

1 LIZA MARQUEZ
2 PLAINTIFF, IN PRO PER



3 **FILED**
4 LOS ANGELES SUPERIOR COURT

5 Plaintiff In Pro Per

MAR 05 2010

6 **JOHNA CLARKE CLERK**
7 BY NANCY GILMAN, DEPUTY

8 SUPERIOR COURT THE STATE OF CALIFORNIA
9 COUNTY OF LOS ANGELES - CENTRAL DISTRICT.

10
11 LIZA MARQUEZ, an individual

CASE NO. BC 411505

12 Plaintiff,

13 **NOTICE OF MOTION AND MOTION
14 TO VACATE REQUEST FOR
15 DISMISSAL AND DISMISSAL WITH
16 PREJUDICE AND SETTLEMENT
17 AGREEMENT PURSUANT TO C.C.P.
18 473, et seq.; MEMORANDUM OF
19 POINTS AND AUTHORITIES IN
20 SUPPORT THEREOF;
21 DECLARATION OF LIZA MARQUEZ
22 IN SUPPORT THEREOF**

14 v.

15 DAVID S. CARUSO, an individual;
16 and DOES 1-10, inclusive,

[Complaint Filed on April 9, 2009
Answer Filed on May 28, 2009]

17 Defendants.

DATE: May 4, 2010
TIME: 8:30 a.m.
DEPT: 13

ORIGINAL

23 TO DEFENDANT AND TO HIS COUNSEL OF RECORD:

24 PLEASE TAKE NOTICE that on May 4, 2010, at 8:30 a.m. in Department

25 of the above named court located at 111 North Hill Street, Los Angeles, California

26 90012, or as soon thereafter as the matter may be heard, Plaintiff, LIZA MARQUEZ

27 will move this court for an order vacating and setting aside any settlement agreement

28 and/or any resulting judgments thereof.

CI/CAR# BC411505 LEA/JEF#:
RECEIVED: CCH45123380
DATE PAID: 01/05/2010 08:55:53 PM
PAYMENT \$400.00
RECEIVED: 0310

1 This motion is based upon the Notice given herewith, and pursuant to the
2 provisions of Code of Civil Procedure Section 473, *et seq.*, concerning attorney's lack of
3 valid authorization given to enter into dismissal with prejudice based on failure to
4 provide proper legal advice, mistake in law, and duress caused by prior attorney that in
5 turn caused Plaintiff to sign a settlement agreement under duress resulting in the
6 dismissal with prejudice against Plaintiff's wishes, the attached Memorandum of Points
7 and Authorities, and the attached Declarations and upon all papers, records, and
8 documents that may be presented at the time of hearing.

9
10 DATED: March _____, 2010

11 SEE ATTACHED FACSIMILE SIGNATURE

12 By _____

13 LIZA MARQUEZ
14 Plaintiff, In Pro Per



15
16
17
18
19
20
21
22
23
24
25
26
27
28
01/25/10

1 This motion is based upon the Notice given herewith, and pursuant to the
 2 provisions of Code of Civil Procedure Section 473, *et seq.*, concerning attorney's lack of
 3 valid authorization given to enter into dismissal with prejudice based on failure to
 4 provide proper legal advice, mistake in law, and duress caused by prior attorney that in
 5 turn caused Plaintiff to sign a settlement agreement under duress resulting in the
 6 dismissal with prejudice against Plaintiff's wishes, the attached Memorandum of Points
 7 and Authorities, and the attached Declarations and upon all papers, records, and
 8 documents that may be presented at the time of hearing.

9
 10 DATED: March 1, 2010

By


 LIZA MARQUEZ
 Plaintiff, In Pro Per



27
 28
 01/28

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I

3 INTRODUCTION

4 Plaintiff LIZA MARQUEZ (hereinafter "Plaintiff"), an individual, seeks to set aside
5 dismissal with prejudice and settlement agreement in the above-entitled action improperly
6 procured through execution of a settlement agreement under duress by her then attorney who
7 had filed said action. A dismissal clearly affects a client's substantive rights and thus
8 requires the client's express authority. Plaintiff's then attorney could not have had such
9 express authority for the reasons set forth below.

