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In Limited Scope Representation pursuant to C.R.C 3.37
Attorneys for Plaintiffs JANE DOE and JOHN DOE

IN THE SUPERIOR COURT OF CALIFORNIA
OF THE COUNTY OF SANTA CLARA

Jane Doe and John Doe
Plaintiffs,

v.

DR. ROY HONG, M.D., AN INDIVIDUAL;
PALO ALTO FOUNDATION MEDICAL
GROUP, A PROFESSIONAL
CORPORATION; DR. FREDERICK
DIRBAS, M.D., AN INDIVIDUAL;
STANFORD HOSPITAL AND CLINICS, A
PROFESSIONAL CORPORATION
(NOW STANFORD HEALTH CARE),
AND DOES 1 - 50,

Defendants.

NO.: 1-14-CV-261702

**To the Honorable Presiding Judge of the
Superior Court**

Assigned For All Purposes to Hon. Zayner
Subject Judge: Hon. Zayner Dept. 6

Complaint Filed: March 5, 2014
Trial Setting Conference: May 2, 2017

**NOTICE OF OBJECTION AND OBJECTION
TO JUDICIAL ASSIGNMENT AND VERIFIED
STATEMENT IN SUPPORT PURSUANT TO
CODE OF CIVIL PROCED. §170.1, OR IN THE
ALTERNATIVE RENEWED RECUSAL
CHALLENGE PER C.C.P. 1008 (b)**

**TO THE HONORABLE MAGISTRATE, COURT, ALL PARTIES AND ATTORNEYS OF
RECORD:** Notice is hereby given that Plaintiffs Jane Doe and John Doe submit this herewith Verified
Statement in support of the objection to superior court Judge Theodore Charles Zayner, pursuant to Code
of Civil Procedure §170.1.

The herewith Statement of recusal is predicated on new evidence of Judge Zayner's inability to rule
impartially and without bias. Plaintiffs have been prejudiced and the Court's rulings have effectively and
fundamentally deprived Plaintiffs of due process and a fair adversary at trial.

Judge Zayner has stricken two recusal statements from Plaintiffs in 2017, and the Court of appeal and
the Supreme Court denied review of the June 2017 order. A judge must have strictly complied with Canon
6, which he did not. By neither making the required disclosure "in writing or on the record", nor filing a

1 verified answer at anytime despite two prior Code of Civil Procedure § 170.1 challenges, the factual
2 allegations of those verified recusal statements must be taken as true. Thus the Judge should be recused.

3 Following the recent writ denial, the facts in the case are now that actual bias is alleged whereas
4 before Plaintiffs alleged at least *an appearance* of judicial bias. The Court ordered a “stay” in this case
5 on October 18, 2017 and yet has continued to rule in this case despite the Court’s ordered stay.

6 Moreover, Plaintiffs have since been informed of the undisclosed social and professional relationship
7 of Stanford Chief Counsel and Vice President Ms. Debra Zumwalt, and Mr. and Mrs. Judge Zayner, as
8 well as factual allegations of *ex parte* recent communications between the Judge and Stanford counsel
9 and representatives in this case and others¹ similarly situated.

10 Recusal is justified by the need for enforcement of the disqualification statutes, which are designed
11 “‘ to ensure public confidence in the judiciary and to protect the right of litigants to a fair and impartial
12 adjudicator...’ ” (*Peracchi v. Superior Court* (2003) 30 Cal.4th 1245, 1251.) There can be no dispute in
13 the Supreme Court’s “the majority’s laudatory characterizations of the goals of Canon 6 and the
14 importance of having judicial decision-makers free from the suspicion of possible bias.” The judicial
15 disclosure requirements must be taken seriously. A judge’s failure to make such a disclosure irretrievably
16 taints everything done by him or her and ordered, and thus must be vacated from the date of recusal.²

17 Defendants are not adversely affected if the factual allegations of the disqualification statement
18 being taken as true. Recusal of the Judge in this matter is thus not prejudicial to Defendants.

19 For these reasons, Plaintiffs respectfully request that the Magistrate of the Superior Court
20 grant this verified challenge statement pursuant to Code of Civil Procedure §§ 170.1 and 170.3, and
21 recuse Judge Theodore Zayner from this action.

22 Respectfully Submitted,

Dated : November 3, 2017

23 

Jane Doe

24 

John Doe

25
26 ¹ This statement references specific cases referenced within as well as those
27 cases currently unknown to Plaintiffs with Defendants Stanford and its alter
28 egos assigned to Judge Zayner.

² Plaintiffs filed the first recusal statement on April 28, 2017 and assert that
is the date from which the orders were tainted.

1
2 **TABLE OF AUTHORITIES**

3 **CASES**

4 Allphin v. United States (Fed. Cir. 2014)
5 758 F.3d 1336
6 Betz v. Pankow (1993)
7 16 Cal.App.4th 931, 939-940, 20 Cal.Rptr.2d 841 (Betz)
8 Briggs v. Superior Court (2001)
9 Cal.App.4th 312, 319
10 Catchepole vs. Brannon (1995)
11 36 Cal App 4th 237, 247
12 Curle v. Superior Court (Gleason) (2001)
13 24 Cal. 4th 1059 [No. S080322. Feb. 8, 2001
14 Flier v Superior Court (1994, 1st Dist)}
15 23 Cal App 4th 165, 28 Cal Rptr 2d 383
16 Giometti v. Etienne (1934)
17 19 Cal. 687, 688-689, 28 P.2d 913 (Giometti)
18 Hayward v. Superior Court, (2016)
19 2 Cal.App.5th 10
20 North Beverly Park Home-owners Ass'n v. Bisno (App. 2 Dist.2007)
21 54 Cal.Rptr.3d 644, 147 Cal.App.4th 762
22 Sincavage v. Superior Court (1996)
23 42 Cal.App.4th 224, 230
24 Stanford University v. Superior Court (1985)
25 173 Cal.App.3d 403
26 United Farm Workers of America v Superior Court (1985, 4th Dist)
27 170 Cal App 3d 97, 216 Cal Rptr 4
28 Urias v Harris Farms, Inc. (1991)
234 Cal.App.3d at p. 424, 285 Cal.Rptr. 659

STATUTES

1 Code of Civil Procedure Section 170.1

2 Code of Civil Procedure Section 170.3

3 Code Civ. Proc., § 170.1, subd. (a)(6)(C

4 Code of Civil Procedure § 170.1 (a)(6)(A) (iii).

5 Code of Civil Procedure §170.3 (c) (5

6 Code of Civil Procedure § 2025.290

7 **CALIFORNIA RULES OF COURT**

8 CRC 3.35-3.37

9
10 **RULES**

11 Judicial Canon Rule 3.4(f)

12 Judicial Canons 1, 2, 6

1
2 **MEMORANDUM OF POINT AND AUTHORITIES**

3 **I. INTRODUCTION**

4 Plaintiffs Jane and John Doe (herein “Plaintiffs” or “ Does”) file the hereto verified affidavit for
5 judicial disqualification pursuant to Code of Civil Procedure sections §170.1, subdivision (a)(6)(A)(iii)
6 and 170.3, subdivisions (c)(1)-(6). Had Plaintiffs been advised of the judicial relationship, they would
7 have timely filed a Code of Civil Procedure § 170.6 motion within 10 days of case assignment. However,
8 due to the Judges’ absolute failure to disclose at anytime, Plaintiffs have been deprived of that statutory
entitlement and are prejudiced in this case.

9 The herewith Statement of Recusal is predicated on new evidence of Judge Zayner’s inability to rule
10 impartially and without bias. Plaintiffs have been prejudiced and the Court’s rulings have effectively and
11 fundamentally deprived Plaintiffs of due process and fair proceedings.

12 Judge Zayner has stricken two recusal statements from Plaintiffs, and the Court of appeal and the
13 Supreme Court denied review of the prior statement. The facts in the case are now that actual bias is
14 alleged whereas before Plaintiffs alleged at least an appearance of bias.

15 As further evidence, Judge Zayner ordered a “stay” in this case on October 18, 2017 (Exh. A) and
16 yet has continued to rule in this case despite the Court’s ordered stay. The Court granted Plaintiffs’ *ex*
17 *parte* motion on October 18, 2017 as evidenced by the Court clerk’s conformed and date endorsed order.
18 Further, Plaintiffs immediately filed and served to all parties a Notice of Entry of the Court’s Order for
19 October 18, 2017. (Exh. B) To date, Plaintiffs have not been served any Notice of Errata or different
Court Order.

20 Based on the Court’s granted stay order on October 18 2017, Plaintiffs ceased all law and motion
21 work on this case. Based on the stay, Plaintiffs thus did not file any reply papers for the November 2, 2017
22 hearings. Plaintiffs have not made any appearances in this Court after October 18, 2017 believing in good
23 faith that a stay is in place. On November 2, 2017 Plaintiffs learned that Judge Zayner had continued
24 ruling in this action.

25 Also on November 1, 2017 Plaintiffs were informed of an undisclosed social and professional
26 relationship of Stanford Chief Counsel and Vice President Ms. Debra Zumwalt (Stanford Class of ‘79),
27 and Mr. and Mrs. Judge Zayner (Stanford Class of ‘78 and ‘79) , as well as factual allegations of *ex parte*
28

1 recent communications between the Judge and Stanford counsel and representatives in this case and
2 others³ similarly situated.

3 As referenced infra, the recusal resolution rests heavily on the judge's prior failure in both April and
4 June 2017 to either consent to disqualification or answer the statement of disqualification per Code of
5 Civil Procedure § 170.3. The judge's failure to contest the claims that he failed to disclose in writing or
6 on the record, and also that he was biased and prejudiced against the Plaintiffs, means that those factual
7 allegations must be taken as true, and he was therefore automatically disqualified. *Hayward v. Superior*
8 *Court*, (2016) 2 Cal.App.5th 10 .

9 Based on the *Hayward Court*, it must be found that (1) the rulings and orders issued by the judge
10 are all void and must be vacated; (2) the orders or agreements entered or signed by the parties prior to
11 disqualification of the judge were tainted by the disqualifying conduct of the judge and therefore may not
12 be enforced pursuant to Code of Civil Procedure⁴and; (3) the conduct of the disqualified judge did taint
13 the proceedings before the superior court judge who replaced him during his brief absence.

14 This verified statement for disqualification is predicated that throughout nearly each proceeding
15 with the Court, the referenced Judge has exhibited a multitude of indicia of bias against certain class of
16 litigants, litigants opposing Stanford University, Stanford Hospitals, Stanford Health Care, and any of its
17 affiliates and particularly Plaintiffs in this case. The Court's compromised impartiality has been
18 exemplified through a number of motions and court transcripts spanning the better part of a year, with
19 resultant prejudice toward Plaintiffs in this case.

20 This verified statement to recuse is timely as most recently, on or about November 2, 2017, the
21 Court continued to rule despite a Court ordered "Stay" (Exh. A and B).

22 New Evidence was presented in June 2017 in the second recusal statement of 2 key facts that
23 Judge Zayner refused service (Decl. Sotto ¶¶4,5), Decl. Lloyd ¶¶4,5, Decl. Doe ¶¶¶6,7,8) of the full
24 motion, and that the video evidence of Mrs. Zayner was surreptitiously destroyed and removed from
25 YouTube within days of the April 28, 2017 filing of Plaintiffs' first recusal motion. As of June 8, 2017
26 Defense Counsel for Stanford et. al have vehemently denied their direction or their clients' or part in the

27 ³ This statement references specific cases referenced within as well as those
28 cases currently unknown to Plaintiffs with Defendants Stanford and its alter
egos assigned to Judge Zayner.

⁴ All statutory references are to the Code of Civil Procedure unless
otherwise indicated.

1 video evidence destruction of Mrs. Zayner. (Evid. Code § 413) (See video evidence captured prior to
2 disclosure to Judge Zayner and Stanford on April 28, 2017 and as now independently reposted
3 <https://www.youtube.com/watch?v=inLHxM-j7l8>)

4 This verified statement, while not a motion, is based on good faith and just cause, and should be
5 granted in light of the following about Judge Zayner: (1) Undisclosed business, financial or fiduciary
6 activities with Stanford and Ms. Debra Zumwalt and others at Stanford; (2) Bias/appearance of bias
7 toward a particular class; (3) Demeanor/decorum toward Plaintiffs vs. Stanford Defendants; and (4)
8 failure to ensure rights of Plaintiffs vs. Stanford and/or its multiple alter egos, as well as Mrs. Zayner's
9 undisclosed video of their estate bequeathed to Stanford; and (4) Failure to comply with Code of Civil
10 Procedure § 170.3.

