABF Capital Corp. v. Berglass (2005) 130 Cal.App.4th 825, 832.)

## **II. Errors Alleged to Justify a New Trial Under § 657**

A new trial is warranted due to “[i]rregularity in the proceedings of the court by which either party was prevented from having a fair trial.” (§ 657, subd. (1).)

“Irregularities” in the proceedings and errors of law were committed by the court. (Estate of Friedman (1918) 178 Cal. 27, 39 [“On a motion for a new trial, upon the ground of irregularities in the proceedings of the court, we are dealing with those irregularities, and it is immaterial whether they result from bias and prejudice or not.”]; Develop–Amatic Engineering v. Republic Mortgage Co. (1970) 12 Cal.App.3d 143, 150.)

There were numerous acts of judicial misconduct that prevented Cummins from fairly presenting her case, including the court's prejudging of the case; its “assumption of the role of de facto counsel for [Lollar],” including by aggressively cross-examining and repeatedly expressing skepticism of her testimony; its constant interruptions preventing Cummins from presenting her case; and the refusal to allow Cummins to give oral testimony/argument and present evidence to the court.

A new trial should be granted based on the trial court's "error in law" in improperly excluding evidence of events prior to 2013 to show a "course of conduct" justifying a permanent injunction under § 527.6. (§ 657, subd. (7); § 527.6, subd. (b)(3).)

#### **A. Irregularities in the § 527.6 Proceeding**

The purpose of a § 527.6 hearing is to determine whether the plaintiff can prove, by clear and convincing evidence, that he or she is the victim of harassment justifying a permanent injunction against the harasser. (§ 527.6, subd. (d).) § 527.6 defines harassment as "unlawful violence, a credible threat of violence, or a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, or harasses the person, and that serves no legitimate purpose. The course of conduct must be such as would cause a reasonable person to suffer substantial emotional distress, and must actually cause substantial emotional distress to the plaintiff." (§ 527.6, subd. (b).) A "course of conduct" is further defined as "a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose, including following or stalking an individual, making harassing telephone calls to an individual, or sending harassing correspondence to an individual by any means." (§ 527.6, subd. (b)(3).)

There were indeed “irregularities” in the manner in which the court conducted the proceeding that interfered with Cummins’ right to a fair hearing on the question whether Lollar engaged in a willful and harassing course of conduct that reasonably caused her emotional distress.

The Courts have significant leeway to control the conduct of a trial. (People v. Fudge (1994) 7 Cal.4th 1075, 1108.) In particular, we note that § 527.6 expressly authorizes courts to make an “independent inquiry” during a hearing to determine whether an injunction prohibiting harassment should be issued. (§ 527.6. subd. (d).) Further, “[m]ere expressions of opinion by a trial judge based on actual observation of the witnesses and evidence in the courtroom” should not be the basis for reversing a judgment. (People v. Guerra (2006) 37 Cal.4th 1067, 1111.) However, in this hearing, the court exceeded the bounds of reasonable conduct for a judge seeking to exercise control of the proceedings and reach a fair and efficient result.

First, the July 1, 2013 hearing strongly suggests that the trial judge prejudged the case. (McVey v. McVey (1955) 132 Cal.App.2d 120, 123 [“A trial judge should not prejudge the issues but should keep an open mind until all of the evidence is presented to him.”].) In Murr v. Murr, a non-jury divorce proceeding, the judge was found to have committed judicial



misconduct in prejudging the case. (Murr v. Murr (1948) 87 Cal.App.2d 511, 521 (Murr).)

In fact in Respondent's reply to Petitioner's motion to reconsider Respondent stated "Judge (sic) Goodman denied the RRO on the face of the application itself." Respondent admits that Judge Goodson prejudged the case before Petitioner was able to present her evidence and argue her case. Another Judge pro tem and Commissioner/Attorney with many years of experience approved the TRO and the extension which shows bias.