10 At the time the action was filed, Plaintiff's attorney had been representing her in her
11 family law child custody matter and also represented Plaintiff at the time Defendant
12 breached a global settlement agreement concerning the payment of child support and the
13 payment of an agreed to monetary settlement concerning Plaintiff's palimony claims.
14 Plaintiff's attorney filed a Verified Complaint on April 9, 2009 (hereinafter "Action")

15 As the Action proceeded, discovery was initiated and Defendant took various
16 depositions including that of the Plaintiff on September 8, 2009. At the time of Plaintiff's
17 deposition Defendant's counsel presented Plaintiff with a copy of a divorce decree and
18 Petition filed in the District Court of Bexar County, Texas in 2006. The Petition was filed
19 on Plaintiff's behalf by her attorney in Texas. Plaintiff filed her divorce petition in Texas
20 at Defendant's request to avoid any publicity a potential divorce filing in Los Angeles by
21 Plaintiff would cause and adversely impact Defendant's own pending divorce filed in Los
22 Angeles Superior Court, Central District. Defendant's counsel began questioning Plaintiff
23 about a domicile finding in said divorce decree wherein it provided that Plaintiff was
24 domiciled in Texas for the preceding six-month period and a residence of Bexar county for
25 the preceding ninety-day period. Plaintiff also began answering questions presented by
26 Defendant's counsel regarding Plaintiff's various residences at various times. During
27 questioning Plaintiff's attorney made no objection and permitted the line of questioning.
28 Upon presentation of the next exhibit by Defendant's counsel which was Plaintiff's Texas

3/5/10

1 divorce Petition filed before the divorce decree, Plaintiff's attorney suddenly and without
2 warning to Plaintiff, stated on the record that she was going to advise Plaintiff to review the
3 Petition and then advise whether Plaintiff wished to proceed with the Deposition. Plaintiff
4 acknowledged the opportunity to review the Petition and then asked whether the deposition
5 proceedings should stop. Defendant's attorney would not consent to stop the deposition but
6 suggested that if Plaintiff was not to answer questions for Fifth Amendment reasons, it was
7 Plaintiff's call. Defendant's attorney began asking questions again regarding the domicile
8 statement in the Petition. Again, without any objection from Plaintiff's attorney or a
9 moment to advise regarding 5th Amendment off the record, Plaintiff's attorney solely asked
10 if Plaintiff intended on asserting the 5th Amendment. Taking her instruction cue from her
11 attorney, Plaintiff responded she did, and through a series of questions concerning the Texas
12 Petition from Defendant's counsel, Plaintiff continued to plead the 5th Amendment. Despite
13 being fully aware that Plaintiff had gone through a prior dissolution proceeding, Plaintiff's
14 attorney never inquired or asked Plaintiff about specifics concerning the divorce proceeding
15 and never contacted Plaintiff's Texas attorney regarding Plaintiff's Texas dissolution for
16 which Plaintiff's attorney had full knowledge of at commencement of her representation of
17 Plaintiff. Because of Plaintiff's attorneys failures to investigate the Texas Petition and
18 Judgment filing with Plaintiff or with Plaintiff's Texas attorney, Plaintiff's attorney was ill
19 prepared and was unable or unwilling to permit Plaintiff to offer testimony at the time of her
20 deposition that the Texas dissolution was initiated in Bexar County, Texas at Defendant's
21 request to avoid any potential publicity or negative impact regarding Defendant's own
22 divorce proceedings pending in the Los Angeles Superior Court, Central District. Plaintiff
23 was also prevented from offering testimony during her deposition that at the time the Texas
24 Petition was filed, she had a valid, Texas issued driver's license.

25 As she had been instructed by her attorney, Plaintiff plead the 5th Amendment
26 regarding any further questions concerning her Texas divorce. The deposition concluded
27 for that day shortly thereafter.

28 On September 9, 2009, the day after Plaintiff's deposition, Plaintiff was summoned

3/3/10

1 to her attorney's office. At the commencement of their meeting, Plaintiff was instructed by
2 her attorney to turn off all her phones and she complied. Plaintiff noticed her attorney had
3 an envelope on her desk, including a pre-prepared Substitution of Attorney in the child
4 custody matter as well as a pre-drafted settlement agreement related to the Action. The
5 agreement provides that the terms were solely negotiated by counsel and no direct
6 negotiations were had between the parties. During their brief meeting, and because
7 Plaintiff's attorney led her to believe that Defendant and his lawyer "had" her due to the
8 domicile finding and statement in the Texas dissolution matter, Plaintiff's attorney made it
9 quite clear to Plaintiff that if she did not immediately execute a settlement agreement in the
10 Action, Plaintiff would be sued by Defendant and his counsel, thrown in jail and her
11 children would be taken away from her. Plaintiff's attorney provided Plaintiff only twenty
12 (20) minutes to make up her mind and due to the prior instruction to turn off her phone,
13 Plaintiff could not reach out to obtain sound advice. Thus, Plaintiff having no other
14 immediate choice signed the settlement agreement under duress on September 9, 2009.
15 Moreover, Plaintiff's attorney did not advise her as to the difference between a dismissal
16 with prejudice versus a dismissal without prejudice.