11 **II. BACKGROUND**

12 This is the third judicial recusal in this action. Plaintiffs took a writ on their second recusal
13 challenge. The Court of Appeals denied it three months later on October 5, 2017. The Supreme Court
14 denied petition review.

15 Plaintiffs' second motion to remove Judge Zayner on June 9, 2017 was stricken by the Judge on
16 June 20, 2017, without any verified response. Although the judge was not only untimely in his ruling in
17 violation of Code of Civil Procedure § 170.3, he also failed to provide any verified response as required
18 by Code of Civil Procedure § 170.3(b).

19 Whereas, the core tenets underlying the Code of Judicial Ethics are to promote public trust and
20 confidence in the judiciary, to ensure the integrity and impartiality of the judiciary, and to provide useful
21 guidance to California's judicial officers and candidates for judicial office as they serve on the bench or
22 stand for election;

23 Whereas, the California Supreme Court mandates transparent disclosures including disclosure of
24 campaign contributions, the advisory committee commentary following canon 3E(2) has been amended
25 to clarify that a judge may satisfy the disclosure requirement regarding campaign contributions by stating
26 the disclosure orally on the record in open court if all the parties and lawyers are present in court. If not,
27 the judge may disclose the contributions in a written minute order or in the official court minutes and
28 notify the parties and the lawyers of the written disclosure;

Plaintiffs hereby move the Presiding Judge of the State of California in the County of Santa Clara,
that in the interest of compliance with judicial propriety and mitigation of prior appearances not consistent

1 with those mandates, that Judge Zayner must submit to the instant verified notification pursuant to CCP §
2 170 et. seq., and §170.1, and recuse himself from this instant proceedings in *Doe adv. Hong*.

3 **III. PROCEDURAL POSTURE**

4 The issues of judicial recusal in this medical malpractice and invasion of privacy (Stanford
5 employee's unauthorized cellphone photography and free dissemination of sedated patients' bodies) case
6 arises from the failure of a judge serving as a Superior Court judge pursuant to article VI of the California
7 Constitution to disclose grounds for his disqualification in the manner required by a canon of the Code of
8 Judicial Ethics applicable specifically to judges in such cases.

9 After the judge has served for more than fifteen months, plaintiffs first learned that the judge had not
10 disclosed "in writing or on the record" professional and ongoing financial relationships which he had had
11 with the defendants institution (Stanford and its alter egos) and its chief general counsel (Debra Zumwalt)
12 and lawyers in the present proceeding, as required by canon 1,2, and 6 and California Rules of Court.

13 Plaintiffs first filed in the Superior court a statement alleging grounds for disqualification, to which the
14 judge failed to respond in accordance with statutory procedure. Plaintiffs refiled a second stamen alleging
15 additional and even stronger grounds for disqualification, namely the fact that the key video evidence of
16 the judge's wife on YouTube surreptitiously disappeared from the internet *within a mere days*⁵ of the
evidence of it shown in the first challenge statements.

17 The presiding judge of the Plaintiffs have not waived disqualification of the judge when they were
18 aware of a potential conflict and proceeded with the judge presiding (*People v. Johnson (2015) 60 Cal.4th*
19 *966.*) An appellate court may set aside orders including vacating a "settlement" agreement on the ground
20 that a disqualified judge's rulings "tainted" the orders or settlement as a matter of law when factual
21 questions exist concerning the extent to which those rulings influenced a party's decision in the case or to
22 force a settlement.

23 For the foregoing reasons, the Supreme Court remanded and directed in *Hayward v. Superior Court*,
24 2 Cal.App.5th 10 (2016) the same, and it must be concluded here that Judge Zayner's orders were all void
25 at the time they issued and must be vacated, regardless whether they were legally correct.⁶ (*Cadenasso v.*
Bank of Italy (1932) 214 Cal. 562, 568-569; Rossco Holdings, supra, 149 Cal.App.4th at p. 1367.)

27 ⁵ Stanford's counsel denied that neither they nor their clients had taken or
28 ordered the video evidence of Mrs. Zayner to be destroyed.

⁶ Until further action is taken by the parties or the trial court on
remand, the effect of vacating Judge Zayner's orders will be to return the

1 1. Disqualified Temporary Judge Judge Zayner's Orders Are All Void and Must Be Vacated

2 Under section 170.1, "(a) A judge shall be disqualified if any one or more of the following are true:
3 [¶] . . . [¶] (6)(A) For any reason: [¶] . . . [¶] (iii) A person aware of the facts might reasonably entertain
4 a doubt that the judge would be able to be impartial."

5 Plaintiffs' motion to disqualify was based on Judge Zayner's alleged violation of canon 6D by
6 failing to disclose his personal or professional relationships with Stanford and Zumwalt "in writing or on
7 the record" and failure to obtain the parties' written waiver to disqualification on that ground and file it
8 with the record as required by section 170.3, subdivision (b)(1).

9 The "motion" to disqualify was also based upon the claim that Judge Zayner's conduct during the
10 proceedings over which he presided demonstrated that he was actually biased and prejudiced against
11 Plaintiffs, and generally parties opposing Stanford.

12 Plaintiffs maintained that a person aware of the facts Judge Zayner declined to disclose in writing
13 or on the record, and/or his biased conduct during the proceedings, "might reasonably entertain a doubt
14 that [Judge Zayner] would be able to be impartial." (Canon 6D(3)(a)(vii)(C), § 170.1, subd. (a)(6)(A)(iii).)

15 The statutory scheme governing the disqualification process, presents three options to a judge
16 whose impartiality has been challenged by the filing of a statement of disqualification. First, the judge
17 may, "[w]ithout conceding his or her disqualification, . . . request any other judge agreed upon by the
18 parties to sit and act in his or her place." (§ 170.3, subd. (c)(2).) The second option is to timely "file a
19 consent to disqualification in which case the judge shall notify the presiding judge . . . of his or her recusal"
20 and the presiding judge appoints a replacement. (§ 170.3, subd. (c)(3).) The third option is to "file a
21 written verified answer admitting or denying any or all of the allegations contained in the party's statement
22 and setting forth any additional facts material or relevant to the question of disqualification." (Ibid.)

23 Judge Zayner twice filed a statement striking Plaintiffs' verified statement, however, Judge
24 Zayner absolutely failed to ever file a verified answer which he was procedurally required to do.

25 In accordance to Code of Civil Procedure §170 et. seq. , Judge Zayner's October 5, 2017, order
26 striking Plaintiffs' second verified statement requesting recusal did not constitute a consent to

27 _____
28 parties to the positions they were in before the judge entered the case, governed by the Superior Court's orders prior to his entry into the action. On remand, the parties and the trial court will have to devise a practical means of determining the parties' respective rights and obligations with regard to payments for motions or other accommodations that have been made in compliance with Judge Zayner's void orders.

1 disqualification within the meaning of section 170.1, subdivision (c)(3). Judge Zayner therefore
2 disregarded entirely the mandatory application of section 170.3, subdivision (c)(4), which provides that
3 where a challenged judge fails to timely file either a consent or an answer to the statement of
4 disqualification, he or she “shall be deemed to have consented to his or her disqualification.” (§ 170.3,
5 subd. (c)(4)).)

6 The meaning of this determination is disputed by the Plaintiffs and the Judge: In Plaintiffs’ view,
7 “consent” and “deemed consent” to disqualification” are equivalent to admitting the facts alleged in the
8 statement of disqualification. Judge Zayner saw it differently, viewing striking the disqualification as
9 non-consent and self determination of non-removal from the case without any judicial admission of the
10 truth of the alleged basis for disqualification. Judge Zayner’s view misinterpreted the statutory scheme.

11 The *Hayward* Court indicated “ the option section of Code of Civil Procedure § 170.3 provides for
12 a challenged judge who wishes to consent to disqualification “[w]ithout conceding” there is a factual basis
13 for disqualification is to “request any other judge agreed upon by the parties to sit and act in his or her
14 place.” (§ 170.3, subd. (c)(2).)” Evidently, Judge Zayner elected not to pursue that course- twice in this
15 case. Nor did he file any answer to the motions to disqualify him. Instead, through silence of omission,
16 he “struck” Plaintiffs’ verified challenge and failed to neither confirm nor deny the allegations. He simply
17 chose to strike the verified statement on different and perhaps non-statutory grounds which intended to
18 circumvent the requirements of section 170.3.

19 Because he elected to neither file a consent nor submit a verified answer contesting Plaintiffs’
20 allegations as provided in section 170.3, Judge Zayner must have been properly “deemed to have
21 consented” to his disqualification. That determination treats the judge’s failure to file a verified response
22 to the statement of disqualification as an admission of the truth of its allegations, and thus authorizes the
23 presiding judge to appoint a replacement.

24 2. Thus, the facts alleged in Plaintiffs’ verified statement must be taken as true and the judge is
25 disqualified automatically.

26 It was settled that, as stated in *Urias v. Harris Farms, Inc.*, 234 Cal.App.3d 415, “[w]hen no answer
27 is filed in response to a statement of disqualification, the facts set out in the statement are taken as true.”
28 (Id. at p. 424, italics added.) In support of that proposition, the *Urias* court cited the statement in *Oak*
Grove School Dist. v. City Title Ins. Co. (1963) 217 Cal.App.2d 678 (Oak Grove) that where the “statement
of disqualification” of the party seeking disqualification “is legally sufficient and the judge fails to file an

1 answer thereto within five days,[] the facts alleged in the statement must be taken as true and the judge
2 becomes disqualified automatically.” (Id. at p. 702.)

3 The California Supreme Court was equally clear in *Calhoun v. Superior Court* (1958) 51 Cal.2d
4 257, 262: After identifying the two factual issues raised by the statement of disqualification, the court
5 concluded, “since the judge has failed to file a written answer to the statement of bias and prejudice,
6 verified as required by section 170 of the Code of Civil Procedure, the facts alleged in the statement must
7 be taken as true.”

8 The opinion in Oak Grove stated that that the failure of a challenged judge to file a verified answer
9 within the specified period “has the same effect as if the judge admits his disqualification or is found
10 disqualified.” (*Oak Grove, supra*, 217 Cal.App.2d at p. 702.)

11 According to the Hayward Court (*Hayward v. Superior Court*, 2 Cal.App.5th 10 (2016)): “As *Urias*,
12 *supra*, 234 Cal.App.3d 415 explained, a challenged judge “cannot simply ignore [a statement of
13 disqualification]. If the judge does not strike the statement [as untimely or legally insufficient on its face]
14 and wants to contest his disqualification, he must file an answer within section 170.3, subdivision (c)(3)’s
15 10-day period admitting or denying the allegations in the statement. If he fails to do so, he is deemed to
16 have consented to the disqualification and he is disqualified.” (*Urias*, at p. 421.)”

17 In brief, *Urias*, *Oak Grove*, and the cases they rely upon stand for the proposition that the facts
18 alleged in a statement of disqualification must be considered true where, as here, the judge whose
19 impartiality was challenged fails to consent to or challenge the allegations of the statement of
20 disqualification.

21 Repeatedly dismissing the procedural requirements for a verified answer by the Judge, Judge
22 Zayner has forfeited the timely requirements of Code of Civil Procedure § 170.3 and thus must be recused.

23 Moreover, because Judge Zayner declined to answer the statement of disqualification, he was left
24 with no alternative but to stipulate to his disqualification. In other words, Judge Zayner’s failure to dispute
25 the allegations of Plaintiffs’ statement of disqualification deprives him of the right to contest the veracity
26 of those allegations.

27 Since Judge Zayner who neither filed a consent nor an answer to the statement of disqualification
28 filed by Plaintiffs, his failure and refusal to answer essentially dispositively concede the truth of the facts
alleged in the statement. Without enforcement of this option, a challenged judge’s failure to respond to a
motion to disqualify would be relatively inconsequential and render purposeless subdivision (c)(2), which
expressly permits a challenged judge to secure a replacement without conceding disqualification.