Immediately after the trial started, the judge stated to Cummins (1 CV 35:11-20) "You are annoying. I find your application for restraining order annoying" and "restraining orders are not for two people who just don't like each other." The trial judge here seemed similarly predisposed to rule against Cummins based on a preconceived notion that the case involved run-of-the-mill disputes between two individuals, as opposed to harassment that deserved to be enjoined.

The hearing suggests the trial judge had already made up her mind before the testimony even began that the case was a waste of time. The court interrupted Cummins repeatedly.

As in Murr, the court's many "ill-advised and unnecessary comments establish definitely that [she] did not consider that the issues presented by

plaintiff were worthy of consideration.” (Murr, supra, 87 Cal.App.2d at p. 520.)

When Cummins who is pro se tried to present her case, the court essentially took over the examination, questioning her in a one-sided manner and characterizing her testimony to fit the court's view that Cummins' request for an injunction was motivated solely by minor personal disputes, rather than a fear of continued harassment. Cummins acknowledges that “ “if a judge desires to be further informed on certain points mentioned in the testimony it is entirely proper for him to ask proper questions for the purpose of developing all the facts in regard to them. Considerable latitude is allowed the judge in this respect as long as a fair trial is indicated [to both parties].” ’ ” (Conservatorship of Pamela J. (2005) 133 Cal.App.4th 807, 827.) Moreover, in a nonjury trial a judge may have greater leeway to examine witnesses than in a jury trial, and particularly so here, given the court's authority under § 527.6 to “make an independent inquiry.” (§ 527.6, subd. (d).) But the inquiry must be reasonable and respectful. Here, the Judge cut off Cummins, belittled her, and mischaracterized her testimony while questioning her in a way that was not consistent with permitting her to present her case. The Judge clearly abused its discretion.

Cummins attempted to testify about other events such as a death threat Lollar made personally over the phone but was again cut off. Cummins stated that Lollar hired a process server who hit her with documents. Cummins tried to submit the video of the assault but the Judge refused. The Judge dismissed her statement by saying “serving documents can get physical.”

Repeatedly, the court cut off Cummins’ attempt to give testimony on other incidents and the reasons Cummins was afraid of Lollar, inserting comments such as “that’s just defamation, libel. Go sue her for it” (1 CR 36:16-24). Cummins wanted to present the defamatory and libelous blogs to show a “continued course of conduct” of “harassment” that “serves no legitimate purpose.” Cummins also had evidence of over 150 violations of the TRO, police reports which she tried to present but was denied. Looking at the examination of Cummins as a whole, Cummins was not given a fair opportunity to present her case for an injunction preventing harassment.

Respondent’s attorney stated in court documents that Cummins applied for a restraining order against her neighbor and did not receive it. Cummins did indeed receive the restraining order as evidenced by Respondent’s own Exhibit C (1 CR 36:24-37:7). Lollar stated she never contacted Cummins which is completely untrue. Lollar sent many, many emails and comments

to Cummins which Cummins brought to the hearing but was not allowed to present. Lollar stated she did not post a death threat yet in sworn deposition Cummins submitted as an Exhibit Lollar admitted that she did. Lollar stated that documents were dropped at Cummins' feet when Cummins was actually hit with the documents as evidenced by video which Cummins linked to in her TRO application but was not allowed to present at the hearing. Lollar was not even a witness to the event and therefore could not give that testimony as it is hearsay.

Respondent's attorney stated in court documents that Cummins accused attorney Randy Turner of placing an incendiary device under Cummins' car. Cummins NEVER stated this. McSweeney's Exhibit L transcript from hearing minutes clearly shows Cummins never stated this and McSweeney misquoted the court transcript. Respondent repeatedly committed fraud upon the court by misstating the facts of the matter and intentionally lying to the court (1 CR 37:8-13).