17 Later in the evening of September 9, 2009, when Plaintiff recounted what had
18 transpired on September 8 and 9, 2009, to a visiting friend who is also an attorney, Plaintiff
19 learned she had done nothing wrong in the filing of her Texas dissolution Petition and that
20 Defendant and his attorney could not come after her as Plaintiff's attorney had led her to
21 believe, and that she did nothing wrong warranting Plaintiff pleading the 5th during her
22 deposition. Because of what Plaintiff learned, Plaintiff immediately instructed her attorney
23 not to file the dismissal; however rather than follow her instructions, unbeknownst to
24 Plaintiff, the dismissal was already filed on September 9, 2009, and her request was ignored.
25 **Noteworthy, is that the dismissal bears the date of September 8, 2009. Thus, Plaintiff**
26 **contends her attorney made arrangements with Defendant's counsel to dismiss this**
27 **matter with prejudice prior to Plaintiff meeting with her attorney on September 9,**
28 **2009.**

3/3/10

1 Plaintiff further contends that at the time of Plaintiff's deposition and given her
2 attorney's lack of performance, and the presentation of the settlement agreement in this
3 instant Action and substitution of attorney in the family law matter the following day,
4 Plaintiff's attorney had ostensibly "one foot out the door" and thus could not have possibly
5 provided Plaintiff with sound legal advice, and did not do so. Plaintiff further contends this
6 created a conflict and Plaintiff's attorney failed to provide Plaintiff with sufficient time to
7 seek the advice of alternate counsel regarding the settlement agreement.

8 Plaintiff relied upon the unfounded and erroneous advice of Plaintiff's prior attorney
9 that she could be sued, thrown in jail and lose her children if she did not immediately enter
10 into a settlement and dismiss the instant civil Action. Plaintiff's reliance on her attorney's
11 poor advice and the threats made to her, caused Plaintiff to execute the settlement agreement
12 under duress and as a result of said execution, the dismissal of the Action was filed the same
13 day. Had Plaintiff been provided with sound, correct legal advice or had she been provided
14 with opportunity to consult alternate counsel regarding the settlement agreement, Plaintiff
15 would have acted differently and she would have not entered into said settlement agreement
16 nor would the Action be dismissed.

17 Plaintiff desires to have this case litigated on the merits and not by way of the
18 injustice which resulted in the execution of a settlement agreement under duress and the
19 dismissal of this Action against the wishes of the Plaintiff.

20 **II.**

21 **THIS COURT HAS THE POWER AND DUTY TO SET**
22 **ASIDE AND VACATE THE DISMISSAL WITH**
23 **PREJUDICE ENTERED HEREIN.**

24 Code of Civil Procedure, Section 473, provides in pertinent part:

25 "The Court may, upon terms as may be just, relieve a party or his or her legal
26 representative from a judgment, dismissal, order or other proceeding taken against
27 him or her through his or her mistake, inadvertence, surprise or excusable neglect."

28 C.C.P., Sec. 473(b)

3/8/10

1 Plaintiff seeks a hearing on the merits in this case as her attorney failed to perform
2 the legal services for which she had retained and had created a conflict at the time she forced
3 Plaintiff to enter into a settlement agreement under duress which resulted in the dismissal
4 of this Action against the wished of the Plaintiff.

5 "When relief under section 473 is available, there is a strong public policy in favor
6 of granting relief and allowing the requesting party to have his or her day in court." Shapiro
7 v. Clark (2008) 164 Cal.App.4th 1128, 1139.

8 "The policy of the law is to have every case tried on its merits, and it looks
9 with disfavor upon a party, who, regardless of the merits attempts to take
10 advantage of the mistake, surprise, inadvertence, or neglect of his adversary."

11 Au-Wang v. Baron (1999) 21 Cal.4th 958, 963.

12 "Because the law favors disposing of cases on their merits, any doubts in applying
13 section 473 must be resolved in favor of the party seeking relief from default." Rappleyea
14 v. Campbell (1994) 8 Cal.4th 975, 980.