1 The statutory scheme places the decision whether to contest the factual basis of a statement of
2 disqualification solely in the hands of the challenged judge. Judge Zayner failed to seize that not just
3 once, but twice.

4 As *Urias* explained, a request for disqualification is not genuinely a “motion” but in the nature of
5 a charging document: a “written verified statement objecting to the hearing or trial before the judge and
6 setting forth the facts constituting the grounds for disqualification of the judge.” (§ 170.3, subd. (c)(1).)
7 “[T]he determination of a judge’s disqualification is outside the usual law and motion procedural rules.”
(*Urias, supra*, 234 Cal.App.3d at p. 422.)

8 “While the challenged judge and all parties must be served with the statement of disqualification,
9 the matter need not be set for hearing. Moreover, while the judge determining the issue may request
10 argument or evidence from the other parties, he is not obligated to do so.

11 Permitting a party to defend the propriety of allegedly unethical conduct and bias where the
12 challenged judge refuses to respond at all to the charges, and is therefore deemed to have consented to the
13 allegations in the statement of disqualification, would wreak havoc with the disqualification process
14 prescribed by the Legislature in section 170.3.

15 3. Because Judge Zayner pursued neither of the options provided by subdivisions (c)(2) and (c)(3)
16 of section 170.3, Judge Zayner leaves no alternative but to deem him to have conceded disqualification
17 on the factual bases alleged in Plaintiffs’ motion. Judge Zayner could have avoided this result by
18 consulting section 170.3 and following one of the options it sets forth for responding to a statement of
disqualification.

19 Judge Zayner should have removed himself before the first recusal challenge, and certainly at
20 the second recusal challenge since he was late by one day in filing any order in the challenge, and
21 moreover by failing to ever file an answer.

22 What Judge Zayner could have done was remove himself from the case without conceding the
23 disqualification—this option would have been apparent if Judge Zayner had referred to the statute. (§
24 170.3, subd. (c)(2).)

25 Even if the Court now elects to make “no finding” as to the truth of the allegations of Plaintiffs’
26 statement of disqualification, the legal effect of Judge Zayner’s failure to file a response was that he
27 effectively conceded disqualification was warranted on the grounds alleged and no factual
28 determination by the court was required or is required now.

1 Although *inert alia* a minority view in the *Hayward* Court (supra) the dissent objected in that
2 case to the majority's application of statutory principles on the theory that a letter written by the
3 temporary judge was a "response", here Judge Zayner's order striking the recusal although neither
4 verified nor stated under penalty of perjury, could be considered by the dissent to be a "response" to
5 the statement of disqualification. In the sense that it was written in reaction to the statement of
disqualification, yes.

6 But rather than admitting or denying Plaintiffs' allegations, Judge Zayner's two orders striking
7 Plaintiffs' challenge statements was summarily dismissive of the claimed failed disclosure, made no
8 mention of the detailed examples of conduct Plaintiffs claimed reflected actual bias, and struck recusal
9 for a reason independent of the alleged basis for disqualification—Judge Zayner refused to accept
10 service of the exhibits to Plaintiffs' first recusal statement, and then he cited the absence of the
11 exhibits as a basis for striking the verified statement.

12 It is clear that on each round Judge Zayner neither intended nor was attempting to "answer"
13 the statement of disqualification within the meaning of section 170.3; he was intending to circumvent
14 the procedures statutory requirements.

15 Moreover, Judge Zayner has since similarly circumvented his ethical duties to disclose to the parties
16 his relationships despite more than half a dozen proceedings and motions before him. Despite ample
17 opportunities, Judge Zayner has declined to comply with the Judicial Canons, thus it must be assumed that
18 the allegations within the verified statements are true.

19 4. The Judicial Commission's Private Censure and Admonishment of Judge Zayner is Privileged and
20 only disclosable to the Governor or President According to Article IV of the California Constitution.

21 Judge Zayner and his department clerk's refusal to accept personal service of the complete prior
22 recusal statement and exhibits personally hand served on May 1, 2017 was admonished.

23 Notwithstanding that most such admonishments by the Counsel are typically "private", the Judges'
24 refusal to accept service and the surreptitious disappearance of the video of his wife openly affirming their
25 bequesting their estate to Stanford was Independent third party declarations filed with the second recusal
26 statement reflected that Judge Zayner simply refused to accept personal service of the recusal statement's
27 pleadings, which was specifically required for Code of Civil Procedure § 170.1 . Upon that rejection, then
28 Judge Zayner summarily struck the verified statement based on the purported failure of Plaintiffs to have
described exhibits and a "proposed order".

1 More troubling, was that within just days after the first recusal statement was filed on April 28,
2 2017, the attached and newly disclosed evidence of the video link exhibit of Mrs. Zayner's Youtube video
3 was surreptitiously destroyed. In fact all traces of the 2012 video which by all analytics had been running
4 for five years for public viewing, was astonishingly cleanly removed from YouTube after notification of
5 this key evidence.

6 Importantly, the YouTube video link of Mrs. Zayner highlighted *completely* undisclosed
7 contemporaneous association and cross promotional activities of Judge Zayner with his Alma Mater
8 Stanford University.

9 **IV. STANFORD HAS A HISTORY OF SIMILAR JUDICIAL RECUSAL ISSUES**

10 Stanford has golden handcuffs and extremely strong alumni connections. Many graduates are
11 lifelong alumni and those as Judge Zayner and Mrs. Zayer have publicly affirmed that they have
12 bequeathed their estate or parts thereof to Stanford.

13 Stanford boasts a large number of its alumni publicly listed as billionaires, Justices, local
14 attorneys, the chief judges, judges, congressmen, and even Supreme Court of the United States
15 Justices. These cases of recusal must be adjudicated and are of great public importance.

16 According to Ms. Debra Zumwalt, Stanford's vice president "We also operate a power plant,
17 a dam, and we own more than 8,000 acres in Silicon Valley, including very valuable commercial and
18 academic real estate. Stanford Management Company is like an investment bank, managing more
19 than \$20 billion in assets," says Zumwalt. "We also provide the legal work for our two hospitals,
20 which are large and important entities themselves; they treat tens of thousands of patients a year, have
21 over \$3 billion a year in operating revenues, and are in the midst of a \$5 billion project to replace and
22 expand their buildings, as anyone who has tried to drive in that part of campus recently will know." (
23 Accessed [https://law.stanford.edu/stanford-lawyer/articles/debra-zumwalt-jd-79-the-chief-legal-](https://law.stanford.edu/stanford-lawyer/articles/debra-zumwalt-jd-79-the-chief-legal-officer-at-the-farm/)
24 [officer-at-the-farm/](https://law.stanford.edu/stanford-lawyer/articles/debra-zumwalt-jd-79-the-chief-legal-officer-at-the-farm/))
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STANFORD HEALTH CARE AND STANFORD UNIVERSITY SECRETS

HOME

the Legal End Zone for Today's Colleg



DEBRA ZUMWALT STANFORD CLASS '79

Stanford Genera

Debra Zumwalt, JD '79; The Chief Legal Officer at the "Farm"

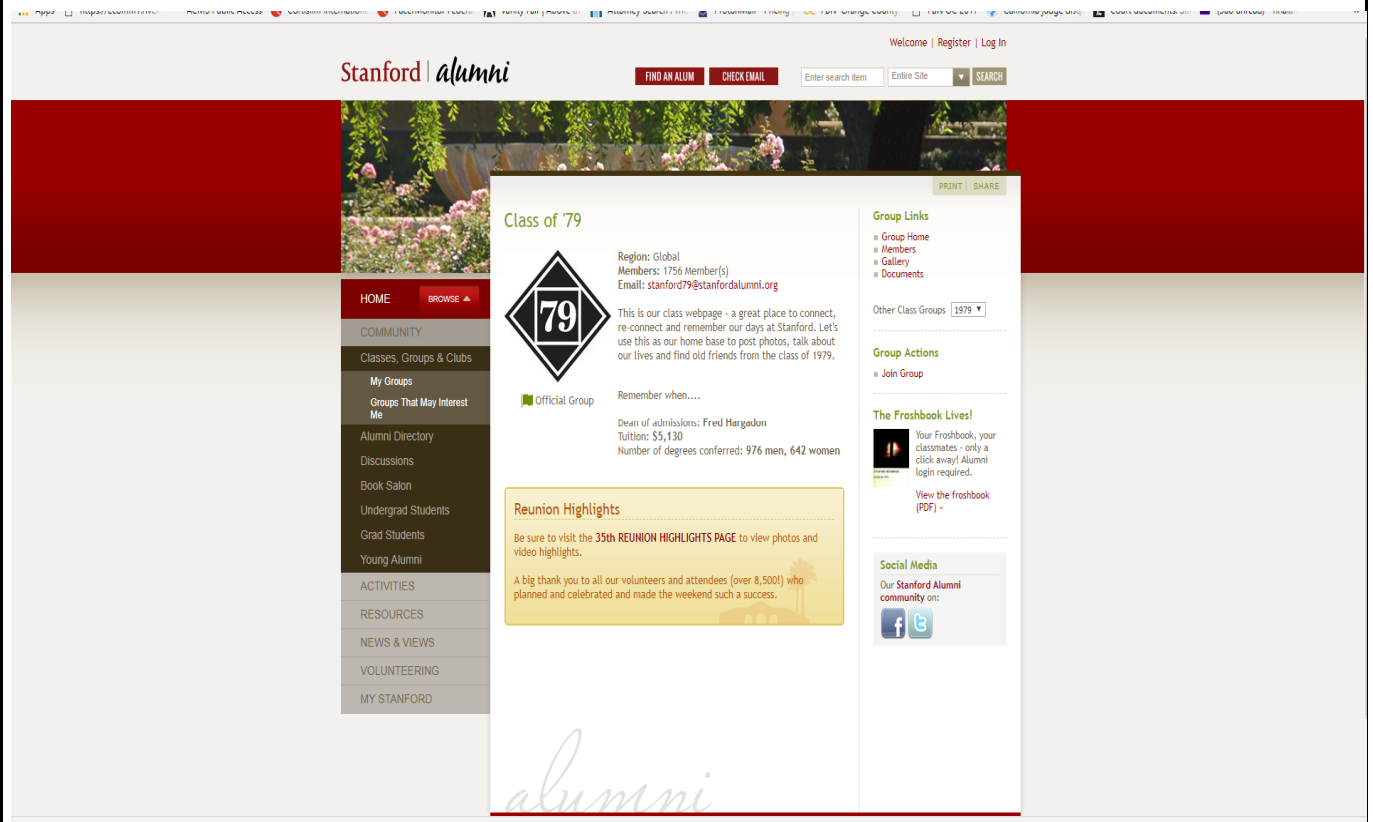
Supreme Court Justice Anthony Kennedy said to Zumwalt at a rece

Stanford's Golden Handcuffs

CMS REPORTS STANFORD DELIVERS SUBSTANDARD MED



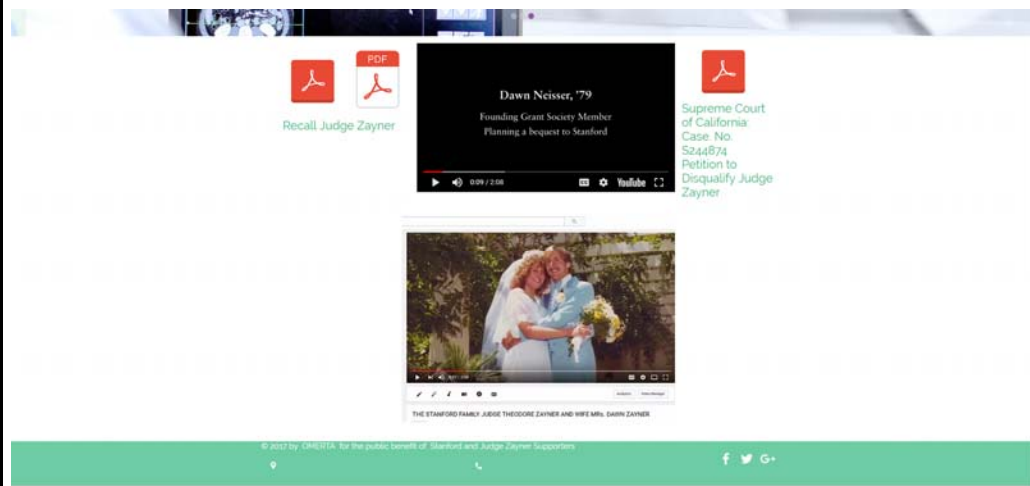
In fact, in Stanford's 1979 graduation there were both Judge Zayner, his wife Dawn Neisser, and the current Chief Counsel and Vice President of Stanford, Ms. Debra Lee Zumwalt. Ms. Zaumwalt and Judge Zayner are current colleagues and friends. They have real time and current *ex parte* communications. They both attend the class of 1979 alumni celebrations and were even photographed on the Stanford site. Accessed at https://alumni.stanford.edu/get/page/groups/overview/class/?group_id=0038990618)



Judge Zayner's wife is a huge fan, supporter, ally, and avid promoter of Ms. Zumwalt. In fact, Judge Zayner's wife made and authorized a promotional video for Stanford Founding Grant Society. In the live stream video, Mrs. Zayner attested to her and "Ted" having bequeathed their estate to Stanford. She also affirms that they are both members of the "Stanford Founding Grant Society Members". (Accessed at <https://www.youtube.com/watch?v=inLHxM-j718>)



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Ms. Zumwalt’s daughter, Elizabeth Zumwalt Harmon (BA ’12) graduated from Stanford 5 years ago. Judge Zayner’s children attend Stanford and another UC school to which he and Dawn regularly donate funds to Stanford. Mrs. Zayner’s father was a Stanford Alumni and she considers herself “The Stanford Family”.