In this case Respondent did not even appear at the hearing. At the previous hearing Respondent's attorney requested a continuance so Respondent could arrange to physically appear. There was no indication that Respondent would not appear. Cummins was not allowed to examine Respondent at the hearing. The Judge was not able to question

Respondent. The Judge relied upon the unsworn statement written by Respondent and an attorney. The unsworn statements contained many completely false statements which Cummins was not allowed to refute and prove in court with her evidence which she was not allowed to submit.

Cummins tried to object and stated “objection” to Respondent’s attorney Dean Rocco presenting unsworn statements as evidence, bringing up unrelated civil cases ... but the Judge did not even acknowledge her objections. The Judge replied with “let the man (Respondent’s attorney Rocco) speak.” Relying on the principle that “a judge's examination of a witness may not be assigned as error on appeal where no objection was made when the questioning occurred” (People v. Corrigan (1957) 48 Cal.2d 551, 556) Cummins did indeed object and has not forfeited the claimed error.

After the Judge did not respond to Cummins’ first two objections Cummins gave up trying to object. Given the tenor of these proceedings, inserting objections each time the court interrupted and took over the questioning would have been futile. (People v. Sturm (2006) 37 Cal.4th 1218, 1237; Haluck v. Ricoh Electronics, Inc. (2007) 151 Cal.App.4th 994, 1007.)

The Court's repeated criticisms of Cummins further prevented Cummins from properly putting on her case. (See *Murr*, supra, 87 Cal.App.2d at pp. 517–521.) The court's treatment of Cummins throughout the hearing was “the antithesis of judicial decorum and courtesy.” (*Haluck v. Ricoh Electronics, Inc.*, supra, 151 Cal.App.4th at p. 1003.)

The Judge's prejudgment of the case, her improper questioning and mischaracterizing of Cummins' testimony, and her pattern of hostility towards Cummins constituted judicial misconduct and “irregularities” in the proceedings.

#### **B. Judge Goodson should have recused herself**

Motion to recuse was denied as filed untimely. “The statement may be timely even if filed after the judge has made one or more rulings in the case. See CCP §§170.3(b)(4), 170.4(c); *Church of Scientology v Wollersheim* (1996) 42 CA4th 628, 655–656, 49 CR2d 620, disapproved on other grounds in 29 C4th 53, 68 n5; *Urias v Harris Farms, Inc.* (1991) 234 CA3d 415, 419, 285 CR 659 (statement of disqualification was timely after judge granted motion for summary judgment because litigant did not learn of grounds for disqualification until then). See §2.33 for discussion of validity of judge's rulings after judge has been disqualified. However, even when the basis for disqualification is known early on, the statement need

not be presented until the assignment is entirely certain. See *Hollingsworth v Superior Court* (1987) 191 CA3d 22, 27, 236 CR 193 (filing statement of disqualification in advance would be superfluous and might even be insolent and offensive).

Petitioner filed her first § 170.6 August 15, 2013 (*see date stamp bottom left* 1 CR 45). Judge Goodson never ruled on this ever and never even mentioned it. Petitioner only learned that Judge Goodson would oversee the motion for vexatious litigant right before the hearing. This new § 170.6 motion and motion to recuse was filed at the absolute earliest time September 5, 2013 (2 CR 247). Petitioner is a pro se. It takes a little longer for a pro se to research, write and file documents with the court especially considering Petitioner's back injury.

Petitioner's § 170.6 preemptory challenge was timely even though Judge Goodson denied it as "untimely." When Cummins first appeared in Dept 75 a different Judge was in charge of the court that day. Cummins signed an agreement that she allows the Judge pro tem to hear the case. Therefore Judge Goodson was not the Judge assigned to the case.

This case was assigned to Department 75 and not a specific Judge. Petitioner has no way to know who will be the Judge that day until the actual morning of the hearing. Petitioner therefore need only file the

challenge before the hearing when Petitioner knows which Judge will oversee the hearing. Petitioner filed before the hearing which was timely.