15 "It is policy of law to bring about a trial on merits whenever possible, and therefore
16 any doubts which may exist should be resolved in favor of application to set aside dismissal
17 with prejudice, to end of securing for litigant his day in court and a trial upon merits."
18 Robinson v. Hiles (1953) 119 Cal.App.2d 666, 668.

19 In Elston v. City of Turlock (1985) 38 Cal.3d 227, the Supreme Court held:

20 "Section 473 is often applied liberally where the party in
21 default moves promptly to seek relief, and the party opposing
22 the motion will not suffer prejudice if relief is granted. In such
23 situations 'very slight evidence will be required to justify a
24 court in setting aside the default.' Moreover, because the law
25 strongly favors trial and disposition on the merits, any doubts
26 in applying section 473 must be resolved in favor of the party
27 seeking relief from default." (Citations omitted). Id at 696.

28 The Supreme Court has repeatedly held that actions should be determined on their

1 merits and that any doubt is resolved in favor of relief. Maynard v. Brandon (2005) 36
2 Cal.4th 364.

3 The court likewise has power under CCP Section 473(b) to vacate a voluntary
4 dismissal entered as a result of "mistake, inadvertence, surprise or excusable neglect."
5 Zamora v. Clayborn Contracting Group, Inc., (2002) 28 Cal.4th 249, 254-255.

6 "In considering mistake, surprise or excusable neglect, the court has broad
7 discretion under C.C.P. Section 473 and such discretion is liberally construed so that
8 lawsuits would be determined upon their merits, and so as to prevent one party from
9 taking advantage of the other's excusable mistakes or errors." Riskin v. Towers
10 (1944) 24 Cal.2d 274.

11 Plaintiff's right to relief herein arises from the inadvertent dismissal with
12 prejudice filed in this Action and her attorney's lack of inherent or implied authority
13 to dismiss the Action since it was procured by Plaintiff being subjected to being
14 threatened that she would be sued, thrown in jail and that her children would be taken
15 away from her if she did not immediately execute a settlement agreement in this
16 Action. Plaintiff signed said settlement agreement under duress in a conflicted setting
17 and thus Plaintiff's attorney could not have obtained Plaintiff's express authority
18 required to dismiss the Action. Where the attorney lacks such authority, the Court
19 must set aside the dismissal. Romadka v. Hoge (1991) 232 Cal.App.3d 1231, 1237.

20 **III.**

21 **PLAINTIFF IS ENTITLED TO BE RELIEVED**
22 **FROM THE DISMISSAL AS WELL AS SET**
23 **ASIDE OF SETTLEMENT AGREEMENT BASED**
24 **ON MISTAKE, SURPRISE AND DURESS**
25 **IMPOSED UPON PLAINTIFF**

26 In HD Arnaz, Ltd v. County of San Joaquin (2002) 96 Cal.App.4th 1357, 1369,
27 the appellate panel held that a "mistake sufficient to vacate a dismissal may be found
28 where a party, under some erroneous conviction, does an act he would not do but for

3/3/10

1 the erroneous conviction." The remedial statute that allows a court to relive a party
2 of his or her legal representative from a judgment, dismissal, order or other
3 proceeding taken against him or her through his or her mistake, inadvertence, surprise
4 or excusable neglect, is to be liberally construed. HD Amaz Ltd. v. County of San
5 Joaquin (2002) 96 Cal.App.4th 1357, 1368.

6 Civil Code §1569 provides, in relevant part, regarding acts constituting duress:

7 "Duress consists in:

8 1. Unlawful confinement of the person of the party . . .

9 . . .

10 3. Confinement of such person, lawful in form, but
11 fraudulently obtained, or fraudulently made unjustly
12 harassing, or oppressive."

13 Civil Code §1575, provides, in relevant part, regarding undue influence, as
14 follows:

15 "Undue influence consists:

16 1. In the use, by one in whom a confidence is reposed by
17 another, or who holds a real or apparent authority over
18 him, of such confidence or authority for the purpose of
19 obtaining an unfair advantage over him;

20 2. In taking an unfair advantage of another's weakness
21 of mind; or,

22 3. In taking a grossly oppressive and unfair advantage of
23 another's necessities or distress."

24 A court may also grant relief under §473 based on the party's surprise. As
25 used in §473, surprise means a condition or situation in which a party to a cause is
26 unexpectedly placed to his or her injury, without any default or negligence on the part
27 of that party. Credit Managers Assn. v. National Independent Business Alliance
28 (1984) 162 Cal.App.3d 1166.