Judge Zayner’s latest book is purported to have been promoted on or about April 2017 at Stanford during his live appearance and promotion of his book at an alumni event.

According to Stanford’s Chief counsel, Ms. “Zumwalt’s office manages all litigation—including patent, class actions, employment disputes, injury and liability cases, and medical malpractice [defense] . She also gets involved in “town-gown” relations, including the negotiation of entitlements with neighboring cities and Santa Clara County to allow the growth necessary to support the university’s academic mission.”. (Accessed at <https://law.stanford.edu/stanford-lawyer/articles/debra-zumwalt-jd-79-the-chief-legal-officer-at-the-farm/>)

According to The Mercury News and Judge Zayner’s ballot disclosures, he has represented clients in medical malpractice defense. (Accessed <http://www.mercurynews.com/2009/12/29/schwarzenegger-names-six-new-santa-clara-county-judges/>) “Zayner, a Woodside resident, has worked for a law firm in Campbell, specializing in a variety of insurance defense, medical malpractice and other civil litigation.”

Dummit Buchholt and Trapp (herein DB&T) is the law firm defending Stanford in this action. Dummit has a special relationship with Ms. Zumwalt as DBT’s partner worked with Ms. Zumwalt. As a result, Ms. Zumwalt and her team of 16 Stanford attorneys heavily control the medical malpractice litigation defense, and regularly assign a plethora of cases to DB&T. On Dummit’s website they blatantly list the verdict they obtained from Judge Zayner in *Martin Collins and Virginia*

1 *Mitchell Collins v. Stanford Hospital & Clinics* No. 2013-1-CV-247673, a case that ended in a defense
2 verdict on 04/24/2015 in this very Court. (Accessed by googling Stanford and Judge Zayner).

3 **V. JUDICIAL RECUSAL CASE LAW**

4 Similarly, in Stanford University v. Superior Court (1985) 173 Cal.App.3d 403 a motion was filed
5 to disqualify the trial judge based on his strong prior connection to the university, the judge refused to
6 recuse himself, and the motion was then referred to a judge selected by the chairperson of the Judicial
7 Council under the procedures established by CCP section 170.3(c)(5). (*Stanford University v. Superior*
8 *Court*, supra, 173 Cal.App.3d 403, 405-406.)

9 See also, *Mayo v. Beber (1960) 177 Cal.App.2d 544, 546* (cited in order striking statement of
10 disqualification at CT 165) [the motion for disqualification was “heard by a judge other than the judge
11 who had presided at the trial...”].)

12 STANFORD and its affiliates and alter egos are not entitled to benefit from every possible
13 political and alumni association and affiliation, and to do so at the peril of Plaintiffs subject to such
14 venues where the STANFORD influence is unjust and prejudicial.

15 **1. STANFORD UNIVERSITY V. SUPERIOR COURT (1985) 173 CAL.APP.3D 403** 16 **REFLECTS THE APPEARANCE OF BIAS VIS A VIS STANFORD’S INFLUENCE FOR** 17 **MORE THAN 30 YEARS.**

18 In *Stanford Univ. vs. Superior Court (1985)* a motion was filed to disqualify the trial judge
19 based on his strong prior connection to the University. Ultimately the trial court’s order to recuse was
20 reversed by the Appellate court, but that was also more than 30 years ago. The span of influence is
21 significantly greater in the internet and social media age, where the value of contributions (may be
22 non-monetized by a dollar value) are measured by influence and not by actual dollars.

23 However, on point is that Stanford cases are by proximity and statute often filed in the County
24 of Santa Clara Superior Court. Stanford accordingly vigorously maintains and has an impressive
25 network of judges as alumni in Santa Clara Superior Court alone. (Exh. attached Theodore Zayner
26 (1979) , Joseph Huber (1967), William Elfing, and Aaron Persky). The great majority and nearly all
27 of STANFORD defense cases in Santa Clara are defended in favor of STANFORD.

28 **VI. STATEMENT OF FACTS**

The underlying action was a medical malpractice case against healthcare giant STANFORD
and associates, that has spanned nearly 3 years. The case was assigned to Judge Zayner on or about

1 January 2016 for trial. The preceding 2 judges who also managed this case were Judge Joseph Huber
2 and Judge Elfing, also Stanford alumni. Throughout Plaintiffs' interactions with this Court, there are
3 explicit indicia of overt bias to Plaintiffs and in favor of STANFORD. There are a number of
4 instances which exemplify the appearance of Judge Zayner's perceived favoritism to STANFORD
5 and inability to thus remain impartial.

6 In the instant case, the Court and Judge Zayner have demonstrated at least the appearance of
7 bias in a multitude of recent hearings in favor of STANFORD.

- 8 1. The Court ordered a "stay" in this case on October 18, 2017 and yet has continued to rule in
9 this case despite the Court's ordered stay. The Court granted Plaintiffs' ex parte motion on
10 October 18, 2017 as evidenced by the Court clerk's conformed and date endorsed order.
11 Further, Plaintiffs immediately filed and served to all parties a Notice of Entry of the Court's
12 Order for October 18, 2017. To date, Plaintiffs have not been served any Notice of Errata or
13 different Court Order. Based on the Court's granted stay order on October 18 2017, Plaintiffs
14 ceased all law and motion work on this case. Based on the stay, Plaintiffs thus did not file any
15 reply papers for the November 2, 2017 hearings. Plaintiffs have not made any appearances in
16 this Court after October 18, 2017 believing in good faith that a stay is in place.
- 17 2. On or about October 12, 2017 the Court made a nonsensical ruling DENYING Plaintiffs' ex
18 parte application for a Motion for Clarification of the Court's Order. The motion simply
19 sought a clarification on an MSJ date set less than 2 weeks before trial. But the Judge denied
20 *clarifying*.
- 21 3. On June 8, 2017 Defense Counsel for Stanford et al vehemently denied that they or their
22 clients had any knowledge of the unequivocal evidence destruction of Mrs. Zayner's YouTube
23 video. (Decl. J. Doe ¶5).
- 24 4. On or before May 28, 2017 Plaintiffs learned that the video link to Mrs Zayner's , " The
25 Stanford Family" video had surreptitiously been destroyed from public view on YourTube.
- 26 5. On April 28, 2017 Plaintiffs prepared and forwarded the 2nd half of the recusal motion, service
27 of which was rejected by Judge Zayner and his Clerk on Monday May 1, 2017. (Decl. Sott
28 ¶¶4,5, Decl. Lloyd ¶¶4,5) All other parties were served the complete motion and confirmed
receipt).
6. On April 28, 2017 Plaintiffs filed the first recusal motion which was filed and served on all
parties.

- 1 7. On or about April 18, 2017 Judge Zayner received non-oppositions from Stanford on
2 Plaintiffs' counsels' 2nd withdrawal motion. Judge Zayner denied being served Plaintiffs'
3 oppositions, despite the fact the Court docket showed all were timely filed and entered. Judge
4 Zayner then granted that motion whereas he had denied it a few weeks before when Stanford
5 had opposed it.
- 6 8. On March 15, 2017 Judge Zayner turned to Defense Counsel for Stanford and asked what
7 would they like to do on Plaintiffs' counsels' 1st withdrawal motion. Stanford responded they
8 wanted the motion denied. Judge Zayner then astonishingly denied the counsel's motion to
9 withdraw. Stanford had filed vehement oppositions to the withdrawal fo Plaintiffs' counsel.
- 10 9. On February 2, 2017 despite a properly filed and served MC950 form permitting Jane Doe
11 (per Calif Rule of Courts 3.35-3.36) to be heard and represent herself in limited scope
12 representation, Hon. Zayner flat denied Plaintiff Doe from being heard. The Court's refusal
13 to permit the Plaintiff to be heard in oral argument prejudiced the Plaintiffs and was a violation
14 of due process.
- 15 10. Hon. Zayner additionally denied all Plaintiff motions on calendar that day in favor of
16 STANFORD Hospitals and Clinics.
- 17 11. Astonishingly , Hon. Zayner also despite reasonable basis and foundation for a clarified
18 protective order, he flat DENIED Plaintiffs' simple motion for an essentially clarified albeit
19 expanded protective order (to supplement and clarify the Court's prior stipulated protective
20 order for Plaintiffs endorsed by the Court on Nov 21, 2015).
- 21 12. Moreover, Hon. Zayner went further to DENY in toto a motion for the sealing of Plaintiffs
22 unredacted medical records with full social security and identifiers (in violation of the Court
23 Protective Orders of 11/21/15, DOE order of 09/14, and CRC 2.55. et. seq.)
- 24 13. The DOE anonymity was ordered by the Court's prior order entered for Plaintiffs on or about
25 September 2014.
- 26 14. On March 15, 2017 Hon. Zayner DENIED Plaintiffs' counsel's motion to withdraw for
27 alleged medical disability, hives, and the like. All parties and counsel were present in the
28 Court for an earlier MSC. Trial was set for March 20, 2017.
15. Plaintiffs themselves moved the Court in their filing for a continuance of trial in order to
arrange a covering attorney in light of Plaintiffs counsel's purported disability.

- 1 16. STANFORD opposed Plaintiffs counsel's motion and demanded trial be kept on the set date.
2 Hon Zayner simply turned to STANFORD Counsel and asked what STANFORD would like
3 him to do. Hon. Zayner DENIED Plaintiffs' motion to grant a trial continuance
- 4 17. On April 4, 2017 Plaintiffs called the Hon Zayner's Court and were misadvised there was no
5 ex parte hearing the next day. Therefore, through the Judge Zayner Court's misrepresentation
6 Plaintiffs did not have an opportunity to submit an opposition or any objections to Plaintiffs'
7 counsel's ex parte motion to withdraw. Plaintiffs were denied an opportunity to be heard in
8 any manner about the ex parte hearing.
- 9 18. On April 5, 2017 Hon Zayner GRANTED Plaintiffs' counsel 2nd ex parte motion to withdraw
10 or for order shortening time. H did so without any notice to Plaintiffs, any explanation for a
11 purported non-opposition by Plaintiffs, or a proper 16 court days for Plaintiffs to seek legal
12 advice and oppose.
- 13 19. On April 14, 2017 in compliance with the Court's orders, Plaintiffs and STANFORD all filed
14 briefs to Plaintiffs' counsel's motion to withdraw. The Court's receipt of all parties briefs were
15 timely recorded on the Court docket for 4/14/17.
- 16 20. Astonishingly, Hon. Zayner intimated in his tentative ruling on 4/17/17 that he unequivocally
17 received and considered STANFORD's non-opposition to Plaintiffs' counsel withdrawal,
18 while at the same instant Hon. Zayner purportedly did not receive at all Plaintiffs' opposition
19 filed objecting to counsel's withdrawal.
- 20 21. On his tentative ruling posted on 4/17/17, Hon. Zayner acknowledged his (preferential)
21 "receipt" of STANFORD's briefs filed on the same date as compared to the "non-receipt" of
22 Plaintiffs' brief filed concurrently.
- 23 22. On April 18, 2017, Hon. Zayner GRANTED Plaintiffs' counsel 2nd motion to withdraw
24 without a proper 16 court days for Plaintiffs to respond. Moreover, Hon Zayner's tentative
25 ruling posted on April 17, 2017 GRANTED the motion and cited that Plaintiffs had not filed
26 any opposition inapposite to the Court ledger which correctly and timely reflected that
27 Plaintiffs' opposition was lodged in the Court on April 14, 2017.
- 28 23. As a practical matter, despite Plaintiffs' timely lodging of their oppositions in compliance
with the Court's order of April 4, 2017, Hon. Zayner GRANTED the motion in favor of
STANFORD citing Plaintiffs' non-opposition.