### **III. Errors in Law**

Cummins contends that a new trial must be granted because the court committed an “error in law” in improperly excluding evidence of harassing incidents prior to 2013. (§ 657, subd. (7).) The trial court's exclusion of evidence was an abuse of discretion. (*Tudor Ranches, Inc. v. State Comp. Ins. Fund* (1998) 65 Cal.App.4th 1422, 1431.)

§ 527.6 directs the court to “receive any testimony that is relevant” at the hearing on a petition for a permanent injunction against harassment. (§ 527.6, subd. (d).) As discussed above, under § 527.6, harassment may consist of “a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, or harasses the person, and that serves no legitimate purpose,” and that reasonably causes the plaintiff to suffer substantial emotional distress. (§ 527.6, subd. (b).) A course of conduct is further defined as “a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose.” (§ 527.6, subd. (b)(3).) Thus, in a § 527.6 hearing, the court is “required to receive relevant testimony” regarding the alleged “course of conduct,” “subject only to such reasonable limitations as are necessary to



conserve the expeditious nature of the harassment procedure set forth by . § 527.6.” (Schraer, supra, 207 Cal.App.3d at p. 730, 733, fn. 6.)

The incidents forming the basis for Cummins’ application for a restraining order first began in 2010. The Judge tried to immediately rule that the events all took place in 2010. Cummins stated they started in 2010 and continued to today. The trial court arbitrarily limited the evidence regarding instances of harassment to the time immediately prior to the date the TRO was entered.

The trial court's ruling hampered Cummins’ ability to prove a “pattern of harassment” or “course of conduct.” The trial court committed an “error in law” in categorically excluding evidence of these prior events to establish a pattern of harassing conduct, without any articulation of a reasonable basis for such a ruling.

Judge Goodson stated in the hearing that restraining orders are only for “people who have been stabbed with a knife” or “hit with a two by four.” The Court ruled that restraining orders are only granted when there has been physical violence. That is an incorrect interpretation of § 527.6. Under § 527.6, harassment may consist of “a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, or harasses the

person, and that serves no legitimate purpose,” and that reasonably causes the plaintiff to suffer substantial emotional distress. (§ 527.6, subd. (b).).

Lollar has been harassing Cummins since July 2010. The attacks have been escalating and have become physical. Lollar paid a man to lure Cummins to the parking lot of a boarded up hotel. Lollar paid the same man to trespass and assault Cummins (1 CR 11:9-27). Lollar threatened to kill Cummins on the phone. Lollar is inciting her Facebook fans to commit violence against Cummins. Lollar has been committing criminal acts such as trying to access Cummins' bank account. Lollar has been photoshopping semen on the face of photos of Cummins, name calling on the Internet calling Cummins “Mary Scummins,” “Mary Dummins,” “Mary Cumstain,” (2 CR 305:22-23) besides other horrible things. Lollar's behavior is indeed civil harassment as per § 527.6.

In fact in Respondent's reply to Petitioner's motion to reconsider Respondent falsely stated that it is “Petitioner who has made threats of violence against Respondent.” Again, Respondent is committing fraud upon the court. Petitioner has clearly stated in communications to Respondent's attorney that she fears for her life and has a gun to protect herself from Respondent, “Cummins has informed Lollar's attorneys that Cummins has a loaded permitted gun and will defend herself to the full extent of the law if

anyone trespasses upon her property and tries to harm her.” Cummins has not made threats of violence against Petitioner. Cummins has clearly stated she fears for her life. In Respondent’s Exhibit 3 C from the same reply Petitioner states “I am prepared to legally defend myself against this crazy person” (1 CR 12:1-15). Legally defending oneself is not a threat of illegal violence. Cummins believes Lollar is mentally ill and violent.

Not only did the Court incorrectly misstate the law at Cummins’ hearing by stating there must be physical violence but previously Judge Goodson awarded restraining orders when there was NO physical violence involved.