3/3/10

1 Moreover, in Roth v. Morton's Chef's Services, Inc. (1985) 173 Cal.App.3d
2 380, the court held a stipulated settlement may be set aside when entered into through
3 inadvertence, excusable neglect, fraud, mistake of fact or law where circumstances
4 exist rendering it unjust to enforce the settlement stipulation.

5 In the case at bar, Plaintiff was surprised by her attorney's lack of performance
6 during her deposition, and was unexpectedly placed in a situation where her attorney
7 did not sufficiently advocate for her, nor did she properly advise her or care to inform
8 herself regarding the reasons why Plaintiff filed a divorce matter in Texas, despite
9 being informed upon her retention by Plaintiff that she had been through a previous
10 divorce. Plaintiff filed her divorce action in Texas at Defendant's request to prevent
11 adverse publicity in his own ongoing Los Angeles County Superior Court divorce
12 proceeding.

13 The next day following her deposition Plaintiff was summoned to her attorneys
14 office and presented with a settlement agreement in a confining and conflicted setting
15 by her attorney of record. At time of presentation of the settlement agreement,
16 Plaintiff was ordered by her attorney to silence her phones and under an unfounded,
17 erroneous and legally unsound conviction that as a result of a domicile finding and
18 statement placed in a Texas divorce court filing, Plaintiff had done something wrong.

19 Plaintiff's attorney also failed to explain to Plaintiff the difference between a
20 dismissal with prejudice and a dismissal without prejudice.

21 Plaintiff had done nothing wrong warranting her to sign a settlement agreement
22 under duress causing a dismissal with prejudice to be filed on the same day. In order
23 to obtain Plaintiff's signature on the settlement agreement, Plaintiff's attorney
24 threatened her that if she did not sign said agreement on the spot, Defendant and his
25 counsel would sue Plaintiff, have her thrown in jail and her children would be taken
26 away from her pursuant to the ongoing parallel child custody family law matter.
27 Because Plaintiff's attorney instantly created a conflict between them in relaying such
28 threats, and instructed her to turn off her telephone, Plaintiff's attorney failed to

3/3/10

1 provide Plaintiff with sufficient time to seek advice from alternative counsel
2 regarding said threats and prevented her the opportunity to have the settlement
3 agreement and the threats relayed to her reviewed by alternate counsel. Plaintiff did
4 not want to risk losing her children and therefore signed the settlement agreement
5 under duress causing the Action to be dismissed on the same day against Plaintiff's
6 wishes. Such grossly oppressive conduct by Plaintiff's attorney created an unjust and
7 unfair condition that warrants relief from the dismissal with prejudice as well as a set
8 aside of the settlement agreement.

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**IV.
CONCLUSION**

For the reasons set forth herein, Plaintiff respectfully requests that the Court grant the relief herein requested and set aside the Dismissal filed September 9, 2009, as well as the settlement agreement signed on September 9, 2009, so that this Action can be adjudicated on the merits.

Dated: March _____, 2010

SEE ATTACHED FACSIMILE SIGNATURE
By: _____

LIZA MARQUEZ
Plaintiff In Pro

3/9/10

1 provide Plaintiff with sufficient time to seek advice from alternative counsel
 2 regarding said threats and prevented her the opportunity to have the settlement
 3 agreement and the threats relayed to her reviewed by alternate counsel. Plaintiff did
 4 not want to risk losing her children and therefore signed the settlement agreement
 5 under duress causing the Action to be dismissed on the same day against Plaintiff's
 6 wishes. Such grossly oppressive conduct by Plaintiff's attorney created an unjust and
 7 unfair condition that warrants relief from the dismissal with prejudice as well as a set
 8 aside of the settlement agreement.

9
 10 **IV.**
 11 **CONCLUSION**

12 For the reasons set forth herein, Plaintiff respectfully requests that the Court
 13 grant the relief herein requested and set aside the Dismissal filed September 9, 2009,
 14 as well as the settlement agreement signed on September 9, 2009, so that this Action
 15 can be adjudicated on the merits.

16
 17 Dated: March 4, 2010

18 By: Liza Marquez
 19 LIZA MARQUEZ
 20 Plaintiff In Pro

21
 22
 23
 24
 25
 26
 27
 28 3/9/10

1 **DECLARATION OF LIZA MARQUEZ**

2 I, LIZA MARQUEZ, hereby declare:

3 If called upon to testify I would competently testify to the following matters that
4 are within my own personal knowledge, or to such other matters that are stated to be
5 based upon information and belief.