1 24. On April 18, 2017 Plaintiffs vehemently objected at oral argument to the tentative, opposed
2 the order based on timely filing of their oppositions, and the evident misrepresentation of the
3 Hon. Zayner in direct contradiction to the Court's docket.

4 25. Additionally, Hon. Zayner GRANTED the April 18, 2017 motion as STANFORD did not
5 oppose Plaintiffs counsels' second motion to withdraw.

6 Taking any single Court's tentative order ruling at face value in this matter may on its own
7 accord seem to be a simple ruling against the same party. However, in light of the Court's consistent
8 pattern of potential exemplified bias and appearance of prejudicial comments captured on the Court
9 Reporter's Transcripts and the Court's own Minute orders, Plaintiffs therefore move that Judge
10 Zayner in abundance of caution, recuse himself from these further proceedings.

11 **VII. JUDGE ZAYNER HAS CONSISTENTLY RULED IN FAVOR OF STANFORD ON**
12 **A MULTITUDE OF CASES IN SANTA CLARA SUPERIOR COURT. JUDGE**
13 **ZAYNER HAS CURRENT CASES INVOLVING STANFORD AS A DEFENDANT**
14 **WHOM ARE EQUALLY AFFECTED BY THE UNDISCLOSED STANFORD**
15 **AFFILIATIONS.**

16 **REPRESENTATIVE STANFORD CASES**

- 17 1. 17CV307897 Commercial Material and Door Supply vs Telesis Design Build, LLC et al (STANFORD and STANFORD UNIVERSITY (Def); Judge Zayner Presiding; Plaintiff
18 Attorney Crosby, Matthew A. Phone 4083707500, Matt@CrosbyPLC.com, Facsimile
19 (408) 984-5063; dismissed entire action with prejudice 05/2017
- 20 2. 17CV305245 Ian Williams vs Timothy McAdams, MD et al (STANFORD) Judge Zayner;
21 Plaintiff Counsel (415) 421-8300 **erik@bostwickfirm.com** Fax Number: (415) 421-8301
- 22 3. CV 263146 Phills vs. Stanford – Presiding Judge Zayner : In August 2017, Judge Zayner
23 granted summary judgment on a cross-complaint in favor of Defendants/ Cross-Complainants
24 Stanford while concurrently denying the Plaintiffs' summary judgment.
- 25 4. Martin Collins and Virginia Mitchell Collins v. STANFORD Hospital & Clinics, No. 2013-
26 1-CV-247673 Santa Clara. EXH B below (as accessed at www.Dbt.law) boasts that
27 STANFORD wins in Judge Zayner Court (Defense Counsel Stoutenburg and Northrup) in
- 28 5. *Lyons vs. Stanford, Doe vs, Stanford*, and others. 2013-1-CV-247673; Same Defense Counsel
Stoutenburg and Northrup from DBT Law in are also representing STANFORD in Judge
Zayner's Court in cases

6. Lyons vs. STANFORD et al. 2014-1-CV-263807 Judges Zayner/ Elfing/ Huber- all are Stanford Alumni, dismissed and Plaintiffs sanctioned by Judge Zayner for more than \$4000 (See Exh. G, H) and judgment of nearly \$20,000, not including a cost bill of \$34,000.
7. Doe vs. Hong, STANFORD et al. Judges Zayner/ Elfing/ Huber- all are Stanford Alumni.
8. 2013-1-CV-249483 | K. Singh, et al vs Stanford Hospital, et al (Same Defense Counsel Stoutenburg from DBT Law) Stanford wins
9. 2008-1-CV-104172 , R. Houts vs L. Hennessee, STANFORD et al ; Judge Zayner
10. 2014-1-CV-266528 | S. Dubrow, et al vs S. Rico, STANFORD et al Judge Elfing (Stanford Alumni) dismissed with no payment.
11. 2008-1-CV-108724, R. Brouk vs G. Levin, STANFORD et al 03/21/2008 Medical Malpractice, Judge Zayner (? independent)
12. 2004-1-CV-014150 | Lance J. Young vs The County Of Santa Clara et al Mr. Zayner represented defendant medical center and the city of Santa Clara;

VIII. THE COURT REPORTER'S TRANSCRIPTS CAPTURE REPEATED BIASED ACTS BY THE COURT IN FAVOR OF HIS ALMA MATER STANFORD.

While these examples are a fraction of the non-clandestine bias and prejudice, they are not an exhaustive list. These transcripts of April 18, 2017 and March 15, 2017 reflect the Court's interest with direct inquires to Stanford on what they would like, and complying in full with those requests.

1. On April 18, 2017 CRT
2. On March 15, 2017 CRT

In sum, there is a cumulative pattern of judicial inability to be impartial. Judge Zayner's demeanor in favor of STANFORD when considered in a collective series is highly indicative of potential judicial bias. Moving forward, this alleged pattern bias or the parties' perception of this bias would preclude the administration of justice in this case. Absent review by the Court, and disqualification of Judge Zayner Plaintiffs in these recent motions, as well as others opposing STANFORD in front of Judge Zayner will find themselves subject to the Judge's unrestrained personal bias, and will be unable to challenge these prejudicial decisions in appropriate instances.

IX. LEGAL BASIS AND ARGUMENT OF RECUSAL FOR JUDGE ZAYNER

The recusal challenge must be to the effect that the judge would not be able to be impartial toward a particular party." *Flier v Superior Court* (1994, 1st Dist) 23 Cal App 4th 165, 28 Cal Rptr

1 2d 383. A motion for judicial disqualification for bias, prejudice, and/ or abuse of discretion is
2 authorized by CCP 170. et. seq. Litigants and attorneys are entitled to non-biased judicial proceedings
3 which are in conformity with the law and CCP. At the heart of the motion for judicial disqualification
4 in this matter are the Court’s denial of constitutional due process because of the judge’s alleged bias
5 against certain classes of litigants.

6 A California Court of Appeal has stated that the test is objective in that “The situation must
7 be viewed through the eyes of the ... average person on the street” as of the time the motion is brought.
8 *United Farm Workers of America v. Sup.Ct. (Maggio, Inc).* (1985) 170 Cal. App. 3d 97, 104
9 (emphasis added).

10 “The word ‘might’ in the statute was intended to indicate that disqualification should follow
11 if the reasonable man, were he to know all the circumstances, would harbor doubts about the judge’s
12 impartiality.” *United Farm Workers of America v. Sup.Ct. (Maggio, Inc.)*, *supra*, 170 Cal.App. 3d at
13 p. 104 (*emphasis added*).

14 Published cases from the California Courts of Appeal have stated that bias exists when there
15 is evidence showing that a judge is clearly predisposed to a case or a particular issue in a certain way
16 or exhibits bias toward a party. This means prejudging a case or issue before all of the facts and
17 evidence have been presented.

18 The United States Supreme Court has stated that when a judge exhibits bias and prejudice
19 towards an attorney, party or witness that deprives a party of their right to a fair and impartial
20 adjudicator and also deprives them of the right to a fair trial in a fair tribunal which is a basic
21 requirement of due process . The Canons of Judicial Ethics also prohibit exhibiting bias or prejudice
22 as well.

23 STANFORD and its related defendants Palo Alto Medical Foundation Group (“PAFMG”)
24 frequently have cited as a bias on CRT that Plaintiffs have had multiple counsel in this medical
25 malpractice action. Judge Zayner has not censured those comments nor admonished the same.

26 As a practical matter, it is arguably entirely irrelevant how many attorneys were involved in
27 Plaintiffs’ medical malpractice MICRA crippled case, or Defendant’s case (about 4 counsel to date)
28 for that matter before when deciding the merits of a single motion. Such tactical rhetoric by
STANFORD is no basis for impartiality. It is improper for such tactical and baseless rhetoric of
Defense counsel on “the number of counsel” to be facilitated in a Court of law, nor tolerated. Judge
Zayner admonished Plaintiff counsel Mr. Pilette on February 2, 2017 for defending her clients in a

1 motion where STANFORD had violated protective order by free dissemination of case documents.
2 Judge Zayner disregarded the Court Protective Order and overlooked STANFORD'S conduct.

3 A motion for judicial disqualification for bias, prejudice, and/ or abuse of discretion is
4 authorized by CCP 170.1 and 170 et. seq. Litigants and attorneys are entitled to non-biased judicial
5 proceedings which are in conformity with the law and CCP. At the heart of the motion for judicial
6 disqualification in this matter are the Court's denial of constitutional due process because of the
7 Judge's alleged bias against certain classes of litigants, irresolvable bias toward an attorney, and
8 party affiliation with the large defense Firm of Carroll Kelly Trotter.

9 "The facts and circumstances prompting the challenge must be evaluated as of the time the
10 motion is brought and the evaluation of the challenge must not isolate facts or comments out of
11 context. The challenge must be to the effect that the judge would not be able to be impartial toward
12 a particular party." *Flier v Superior Court* (1994, 1st Dist) 23 Cal App 4th 165, 28 Cal Rptr 2d 383.

13 Once disqualification is filed, " the challenged judge may consent or file an answer within
14 10 days of the filing or service, whichever is later. The question of disqualification must be
15 determined by another judge agreed upon by the parties, or if they are unable to agree, be a judge
16 selected by the Chairperson of the Judicial Counsel. (CCP 170.3 (c)).

17 In *Catchpole vs. Brannon* (1995) 36 Cal App 4th 237, 247 (overruled on other ground , the
18 appellate court reversed a judgment for the defense in a sexual harassment lawsuit because of
19 gender bias demonstrated by the trial judge through his actions during the trial. While the judge
20 never expressly stated a bias, the Court found that his conduct including questions the Court asked
21 of the plaintiff during his testimony, demonstrated gender bias. The court rejected a rule that actual
22 bias was the only permissible grounds for finding out that a trial judge should have disqualified
23 himself, and rested its decision on the objective standard stated in CCP § 170.1 (a) (6). "Where the
24 average person could well entertain doubt whether the trial judge was impartial, appellate courts are
25 not required to speculate whether the bias was actual or merely apparent..." (Id at 247).

26 Application of these legal principles demonstrates that Judge Zayner should be recused from
27 this case. The Court Reporters Transcripts as well as Judge's minute orders and tentative order of
28 April 18, 2017 exemplify his inability to be impartial. Accordingly, since "a person aware of the
facts might reasonably entertain a doubt that the judge would be able to be impartial", Judge
Zayner's recusal would further justice. (See CCP 170.1 (a)(6)(A) (iii).

1 It is well stated in CCP 170.1 (a) (6) (C) a person aware of the facts might reasonably
2 entertain a doubt that the judge would be able to be impartial. Bias or prejudice towards a lawyer [a
3 pro per is acting as a lawyer] in the proceeding may be grounds for disqualification. The previous
4 corresponding statute--Sec. 170, subdivision (a)(5)--which was repealed in 1984, had been
5 construed to require bias in fact, with the enactment of Sec. § 170.1, however, a party seeking to
6 disqualify a California judge for cause was no longer required to prove that the judge was actually
7 biased. The test to be applied in evaluating recusal and disqualification of judges was clearly stated
8 many years ago in *Berger v United States* (1921) 255 U.S. 22:

9 Does the [Declaration] of Prejudice [executed defendant] give fair support to the charge of a
10 bent of mind that may prevent or impede impartiality of judgment (225 U.S.) In the case *United*
11 *Farm Workers of America v Superior Court* (1985, 4th Dist) 170 Cal App 3d 97, 216 Cal Rptr 4.
12 Code Civ. Proc., § 170.1, subd. (a)(6)(C) (Judge disqualified if person aware of facts might
13 reasonably entertain doubt that judge would be impartial) makes the disqualification standard
14 fundamentally an objective one. It represents a legislative judgment that due to the sensitivity of the
15 question and inherent difficulties of proof as well as the importance of public confidence in the
16 judicial system, the issue is not limited to the existence of an actual bias.