(Case #BS140742) LAPD Chief Charlie Beck’s wife Cindy Beck v Veronica Roberts, January 9, 2013 (1 CR 40:18-23). Homeless person Veronica Roberts phoned Cindy Beck stating the police chief was following and harassing her demanding that he stop. Roberts later threatened to kill Cindy Beck on the phone. Judge Goodson stated “There doesn’t appear to be any reason why the restraining order should not be granted. In fact, it appears appropriate.”

(Case #BS141503) County of Los Angeles v Hashim Mwamba Bomani, March 6, 2013 (1 CR 40: 24-41:7). Bomani merely ranted about an employee and the agency online. Judge Goodson stated while she found his postings “insulting and libelous,” they didn’t “rise to the level of a threat.”

However, Goodson added, "I'm concerned about this guy." Judge Goodson ordered Bomani to stay away from the agency and three employees.

Judge Goodson granted restraining orders for people and entities associated with Los Angeles City and County government when there was no physical violence involved. The fact that Judge Goodson granted restraining orders in these two cases that did not involve physical violence, clearly shows the Court's bias against Cummins and commission of error in law.

Judge Goodson has a history of being biased and committing errors of law. In an almost identical court proceeding (Radha Bharadwaj v William Mears, Case # B222911, 2011)(1 CR 41:8-20) Judge Goodson denied Petitioner Bharadwaj a restraining order and ordered her to pay respondent's legal fees. Bharadwaj appealed the decision stating Judge Goodson was biased and committed errors of law. The transcript of the hearing contains almost identical language and behavior which Judge Goodson expressed in Cummins' hearing. That order was reversed and she was allowed a new trial with a different judge.

## **CONCLUSION**

Taken individually, it is possible that none of the above acts of judicial misconduct or the error in excluding evidence would constitute an error that

“materially affect[ed] the substantial rights” of Cummins such that a new trial was necessary (§ 657). However, “the cumulative effect of the trial judge's conduct requires reversal.” (People v. Sturm, supra, 37 Cal.4th at p. 1243.) “The trial of a case should not only be fair in fact, but it should also appear to be fair. And where the contrary appears, it shocks the judicial instinct to allow the judgment to stand.” (Pratt v. Pratt (1903) 141 Cal. 247, 252.)

The order should be reversed and the matter remanded to the superior court for a new trial before a different judge. (§ 187; Hernandez v. Paicius (2003) 109 Cal.App.4th 452, 455, disapproved on another ground in Freeman, supra, 47 Cal.4th at p. 1006, fn. 4.) The Court is asked to reverse and to award fees and costs for this appeal and the trial court proceedings in amounts to be determined on remand.

Respectfully submitted,



---

Mary Cummins  
Appellant In Pro Per  
645 W. 9th St. #110-140  
Los Angeles, CA 90015-1640  
(310) 877-4770 Direct  
(310) 494-9395 Fax  
mmmaryinla@aol.com

**CERTIFICATE OF COMPLIANCE**

**Pursuant to California Rule of Court 8.204(c)(1)**

Pursuant to California Rule of Court 8.204(c)(1), I certify that the text of this brief consists of 6,130 words. In so certifying, I am relying on the word count of Apple iPages, the computer program used to prepare this brief.

DATED: April 2, 2014

Respectfully submitted,

By Mary Cummins  
Mary Cummins  
Appellant in Pro Per

PROOF OF SERVICE BY MAIL  
(FRCivP 5 (b)) or  
(CCP 1013a, 2015.5) or  
(FRAP 25 (d))

I am Plaintiff in pro per whose address is 645 W. 9th St. #110-140, Los Angeles, California 90015-1640. I am over the age of eighteen years. I further declare that on the date hereof I served a copy of:

**APPELLANT'S OPENING BRIEF**

on the following parties by placing a true copy thereof enclosed in a sealed envelope addressed as follows for collection and mailing at 645 W. 9th St. #110-140, Los Angeles, CA 90015-1640.