6 1. I am the Plaintiff in the action entitled Marquez v. Caruso, Los Angeles
7 Superior Court Case No. BC 411505 ("Action"). Said Action was filed on April 9, 2009,
8 as a verified complaint, and Defendant DAVID S. CARUSO ("Defendant") filed his
9 answer on May 28, 2009.

10 2. My declaration, as well as the other declarations filed concurrently herein,
11 are submitted in support of my motion to vacate the dismissal with prejudice filed on
12 September 9, 2009. The basis for my motion concerns the poor advice, attorney mistake,
13 mistake in law, and duress caused by my then attorney Debra Opri that in turn caused me
14 to sign a settlement agreement under duress resulting in the dismissal with prejudice of
15 the Action against my wishes.

16 3. Between September 2004 and October 2007, Defendant and I were in a
17 committed live-in relationship. We resided together in Defendant's home in the San
18 Fernando Valley. We are also the parents of two (2) minor children, the first born in
19 September 2005, and the second born in October 2007, that are the product of our
20 relationship. Prior to the birth of our children, I traveled extensively with the Defendant.
21 Presently, Defendant and I are also in the middle of a custody action concerning the minor
22 children entitled Matter of Caruso and Marquez, Los Angeles Superior Court Case No.
23 BF 032676. This custody action was filed in October of 2007 by Defendant who had
24 attempted to serve me with the Petition while I was in the hospital giving birth to our
25 second child.

26 4. Prior to the filing of the Action, Defendant and I reached a global
27 settlement concerning the issues between us, including but not limited to, the amount of
28 child support payable by Defendant, the providing of funds to furnish a new residence,

3/9/10

1 the payment of attorneys fees and costs as well as an amount payable to me arising from
2 Defendant's promises made during our relationship of his desire to ensure my financial
3 security.

4 5. In or about August of 2008, Defendant commenced payment of the child
5 support amount pursuant to our global settlement. Attached hereto as Exhibit "A" are
6 true and correct copies of some of Defendant's checks I received representing the agreed
7 upon child support, incorporated herein by reference as though set forth in full.

8 6. In or about March of 2009, Defendant unilaterally stopped making the
9 agreed upon child support payments. By then, he also failed to pay the agreed upon
10 portion related to my financial security. In January of 2009, Defendant was required to
11 make the first payment of approximately \$335,000 and failed to do so. He also failed to
12 make his second payment of approximately \$335,000 due and owing in January of 2010,
13 as we agreed. The third payment of \$335,000 will be due and owing in January of 2011.

14 7. Defendant's breach of our agreement resulted in the filing of the above-
15 referenced Action in April of 2009, by my attorney Debra Opri who was also representing
16 me in the child custody matter as of approximately July of 2008. Following filing of the
17 complaint in the Action, the matter was proceeding, discovery was propounded and
18 Defendant took various depositions. In August of 2009, a Case Management Conference
19 was held.

20 8. On September 8, 2009, I appeared with my attorney Ms. Opri for my
21 deposition noticed by Defendant in the Action. During the Deposition, Defendant's
22 counsel began questioning me about a divorce proceeding concerning me and my former
23 husband Rodolfo Leza. He presented me with a copy of a final decree of divorce filed in
24 the District Court of Bexar County, Texas on or about April 19, 2006. After a short
25 recess, Defendant's counsel then began questioning me, among others, about a domicile
26 finding contained in said divorce decree which provided that I had been domiciled in
27 Texas for the preceding six-month period and a resident of Bexar county for the
28 preceding ninety-day period. Attached hereto as Exhibit "B" is a true and correct copy

3/3/10

1 of said divorce decree incorporated herein by reference as though set forth in full.
2 Attached hereto as Exhibit "C" is a true and correct copy of my 2006 Texas Petition for
3 Divorce incorporated herein by reference as though set forth in full.