17 Rather, if a reasonable man or woman would entertain doubts concerning the judge's
18 impartiality, disqualification is mandated. To ensure that the proceedings appear to the public to be
19 impartial and hence worthy of their confidence, the situation must be viewed through the eyes of the
20 objective person. The reason for the objective standard of proof is the difficulty in showing that a
21 judge is biased unless the judge so admits. In addition, public perceptions of justice are not
22 furthered when a judge who is reasonably thought to be biased in a matter hears the case. (emphasis
23 added)” *Catchpole v Brannon* (1995, 1st Dist) 36 Cal App 4th 237, 42 Cal Rptr 2d 440.

24 Proceeding in the instant case, it would not be conducive to justice for a member of the
25 judiciary to retaliate against a litigant because of an unsuccessful CCP 170.1. However judges are
26 humans and are more likely to rule consciously or sub-consciously against a party that has asserted
27 this claim of impartiality. CCP 170.1 in relevant parts reads:

28 (6) (A) For any reason:

(i) The judge believes his or her recusal would further the interests of justice.

(ii) The judge believes there is a substantial doubt as to his or her capacity to be impartial.

(iii) A person aware of the facts might reasonably entertain a doubt that the judge would be able to be impartial.

(B) Bias or prejudice toward a lawyer in the proceeding may be grounds for disqualification.

(8) (A) The judge has a current arrangement concerning prospective employment or other compensated service as a dispute resolution neutral or is participating in, or, within the last two years has participated in, discussions regarding prospective employment or service as a dispute resolution neutral, or has been engaged in that employment or service, and any of the following applies:

(i) The arrangement is, or the prior employment or discussion was, with a party to the proceeding.

These are some grounds for disqualification of a judiciary in proceedings:

- Abuse of contempt/sanctions
- Administrative malfeasance/improper comments/treatment of colleagues and staff
- Bias/appearance of bias toward a particular class
- Bias/appearance of bias not directed toward a particular class
- Decisional delay/false salary affidavits
- Demeanor/decorum
- Ex parte communications
- Failure to ensure rights
- Improper business, financial or fiduciary activities
- Improper political activities

APPEARANCE OF IMPARTIALITY

Some appellate courts have stated, with minimal analysis, that the question of whether a judge should have been disqualified because of an appearance of partiality is a question of law, reviewable de novo, where the facts are not in dispute. (See, e.g., *Briggs v. Superior Court* (2001) Cal.App.4th 312, 319 [“On undisputed facts this is a question of law for independent appellate review”]; *Sincavage v. Superior Court* (1996) 42 Cal.App.4th 224, 230 [“Where, as here, the underlying events are not in dispute, disqualification on this ground becomes a question of law which this court may determine”].)

MANDATORY RECUSAL

1 Disqualification for conflict of interest exists based upon any of the grounds set forth in Code
2 of Civil Procedure section 170.1 governing the disqualification of judges. If any member of the law
3 firm would be disqualified under subdivision (a)(2) of section 170.1, the member is disqualified.
4 Unless the ground for disqualification is disclosed to the parties in writing and is expressly waived
5 by all parties in writing, the judge must be recused.

7 **NO PREJUDICE TO DEFENDANTS**

8 Defendants are not adversely affected if the factual allegations of the disqualification statement being
9 taken as true. Recusal of the Judge in this matter is thus not prejudicial to Defendants. Recusal is
10 justified by the need for enforcement of the disqualification statutes, which are designed “ ‘to ensure
11 public confidence in the judiciary and to protect the right of litigants to a fair and impartial adjudicator
12’ ” (Peracchi v. Superior Court (2003) 30 Cal.4th 1245, 1251.)

13 14 **X. JUDGE ZAYNER AND THIS COURT INTIMATE AT LEAST AN APPEARANCE** 15 **OF JUDICIAL BIAS.**

16 In addition to the issues noted supra, Judge Zayner has often in this case as well as others
17 with Defendant STANFORD turned a blind eye and ignored Defendant STANFORD’s admission
18 through omissions in counsel declarations that they violated Court Orders and Court Protective
19 Orders. (Evidence Code § 413).

20 Despite the admission, Judge Zayner astonishingly dismissed any and all evidence brought
21 forth of Defendant STANFORD misconduct which adversely affected Plaintiffs case including
22 STANFORD’s unlawful and free dissemination of Plaintiffs’ protected depositions, unreacted
23 discovery, and the like. However, Judge Zayner readily punishes and sanctions Plaintiffs for mere
24 unfounded allegations made by Defendant STANFORD. (Exh. G, H inset into this motion)

25 STANFORD has never once been sanctioned monetary or otherwise in this current case, even
26 when warranted and requested by Plaintiffs. However, Plaintiffs in this case were sanctioned an
27 exorbitant several thousand dollar award by this very court for STANFORD’s motion to compel
28 additional oral deposition after exceeding 9 hours oral deposition of Jane Doe. It should be noted that

1 the Court disregarded that STANFORD's 9 hour preceding deposition was in unequivocal violation
2 of California Code of Civil Procedure Section 2025.290 which states in relevant part
3 (a) Except as provided in subdivision (b), or by any court order, including a case management order,
4 a deposition examination of the witness by all counsel, other than the witness' counsel of record, shall
5 be limited to seven hours of total testimony. The court shall allow additional time, beyond any limits
6 imposed by this section, if needed to fairly examine the deponent or if the deponent, another person,
7 or any other circumstance impedes or delays the examination (Court files September 3, 2015
STANFORD Motion to Compel).

8 **XI. REQUEST FOR JUDICIAL NOTICE OF STANFORD CASES BEFORE JUDGE**
9 **ZAYNER, AND OTHER STANFORD ALUMNI IN SANTA CLARA SUPERIOR**
10 **COURT**

11 This Court is authorized to take judicial notice of any matters before any other Court as well
12 as general government proceedings. Plaintiffs request that the Court take Judicial notice of at least
13 the case listed supra with Judge Zayner and Defendant Stanford. (Evid. Code, §§ 452, subds. (c) &
14 (h); see, www.gov.ca.gov/declar/news.php?id_18566.

15 **XII. CONTINUED BIAS IN FAVOR OF STANFORD IN SANTA CLARA COURTS**
16 **WOULD DEVASTATE AND DETER EVEN THE MOST MERITORIOUS MEDICAL**
17 **MALPRACTICE CASES.**

18 As a practical matter, non-catastrophic medical malpractice cases are very expensive, expert
19 drive, an uphill battle, and nearly impossible to prosecute in California. As a practical matter, non-
20 catastrophic medical malpractice cases are tough if not nearly impossible cases to retain counsel for
in California. Of the medical malpractice cases filed, more than 80% Plaintiffs lose.

21 Unless there is a "bad baby case" or paralyzed adult, most plaintiff counsel will not even take a
22 med mal case with citing of MICRA's \$250,000 CAP. Similarly, if an action becomes heavily litigated
23 , heavy discovery, and general scorched earth defense tactics, and perceived as just "requiring too
24 much work" Plaintiff counsel will 95% percent of the time "abandon ship" and walk away, either
through dismissal, or withdrawing from representation.

25 Where, as here, the Court's own statements repeatedly suggest that insufficient consideration was
26 given to the issue of Plaintiffs' motion prior to the direct denying decision on April 18, 2017, a defense
27 of abuse of discretion may lie. The Court for practical purposes intimated it rubber stamp rejected
28

1 Plaintiffs' voluminous motions and amended motions as unfounded without consideration of the
2 merits, and wished it had known about the parties' oppositions prior to issuing the tentative.

3 STANFORD's own intended and in fact failure to similarly disclose in any fashion to
4 opposing parties the relationship of the Santa Clara Judges like Judge Zayner appears at best
5 unethical, and appearing to take advantage of every opportunity, just or unjust.

6 **STANFORD'S GOLDEN HANDCUFFS AND INFLUENCE ARE LIFELONG OVER** 7 **ITS ALUMNI**

8 Absent review by the Court, and disqualification of Judge Zayner, Plaintiffs in their statements,
9 as well as others in front of Judge Zayner will find themselves subject to the Judge's potential and/
10 or actualized bias and potential interpretations of prejudicial decisions especially when the cases
11 involve his and Santa Clara County's beloved STANFORD. Therefore, Plaintiffs will be deprived of
12 due process in an unbiased Court of law, away from STANFORD'S gentle gorilla-like and velvet
13 handcuff influence, and therefore unable to challenge these decisions in appropriate instances.

14 **JUDGE ZAYNER MUST DISCLOSE HIS ASSOCIATIONS AND** 15 **COMMUNICATIONS WITH STANFORD IN AN ABUNDANCE OF CAUTION.**

16 In light of the very recent public uproar over Judge Persky's 2016 failure to disclose his
17 relationship with Stanford, and the resulting alleged bias in a less than 6 month sentence for the Brock
18 Turner Stanford student rape conviction in 2016, it would seem prudent that Judge Zayner and those
19 Judiciary in similar associations, in an abundance of caution would ensure transparency and thereby
20 make proper disclosures of the Stanford Alumni membership.

21 Stanford alumni, Judge Zayner failed to disclose his association with STANFORD, his
22 alumnus standing, his financial contributions, alleged donations in kind for promotion of his book
23 through STANFORD non-monetized promotions and appearances for the same, purported recent
24 March 2017 personal appearances at STANFORD for his new book, his prior representation of
25 medical malpractice defense cases in this very Court as referenced infra, and a plethora of potential
26 conflicts which would reasonably present an appearance of potential bias to any ordinary civilian.

27 **XIII. CONCLUSION**

28 The new evidence found on May 28, 2017 of the surreptitious destruction of Mrs. Zayner's
YouTube video "The Stanford Family" justifies granting of this motion and recusal. (Decl. J. Doe
¶26). Santa Clara Court and Judge Zayner in this instant case have repeatedly appeared to favorably

1 reward STANFORD in a multitude of cases and nearly universally find in favor of STANFORD in
2 not only motions, but judgements in civil unlimited cases. Nearly all if not all cases as STANFORD
3 defendants in this Court, STANFORD prevails either through dismissal or judgment.

4 Judge Zayner displays demeanor in the STANFORD defended cases which has the
5 appearance of being dismissive of Plaintiffs, and in particular in medical malpractice pro persona
6 plaintiffs. Judge Zayner's heavy handed use of exorbitant sanctions of sometimes tens of thousands
7 of dollars awarded to benefit STANFORD on single motions is deserving of consideration because
8 of the magnitude of impact that these unconscionable and unwarranted monetary sanctions have to
effectively deter future litigants suing STANFORD.

9 Application of these legal principles demonstrate within reason, and in many instances a
10 preponderance, that Judge Zayner, Stanford activist and Alumnus should be recused from this
11 instant case. The Court Reporters Transcripts in this case from February 2, 2017 to date, as well as
12 Judge Zayner's May 2017 Order striking his own disqualification exemplify at least the appearance
13 that Judge Zayner could be perceived to have an inability to be impartial when beloved Santa Clara
14 County STANFORD is a party to the action. Accordingly, since "a person aware of the facts might
15 reasonably entertain a doubt that the judge would be able to be impartial", Judge Zayner should be
16 recused. (See CCP § 170.1 (a)(6)(A) (iii).)

17 **Verified Statement :** I declare under the penalty of perjury that the evidence put forth in this
18 memorandum is verified and to the best of my knowledge.

19 .
20 Respectfully Submitted,

Dated : November 3, 2017

21 
22 _____

23 Jane Doe

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25 _____

26 John Doe

27 In Limited Scope Representation Pursuant to CRC 3.35-3.37
28

Jane Doe
John Doe
14 Monarch Bay Plaza Suite 383
Dana Point, CA 92629
Jd121212@hotmail.com
In Limited Scope Representation pursuant to C.R.C 3.35-3.37
Attorneys for Plaintiffs JANE DOE and JOHN DOE

IN THE SUPERIOR COURT OF CALIFORNIA
OF THE COUNTY OF SANTA CLARA

Jane Doe and John Doe
Plaintiffs,

v.