**Dean Rocco**

Wilson Elser Moskowitz Edelman & Dicker LLP  
555 S. Flower Street - Suite 2900  
Los Angeles, CA 90071-2407

**Los Angeles County Superior Court**

Judge Carol Boas Goodson, Dept 75  
111 North Hill St.  
Los Angeles, CA 90012

**Second District Court of Appeals**

300 S. Spring Street  
2nd Floor, North Tower  
Los Angeles, CA 90013

**Supreme Court of California**

350 McAllister Street  
San Francisco, CA 94102-4783

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

///

Executed this day, April 2, 2014, at Los Angeles, California.

Respectfully submitted,

*Mary Cummins*

---

Mary Cummins, Plaintiff

Dated: April 2, 2014

645 W. 9th St. #110-140

Los Angeles, CA 90015



## APPELLANT'S APPENDIX TABLE OF CONTENTS

### *Relevant Trial Court Orders, Notices*

1. Order Deny Restraining Order (1 CR 9)
2. Order Deny Motion Reconsider (1 CR 67)
3. Order Deny Vexatious Litigant Status (2 CR 313)
4. Order Deny Motion Recuse (2 CR 248)
5. Notice of Appeal (2 CR 316)

### *Relevant Statutory and Constitutional Authority*

6. U.S. Const. Amend. 14, § 1
7. *ABF Capital Corp. v. Berglass*  
(2005) 130 Cal.App.4th 825, 832.
8. *Americans for Safe Access v. County of Alameda*  
(2009) 174 Cal.App.4th 1287, 1295;
9. *Conservatorship of Pamela J.*  
(2005) 133 Cal.App.4th 807, 827
10. *Develop-Amatic Engineering v. Republic Mortgage Co.*  
(1970) 12 Cal.App.3d 143, 150
11. *Haluck v. Ricoh Electronics, Inc.*  
(2007) supra, 151 Cal.App.4th at p. 1003
12. *Hernandez v. Paicius*  
(2003) 109 Cal.App.4th 452, 455

13. *McVey v. McVey*  
(1955) 132 Cal.App.2d 120, 123

14. *Murr v. Murr*  
(1948) 87 Cal.App.2d 511, 521

15. *Schraer, supra,*  
(2007) Cal.App.3d at p. 730, 733, fn. 6

16. *Tudor Ranches, Inc. v. State Comp. Ins. Fund*  
(1998) 65 Cal.App.4th 1422, 1431

2011 APR 3 PM 10:21

carbon neutral envelope shipping

SHIP DATE: 01APR14  
ACTWGT: 0.5 LB MAN  
CAD: /OFFFC1424  
DIMS: 0x0x0 IN  
BILL SENDER

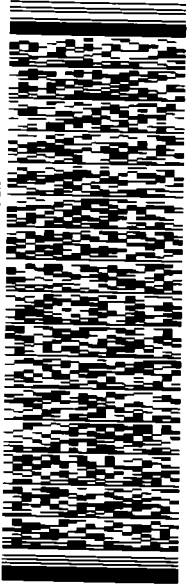
ORIGIN ID:CCDA

UNITED STATES US

TO DEAN ROCCO  
WILSON ELSER MOSKOWITZ LLP  
555 S FLOWER ST  
STE 2900  
LOS ANGELES CA 90071  
(213) 824-3044  
PO#:  
REF:

DEPT:

FedEx Express

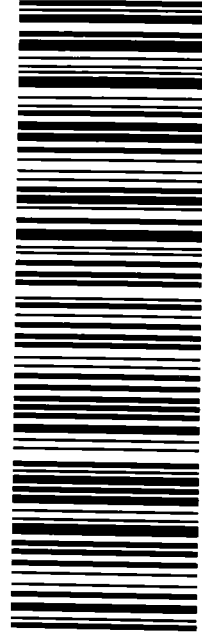


J13201306280126

THU - 03 APR AA  
\*\* 2DAY \*\*

TRK# 8050 0914 2879  
0200

SH EMTA  
90071  
CA-US LAX



D  
2879  
04.03

978  
679  
R115  
Z1

Rev. Date 1/12 • Part # 153002 • ©2012 FedEx • PRINTED IN U.S.A. 58F

Our liability is limited to US\$100 unless you declare a higher value. See the current FedEx Service Guide for details.