4 9. Defendant's counsel then presented me with a copy of the divorce Petition
5 and proceeded to ask me questions regarding same, specifically about my Texas attorney
6 who had signed and filed the Petition on my behalf. My attorney then suddenly and
7 without warning to me, stated on the record that she was going to advise me to review the
8 Petition and then advise whether I wished to proceed with my deposition. I
9 acknowledged the offer to review the document. I then asked whether the deposition
10 proceedings should stop. Defendant's attorney would not consent to stop the deposition
11 but suggested that if I was not to answer questions for Fifth Amendment reasons, it was
12 my call. Defendant's attorney then began asking questions regarding the domicile
13 statement in the divorce Petition. Again, without having taken a prior moment to advise
14 me off the record, Ms. Opri simply asked if I intended to assert the 5th Amendment.
15 Taking my instruction cue from Ms. Opri, I began pleading the 5th through the next series
16 of additional questions, among others, concerning the domicile statement in my Texas
17 Petition. Again, Ms. Opri made no effort to contact Mr. Efron my Texas attorney
18 regarding the Texas petition he filed on my behalf. I did as my attorney had instructed me
19 to do and plead the 5th. The deposition stopped shortly thereafter. Attached hereto as
20 Exhibit "D" are the relevant portions of my deposition concerning the issue of my Texas
21 divorce (Pages 141:Line 21 to Page 163:Line 5). The face sheet of my deposition
22 transcript is incorrect, the deposition was actually taken on September 8, 2009.

23 10. It should be noted that from July of 2008, when Ms. Opri began
24 representing me in my custody matter, and filed the Action in April of 2009, on my
25 behalf, I was forthright in making her aware that I had been through a divorce proceeding.
26 She never inquired or asked me about specifics concerning the divorce proceedings and
27 as provided above, never bothered to contact my Texas attorney after she requested the
28 short recess in the deposition proceedings regarding Texas divorce decree document.

3/9/10

1 11. Because of my attorney's failures, I was thus prevented from providing
2 deposition testimony that the divorce proceedings were initiated in Texas at Defendant's
3 request because he was simultaneously going through his own divorce from his wife
4 Margaret Caruso in the matter entitled Marriage of Caruso, Los Angeles Superior Court
5 Case No. BD420420 filed on February 2, 2005, after Defendant and I commenced our
6 committed relationship, and didn't want the publicity from having my name on anything
7 public associated with him that would garner attention and negatively affect the
8 Defendant in his divorce proceedings from Mrs. Caruso. Defendant is a well-known
9 television actor and character on the series "CSI: Miami."

10 12. I was also prevented from offering testimony that at the time of the 2006
11 Texas Petition filing, I had a valid Texas issued driver's license which included a valid
12 Texas address.

13 13. During my deposition, Ms. Opri paid little to no attention toward assisting
14 me. She was constantly using her BlackBerry device during the deposition. I felt as if I
15 was being put through the motions of a deposition because she made no effort in
16 defending me or advising me. She was ill prepared.

17 14. Based on Ms. Opri's lack of performance during the deposition and her lack
18 of attention in assisting me and advising me, I understand and believe that Ms. Opri was
19 likely made aware of the domicile issue before my deposition and went into said
20 deposition with a pre-arranged understanding between herself and Defendant's counsel
21 that the Action would be dismissed. Information and understanding she did not share
22 with me. She permitted the line of questioning regarding the Texas final divorce decree
23 without objection; however, suddenly and without prior warning to me, upon the
24 presentation of the Texas divorce Petition, stated she would advise me to review the
25 Petition and advise whether or not I wanted to proceed with the deposition. Taking my
26 cue from Ms. Opri, I acknowledged the offer to review the Petition and asked whether the
27 deposition should be stopped. After Defendant's counsel stated he would not stop the
28 deposition, he suggested that if I were not answering questions for 5th Amendment

3/9/10

1 reasons that was my call. When Defendant's counsel continued with his questions, my
2 attorney asked if I intended to plead the 5th. Taking my cue again from Ms. Opri I began
3 pleading the 5th Amendment concerning further questions from Defendant's counsel
4 regarding the Texas Divorce Petition. The Deposition ended soon after.

5 15. On September 9, 2009, I was summoned to Ms. Opri's offices. At the
6 commencement of our meeting, she instructed me to turn off all of my phones and I
7 complied. I noticed she already had an envelope on her desk, including a pre-prepared
8 Substitution of Attorney in the child custody matter wherein I would ostensibly relieve
9 Ms. Opri as my attorney in the family law matter and substitute myself in as a self-
10 represented party.

11 16. Ms. Opri also presented me with a drafted Settlement Agreement in the civil
12 Action. As noted in Paragraph 1(B), the agreement was solely negotiated by counsel.
13 Ms. Opri made it quite clear to me that if I did not immediately sign the Settlement
14 Agreement, I would be sued by Defendant and his counsel, thrown in jail and my children
15 would be taken away from me. I was only provided approximately twenty (20) minutes to
16 make up my mind. I couldn't make a phone call to reach out to obtain sound advice, legal
17 or otherwise, because of Ms. Opri's prior instruction to turn off my phone during our
18 meeting. I understand and believe all of these threats were because of the domicile
19 questions asked during my deposition, and because, according to Ms. Opri, Defendant
20 and his lawyer "had me" under a contention that I had committed perjury regarding the
21 Texas divorce petition and divorce decree later entered.