DR. ROY HONG, M.D., AN INDIVIDUAL;
PALO ALTO FOUNDATION MEDICAL
GROUP, A PROFESSIONAL CORPORATION;
DR. FREDERICK DIRBAS, M.D., AN
INDIVIDUAL; STANFORD HOSPITAL AND
CLINICS, A PROFESSIONAL CORPORATION
(NOW STANFORD HEALTH CARE),
STANFORD REPRODUCTIVE
ENDOCRINOLOGY CLINIC AT STANFORD
UNIVERSITY, PENNY DONNELLY BSN, RN,
LMFT, AN INDIVIDUAL AND DOES 3 - 50,

Defendants.

NO.: 1-14-CV-261702

Presiding Judge of Superior Court

Subject Judge : Zayner Dept. 6

Complaint Filed: March 5, 2014
Trial Setting Conference: July 11, 2017


**DECLARATION OF JANE DOE IN
SUPPORT OF MOTION RE
DISQUALIFICATION OF JUDICIAL
OFFICER PURSUANT TO CALIF CIVIL
PROC. § 170.1.**

[Filed concurrently with Verified Statement]

DECLARATION:

1. I am a party in the above entitled case and declare that Judge Zayner, the judicial officer before whom the trial or hearing in this action or special proceeding is pending, or to whom this case is assigned, is prejudiced against the party or the party's attorney, or the interest of the party or party's attorney, such that the declarant cannot, or believes that he/she cannot, have a fair and impartial trial or hearing before the judicial officer.

2. This judicial officer has presided over a hearing, motion, or other proceeding in the past in this case. Pursuant to the provisions of Code of Civil Procedure § 170.1, I request that this case be assigned to another judicial officer for further proceedings.

1 I declare under penalty of perjury under the laws of the State of California that the
2 foregoing is true and correct. Dated : November 3, 2017 

3 _____
4 JANE DOE

5 **DECLARATION OF JANE DOE**

- 6 1. I am a California licensed Physician in good standing for more than 20 years, an Appointed
7 Expert Medical Reviewer for the State of California, and Expert for the State of California
8 Department of Consumer Affairs.
9 2. As such, I do from time to time testify on behalf of the People of the State of California
10 3. I am one of the Plaintiffs in this action and knowledgeable about the contents and matter
11 herein. If called upon, I would absolutely testify to the same facts under oath.
12 4. I attest to the statements made within this motion as true and to the best of my knowledge.
13 5. On June 8, 2017 Defense Counsel for Stanford et. al acknowledged that they had the video
14 link to Mrs. Zayner's video. However, they vehemently denied that they or their clients had
15 any knowledge of the unequivocal evidence destruction of Mrs. Zayner's YouTube video.
16 6. On June 8, 2017 Plaintiffs requested that Defendants stipulate or meet and confer on the issues
17 raised in the recusal motion. Defense Counsel have all refused to stipulate to any judicial or
18 venue change in order to mitigate the appearance of bias.
19 7. Parties in this instant action in Santa Clara have represented to me on STANFORD as
20 "Everybody's Beloved STANFORD" through our the course of this litigation in Santa Clara.
21 8. Upon information and belief, multiple counsel have reported to me that Stanford rarely loses
22 a case in this Court. Ms. Stoutenburg who is defending this case for Stanford vehemently
23 refused to change venues and insists on this very Court in Santa Clara for her Stanford cases.
24 9. Third parties not part of this action have represented to me that it is an extreme challenge at
25 best to achieve a fair trial in Santa Clara Court with Defendant STANFORD.
26 10. At no time since case inception in 2014, have this Court, STANFORD, or any parties made
27 disclosures of the relationship of STANFORD to the Santa Clara Judges whom were assigned
28 the Doe vs. Hong et al case.
11. Such a disclosure of affiliations with STANFORD and all three Judges assigned to the instant
action would be significant information and relevant to the case.

- 1 **12.** Judge Zayner's Stanford association and contemporaneous cross promotion at Stanford
2 alumni evets was uncovered within 2 weeks of bringing this motion.
- 3 **13.** In sum, the fact basis of Judge Zayner's alma mater and the undeniable multitude of cases for
4 STANFORD in front of Judge Zayner's Court is troubling.
- 5 **14.** In light of Judge Zayner's promotion through Stanford online articles about its successful
6 alumni, there appears to be a cumulative pattern of promotion (even if non-monetized in
7 actual dollars) and therefore appearance of potential judicial inability to be impartial.
- 8 **15.** This Court predating Judge Zayner was another STANFORD alumni, Judge Joseph Huber.
9 That Court astonishingly awarded thousands of dollars of exorbitant sanctions in favor of
10 STANFORD for a motion to compel that was calendared off calendar by STANFORD.
- 11 **16.** Most recently on February 2, 2017 Judge Zayner essentially disregarded Court Orders and
12 was unwilling to uphold the Court Protective Order issued by Judge Huber on November 21,
13 2015.

14 Dated : November 3, 2017

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JANE DOE

Jane Doe
John Doe
14 Monarch Bay Plaza Suite 383
Dana Point, CA 92629
Jd121212@hotmail.com
In Limited Scope Representation pursuant to C.R.C 3.35-3.37
Attorneys for Plaintiffs JANE DOE and JOHN DOE

IN THE SUPERIOR COURT OF CALIFORNIA
OF THE COUNTY OF SANTA CLARA

Jane Doe and John Doe
Plaintiffs,

v.

DR. ROY HONG, M.D., AN INDIVIDUAL;
PALO ALTO FOUNDATION MEDICAL
GROUP, A PROFESSIONAL CORPORATION;
DR. FREDERICK DIRBAS, M.D., AN
INDIVIDUAL; STANFORD HOSPITAL AND
CLINICS, A PROFESSIONAL CORPORATION
(NOW STANFORD HEALTH CARE),
STANFORD REPRODUCTIVE
ENDOCRINOLOGY CLINIC AT STANFORD
UNIVERSITY, PENNY DONNELLY BSN, RN,
LMFT, AN INDIVIDUAL AND DOES 3 - 50,

Defendants.

NO.: 1-14-CV-261702

Presiding Judge of Superior Court

Subject Judge : Zayner Dept. 6

Complaint Filed: March 5, 2014
Trial Setting Conference: July 11, 2017

**DECLARATION IN SUPPORT OF
MOTION RE DISQUALIFICATION OF
JUDICIAL OFFICER PURSUANT TO
CALIF CIVIL PROC. § 170.1.**

[Filed concurrently with Verified Statement]

DECLARATION:

1. I am a party in the above entitled case and declare that Judge Zayner, the judicial officer before whom the trial or hearing in this action or special proceeding is pending, or to whom this case is assigned, is prejudiced against the party or the party's attorney, or the interest of the party or party's attorney, such that the declarant cannot, or believes that he/she cannot, have a fair and impartial trial or hearing before the judicial officer.

2. This judicial officer has presided over a hearing, motion, or other proceeding in the past in this case. Pursuant to the provisions of Code of Civil Procedure section § 170.1, I request that this case be assigned to another judicial officer for further proceedings.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Dated : November 3, 2017

s / jd/ signed

JOHN DOE

Jane Doe and John Doe
14 Monarch Bay Plaza Suite 383
Dana Point, CA 92629
Jd121212@hotmail.com
In Limited Scope Representation pursuant to C.R.C 3.37
Attorneys for Plaintiffs JANE DOE and JOHN DOE

IN THE SUPERIOR COURT OF CALIFORNIA
OF THE COUNTY OF SANTA CLARA

Jane Doe and John Doe
Plaintiffs,

v.

DR. ROY HONG, M.D., AN INDIVIDUAL;
PALO ALTO FOUNDATION MEDICAL
GROUP, A PROFESSIONAL
CORPORATION; DR. FREDERICK
DIRBAS, M.D., AN INDIVIDUAL;
STANFORD HOSPITAL AND CLINICS, A
PROFESSIONAL CORPORATION
(NOW STANFORD HEALTH CARE),
AND DOES 1 - 50,

Defendants.

NO.: 1-14-CV-261702

**To the Honorable Presiding Judge of the
Superior Court**

Assigned For All Purposes to Hon. Zayner
Subject Judge: Hon. Zayner Dept. 6

Complaint Filed: March 5, 2014
Trial Setting Conference: May 2, 2017

**EXHIBITS TO OBJECTION TO JUDICIAL
ASSIGNMENT AND VERIFIED STATEMENT
IN SUPPORT PURSUANT TO CODE OF CIVIL
PROCED. §170.1, OR IN THE ALTERNATIVE
RENEWED RECUSAL CHALLENGE PER
C.C.P. 1008 (b)**

**TO THE HONORABLE MAGISTRATE, COURT, ALL PARTIES AND ATTORNEYS OF
RECORD:** Notice is hereby given that Plaintiffs Jane Doe and John Doe submit this herewith exhibits.
The attached are true and correct copies of the exhibits.

Respectfully Submitted,

Dated : November 3, 2017



Jane Doe



John Doe

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EXHIBIT A

ENDORSED
FILED

OCT 18 2017

CLERK OF THE COURT
SUPERIOR COURT OF CA
COUNTY OF SANTA CLARA
BY A. Hwang DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA

JANE DOE; JOHN DOE) Case No.: 1-14-CV-261702

Plaintiffs) Assigned for all Purposes to:

v.) Hon. Theodore C. Zayner

) Dept. 6

DR. ROY HONG, M.D., an individual; PALO)

ALTO FOUNDATION MEDICAL GROUP,) **[PROPOSED] ORDER GRANTING**
a professional corporation; DR. FREDERICK) **PLAINTIFFS' EX PARTE APPLICATION FOR**
DIRBAS, M.D., an individual; STANFORD) **A ORDER TO STAY PROCEEDING PENDING**
HOSPITAL AND CLINICS, a professional) **DETERMINATION OF PETITION**
corporation, et al and DOES 3 - 50,) **S244874 BEFORE THE SUPREME COURT**

Defendants.)

On October 18, 2017 Plaintiffs' *ex parte* application was taken under submission and reviewed by the Superior Court in Department Six of the above entitled Court in Santa Clara.

On the matter of Plaintiffs' application, based on just cause and good showing, the Court hereby **GRANTS** Plaintiffs' *ex parte* application for a stay in the superior Court proceedings. Effective on this date of the Court's Order, all proceedings in Superior Court on this matter are stayed for pending the determination of Supreme Court Case No. S244874. Plaintiffs are ordered to give notice pursuant to Calif. Rules of Court 3.1312 (a).

IT IS HEREBY ORDERED:

Date OCT 18 2017

Theodore C. Zayner

JUDGE OF THE SUPERIOR COURT

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EXHIBIT B

Jane Doe and John Doe
14 Monarch Bay Plz. #383
Dana Point, CA 92629
JD121212@hotmail.com

IN LIMITED SCOPE REPRESENTATION PURSUANT TO C.R.C 3.35-3.37¹
ATTORNEYS FOR PLAINTIFFS, JANE AND JOHN DOE

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA

JANE DOE; JOHN DOE

Plaintiffs

v.

DR. ROY HONG, M.D., an individual;
PALO ALTO FOUNDATION MEDICAL
GROUP, a professional corporation; DR.
FREDERICK DIRBAS, M.D., an
individual; STANFORD HOSPITAL AND
CLINICS, a professional corporation, et al
and DOES 1 - 50,

Defendants.

Case No.: 1-14-CV-261702

Assigned for all Purposes to:

Hon. Theodore C. Zayner

Dept. 6

**NOTICE OF ENTRY OF ORDER
ON PLAINTIFFS' *EX PARTE*
APPLICATION FOR AN ORDER TO STAY
ALL PROCEEDINGS PENDING
DETERMINATION OF THE PETITION
FOR REVIEW NO. S244874 BEFORE THE
SUPREME COURT OF CALIFORNIA**

Hearing Date: Wednesday October 18 , 2017

Complaint Filed: March 5, 2014

**TO THE HONORABLE COURTS, ALL PARTIES, AND THEIR ATTORNEYS OF
RECORD: PLEASE TAKE NOTICE THAT ON October 18, 2017 Plaintiffs Jane Doe**

¹ Calif. Rules of Court- Rule 3.37." Nondisclosure of attorney assistance in preparation of court documents (a) Nondisclosure In a civil proceeding, an attorney who contracts with a client to draft or assist in drafting legal documents, but not to make an appearance in the case, is not required to disclose within the text of the documents that he or she was involved in preparing the documents." (b) Attorney's fees If a litigant seeks a court order for attorney's fees incurred as a result of document preparation, the litigant must disclose to the court information required for a proper determination of the attorney's fees, including (1) The name of the attorney who assisted in the preparation of the documents; (2) The time involved or other basis for billing; (3) The tasks performed; and (4) The amount billed.