Sender:  Instruct Signatures  Signature Required  Signature Required (package may be left without obtaining a signature for delivery)

Recipient:  Recipient  Third Party  Credit Card  Cash/  Emerg. Fedex Acct. No. or Credit Card No. below

7 Payment Bill to:  Sender  Recipient  Third Party  Credit Card

8 Special Handling and Delivery Signature Options

9 Packaging

10 Next Business Day

11 Next Business Day

12 Next Business Day

13 Next Business Day

14 Next Business Day

15 Next Business Day

16 Next Business Day

17 Next Business Day

18 Next Business Day

19 Next Business Day

20 Next Business Day

21 Next Business Day

22 Next Business Day

23 Next Business Day

24 Next Business Day

25 Next Business Day

26 Next Business Day

27 Next Business Day

28 Next Business Day

29 Next Business Day

30 Next Business Day

31 Next Business Day

32 Next Business Day

33 Next Business Day

34 Next Business Day

35 Next Business Day

36 Next Business Day

37 Next Business Day

38 Next Business Day

39 Next Business Day

40 Next Business Day

41 Next Business Day

42 Next Business Day

43 Next Business Day

44 Next Business Day

45 Next Business Day

46 Next Business Day

47 Next Business Day

48 Next Business Day

49 Next Business Day

50 Next Business Day

51 Next Business Day

52 Next Business Day

53 Next Business Day

54 Next Business Day

55 Next Business Day

56 Next Business Day

57 Next Business Day

58 Next Business Day

59 Next Business Day

60 Next Business Day

61 Next Business Day

62 Next Business Day

63 Next Business Day

64 Next Business Day

65 Next Business Day

66 Next Business Day

67 Next Business Day

68 Next Business Day

69 Next Business Day

70 Next Business Day

71 Next Business Day

72 Next Business Day

73 Next Business Day

74 Next Business Day

75 Next Business Day

76 Next Business Day

77 Next Business Day

78 Next Business Day

79 Next Business Day

80 Next Business Day

81 Next Business Day

82 Next Business Day

83 Next Business Day

84 Next Business Day

85 Next Business Day

86 Next Business Day

87 Next Business Day

88 Next Business Day

89 Next Business Day

90 Next Business Day

91 Next Business Day

92 Next Business Day

93 Next Business Day

94 Next Business Day

95 Next Business Day

96 Next Business Day

97 Next Business Day

98 Next Business Day

99 Next Business Day

100 Next Business Day

644

8050 0914 2879

Address: 555 S Flower St, Ste 2900, Los Angeles, CA 90071

City: Los Angeles, State: CA, ZIP: 90071

Company: Wilson Elser Moskowitz LLP

Phone: 213-824-3044

Sender's Name: Dean Rocco

Company: Wilson Elser Moskowitz LLP

Address: 555 S Flower St, Ste 2900, Los Angeles, CA 90071

City: Los Angeles, State: CA, ZIP: 90071

Phone: 213-824-3044

3 To Recipients Name

4 Your Internal Billing Reference

5 City: Los Angeles, State: CA, ZIP: 90071

6 Recipients Name

7 Company: Wilson Elser Moskowitz LLP

8 Address: 555 S Flower St, Ste 2900, Los Angeles, CA 90071

9 City: Los Angeles, State: CA, ZIP: 90071

10 Phone: 213-824-3044

11 Sender's Name

12 Company: Wilson Elser Moskowitz LLP

13 Address: 555 S Flower St, Ste 2900, Los Angeles, CA 90071

14 City: Los Angeles, State: CA, ZIP: 90071

15 Phone: 213-824-3044

fedex.com 1.800.GoFedEx 1.800.463.3339