22 17. Ms. Opri also did not advise me as to the difference between a dismissal with
23 prejudice and a dismissal without prejudice.

24 18. In fear of being sued, being arrested and thrown in jail, and most importantly
25 because I feared losing my children, I signed the Settlement Agreement under duress.
26 Attached hereto as Exhibit "E" is a true and correct copy of said Settlement Agreement,
27 incorporated herein by reference as though set forth in full.

28 19. Later in the evening on September 9, 2009, when I had the opportunity to

3/9/10

1 recount the events over the previous days to an attorney friend of mine, Desmond Acosta
2 who was visiting, about what had transpired, he was in complete shock. I learned that in
3 fact, Defendant and his attorney could not come after me as Ms. Opri had led me to
4 believe and that I did nothing wrong concerning the Texas divorce matter or that
5 warranted my pleading the 5th Amendment during my deposition.

6 20. I immediately instructed Ms. Opri not to file the Request for Dismissal. My
7 request was ignored and rather than follow my instructions I later learned the dismissal
8 was filed on the same day as I signed the settlement agreement under duress. Attached
9 hereto as **Exhibit "F"** is a true and correct copy of the Request for Dismissal filed
10 September 9, 2009, incorporated herein by reference as though set forth in full. **Of note**
11 **is that counsel effectively signed the dismissal on September 8, 2009, prior to my**
12 **meeting with Ms. Opri.**

13 21. Having one foot out the door in both the family law matter and in the Civil
14 Action, I believe that Ms. Opri could not have possibly provided me with sound legal
15 advice on September 8 and 9, 2009, and did not do so. I further believe that the threats
16 presented to me by Ms. Opri and the duress she placed me under during our meeting of
17 September 9, 2009, created a conflict between us. Ms. Opri did not provide me with
18 sufficient time or ability to seek alternative counsel regarding the settlement agreement
19 she presented to me, or regarding the threatening statements she made to me.

20 22. The erroneous dismissal of my civil Action left me reeling and in need of time
21 to inquire of competent counsel as to my true rights. Because the children were of a
22 bigger concern, from November of 2009, to the present, the child custody family law
23 matter has taken priority and I was unable to address what transpired in the Action until
24 now. I was without legal counsel for approximately two (2) months in my family law
25 matter and since retention of my current attorney in November of 2009, there have been
26 approximately four (4) hearings in the family law matter through February 22, 2010, to
27 which my counsel had to prepare numerous pleadings on my behalf as well as appear for
28 two (2) days of my deposition conducted in the family law matter.

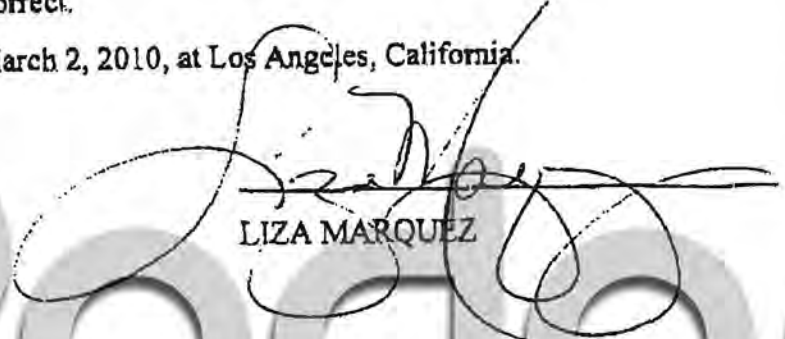
3/9/10

1 23. I detrimentally relied upon the unfounded and erroneous convictions of my
 2 prior attorney that I could be sued, thrown in jail and lose my children if I did not
 3 immediately enter into a settlement agreement and dismiss the civil Action. I am now
 4 seeking relief from the court so that I may correct this injustice.

5 24. I respectfully request that the court grant my motion to vacate the dismissal
 6 with prejudice, set aside the settlement agreement and reinstate the Complaint and
 7 Answer filed by the parties so that the Action can be adjudicated on the merits.

8
 9 I declare under penalty of perjury of the laws of the State of California that the
 10 foregoing is true and correct.

11 Executed this March 2, 2010, at Los Angeles, California.

12
 13
 14 
 LIZA MARQUEZ



15
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25
 26
 27
 28
 01/16/10