1 and John Doe's *ex parte* application for an Order to Stay All Proceedings Pending
2 Determination of the Petition for Review No. S244874 Before the Supreme Court of
3 California in Case 14-CV-261702 came before the Honorable Theodore Zayner, in
4 Department Six of the above entitled Superior Court in Santa Clara.

5 On the matter of Plaintiffs' application, based on just cause and good showing, the
6 Court **GRANTED** Plaintiffs' *ex parte* application for a stay in the Superior Court
7 proceedings. Effective on October 18, 2017, on the date of the Court's Order, all
8 proceedings in Superior Court on this matter are **stayed** pending the determination of the
9 Petition for Review before the Supreme Court of California as Case No. S244874,
10 captioned Doe vs. Superior Court (Hong).

11 This Court ordered a complete stay of all upcoming or calendared motions,
12 proceedings, discovery, deadlines, pre-trial motions, and the trial date. Thus, Parties are
13 ordered to immediately suspend and withdraw all formal discovery including trial
14 subpoenas. All parties are ordered to take pending matters off calendar with the Clerk of
15 the Court.

16 The Court ordered that Plaintiffs give notice of the ruling pursuant to Calif. Rules
17 of Court 3.1312 (a). Plaintiffs hereby give notice. A true and correct copy of the Order of
18 the Superior Court is attached hereto as "Exhibit A".

19 DATED: October 19, 2017

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21 Jane Doe

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23 FOR PLAINTIFFS JANE AND JOHN DOE
24 IN LIMITED SCOPE REPRESENTATION PURSUANT TO C.R.C 3.35-3.37²
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27 ² Calif. Rules of Court- Rule 3.37." Nondisclosure of attorney assistance in preparation of court documents
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EXHIBIT “A”

ENDORSED
FILED

OCT 18 2017

CLERK OF THE COURT
SUPERIOR COURT OF CA
COUNTY OF SANTA CLARA
BY A. Hwang DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA

JANE DOE; JOHN DOE) Case No.: 1-14-CV-261702

Plaintiffs) Assigned for all Purposes to:

v.) Hon. Theodore C. Zayner

) Dept. 6

DR. ROY HONG, M.D., an individual; PALO)

ALTO FOUNDATION MEDICAL GROUP,) **[PROPOSED] ORDER GRANTING**
a professional corporation; DR. FREDERICK) **PLAINTIFFS' EX PARTE APPLICATION FOR**
DIRBAS, M.D., an individual; STANFORD) **A ORDER TO STAY PROCEEDING PENDING**
HOSPITAL AND CLINICS, a professional) **DETERMINATION OF PETITION**
S244874 BEFORE THE SUPREME COURT

corporation, et al and DOES 3 - 50,)

Defendants.)

On October 18, 2017 Plaintiffs' *ex parte* application was taken under submission and reviewed by the Superior Court in Department Six of the above entitled Court in Santa Clara.

On the matter of Plaintiffs' application, based on just cause and good showing, the Court hereby **GRANTS** Plaintiffs' *ex parte* application for a stay in the superior Court proceedings. Effective on this date of the Court's Order, all proceedings in Superior Court on this matter are stayed for pending the determination of Supreme Court Case No. S244874. Plaintiffs are ordered to give notice pursuant to Calif. Rules of Court 3.1312 (a).

IT IS HEREBY ORDERED:

Date OCT 18 2017

Theodore C. Zayner
JUDGE OF THE SUPERIOR COURT

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REAL PARTY IN INTEREST: DEFENDANTS HONG AND PAFMG
Mr. David Burke and Mr. Clark Hudson
Neil, Dymott, Frank, McFall, Trexler, McCabe & Hudson APLC 1010 Second Avenue, Suite 2500
San Diego, CA 92101-4959 Phone: (619) 238-1712
Fax: (619) 238-1562

Honorable Theodore Zayner
Judge of the Superior Court of California, County of Santa Clara
Department Six, 191 N. First Street
San Jose, CA 95113

Supreme Court of California
350 McAllister Street
Room 1295
San Francisco, CA 94102-4797

I declare under the penalty of perjury of the State of California of the aforementioned service to parties and the courts.

Arzu

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PROOF OF SERVICE

S244874

1. At the time of service I was at least 18 years of age.
2. My email address used to e-serve: **jd121212@hotmail.com**
3. I served by email a copy of the following document(s) indicated below:

Title(s) of papers e-served:

Filing Type	Document Title
ADDITIONAL DOCUMENTS	NOTICE OF ENTRY OF ORDER FOR STAY IN SUPERIOR COURT

PERSON SERVED	EMAIL ADDRESS	Type	DATE / TIME
John Doe Court Added PRO PER	jd121212@hotmail.com	e-Service	10-19-2017 10:12:23 PM
BURKE DAVID Additional Service Recipients	dburke@neildymott.com	e-Service	10-19-2017 10:12:23 PM
CAROLYN NORTHRUP Additional Service Recipients	carolyn.northrop@dbtlaw.org	e-Service	10-19-2017 10:12:23 PM
CLARK HUDSON Additional Service Recipients	1010 SECOND AVE SAN DIEGO, CA92101	Mail	10-19-2017 10:12:23 PM
COURT OF APPEALS SIXTH DISTRICT MADAME CHANG Additional Service Recipients	Mery.Chang@jud.ca.gov	e-Service	10-19-2017 10:12:23 PM
DANIELLA STOUTENBURG Additional	1661 GARDEN HWY SACRAMENTO, CA95833	Mail	10-19-2017 10:12:23 PM

Service Recipients			
HON. ZAYNER Additional Service Recipients	MCastellon@scscourt.org	e-Service	10-19-2017 10:12:23 PM
SUPREME COURT CLERK COURT Additional Service Recipients	350 MCALLISER STREET SAN FRANSISCO, CA94102	Mail	10-19-2017 10:12:23 PM

This proof of service was automatically created, submitted and signed on my behalf through my agreements with TrueFiling and its contents are true to the best of my information, knowledge, and belief.

I declare under penalty of perjury that the foregoing is true and correct.

10-19-2017

Date

/s/Jdoe

Signature

Doe,Jane

Last Name, First Name (PNum)

Pro Persona

Law Firm

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IN THE SUPERIOR COURT OF CALIFORNIA
OF THE COUNTY OF SANTA CLARA

JANE DOE; JOHN DOE
Plaintiffs

v.

DR. ROY HONG, M.D., an individual;
PALO ALTO FOUNDATION MEDICAL
GROUP, a professional corporation; DR.
FREDERICK DIRBAS, M.D., an individual;
STANFORD HOSPITAL AND CLINICS, a

) Case No.: 1-14-CV-261702

) Assigned for all Purposes to:

) Hon. Theodore C. Zayner

) Dept. 6

)

) ~~PROPOSED~~ ORDER GRANTING
) PLAINTIFFS' *EX PARTE* APPLICATION
) FOR
) CLARIFICATION OF DATES FOR
) PLAINTIFFS' CALENDARED MSJ
) Complaint Filed: March 5, 2014
) Trial Date: November 27, 2017
) Hearing Date: October 12, 2017

DENY

1 professional corporation, et al and DOES 3 -) Hearing Time: 8:15 a.m.
2 50,) Location: Dept. 6
3)
4 Defendants.

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11 On October 12, 2017 the Parties to this action and/or their attorneys of record appeared
12 telephonically in the matter of PLAINTIFFS' *ex parte* application. Plaintiffs' application was
13 reviewed by the Superior Court in Department Six of the above entitled Court in Santa Clara.

14 On the matter of Plaintiffs' application, based on just cause and good showing, the Court
15 hereby ~~GRANTS~~ ^{Denies} Plaintiffs' *ex parte* application and clarifies that Plaintiffs' MSJ will be permitted
16 to remain as calendared on November 17, 2017 and January 30, 2018. TUE

17 Plaintiffs are ordered to give notice pursuant to Calif. Rules of Court 3.1312 (a).
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23 IT IS HEREBY ORDERED:
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25 Date 10/17/17

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27 JUDGE OF THE SUPERIOR COURT
28 HON. THEODORE ZAYNER

EXHIBIT D

**SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA**

Department 6, Honorable Theodore C. Zayner Presiding

Maggie Castellon, Courtroom Clerk

TBA, Court Reporter

191 North First Street, San Jose, CA 95113

Telephone: 408-882-2160

To contest the ruling, call (408) 808-6856 before 4:00 P.M.

LAW AND MOTION TENTATIVE RULINGS

DATE: 11-2--17 TIME: 9 A.M.

PREVAILING PARTY SHALL PREPARE THE ORDER

(SEE [RULE OF COURT 3.1312](#))

**EFFECTIVE JULY 24, 2017, THE COURT WILL NO LONGER PROVIDE
OFFICIAL COURT REPORTERS FOR LAW AND MOTION HEARINGS.
SEE COURT WEBSITE FOR POLICY AND FORMS.**

TROUBLESHOOTING TENTATIVE RULINGS

If you do not see this week's tentative rulings, either they have not yet been posted, or your web browser cache (temporary internet files) is pulling up an older version. You may need to "REFRESH", or "QUIT" your browser and reopen it – or adjust your internet settings so you only see the current version of the web page. Otherwise, your browser may continue to show an older version of the web page even after the current tentative rulings have been posted.

LINE #	CASE #	CASE TITLE	RULING
LINE 1	17CV305768	D'Zatko v Perez	Control/Click Line 1 for tentative ruling.
LINE 2	17CV311288	Merritt-Tinsley v Merritt	Control/Click Line 2 for tentative ruling.
LINE 3	16CV291461	McMahon v Santa Clara Valley Transportation Agency	Control/Click Line 3 for tentative ruling.

**SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA**

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LAW AND MOTION TENTATIVE RULINGS

LINE 4	17CV306170	Bank of the West v SGK Home Solutions, Inc.	Motion for terminating sanctions for failure to comply with discovery order, and for entry of judgment against defendants, is DENIED without prejudice. As plaintiff acknowledges, such sanctions are a drastic measure to be employed by the court with caution. Defendants are in default, with Request to Enter Default pending as of 4/3/17. Plaintiff may proceed in due course, once default is entered as of that date, to proceed with court judgment at default hearing. The court will impose reasonable monetary sanctions for this motion and defendants' failure to comply with the court's discovery order. Defendants, jointly and severally, are ordered to pay to plaintiff's counsel \$2,485.60 within 20 days.
LINE 5	15CV289651	Nguyen v Allen	Petition to Confirm Arbitration Award by Defendants. No Opposition. Petition is GRANTED.
LINE 6	16CV300488	Saratoga Oaks Homeowners Association v Krueger	Unopposed motion to be relieved as counsel for defendant is GRANTED.
LINE 7	2014-1-CV-261702	Doe v Hong	Plaintiffs' motion for sanctions under Code of Civil Procedure §§128.7 and 128.5 is DENIED as procedurally defective and substantively without merit.
LINE 8	2014-1-CV-261702	Doe v Hong	Plaintiffs' motion for leave to file a Second Amended Complaint is DENIED, per California Rules of Court, rule 3.1324.

EXHIBIT E



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Philosophy

VERDICT

Defense

CASE

Martin Collins and Virginia Mitchell Collins v. Stanford Hospital & Clinics

No. 2013-1-CV-247673

COURT

Superior Court of Santa Clara County, Santa Clara

JUDGE

Theodore C. Zayner

DATE

4/24/2015

PLAINTIFF ATTORNEY(S)

RESULT

The jury rendered a defense verdict, finding that Stanford Hospital & Clinics was not negligent in the treatment of Mr. Collins.

DEMAND

\$2,000,000 (at mediation)

OFFER

\$90, 000 (conditioned upon the plaintiffs resolving a Medicare lien that exceeded \$500,000)

TRIAL DETAILS

Trial Length: 15 days

Jury Vote: 11-1

Jury Composition: 2 male, 10 female