No. 18-1349 ORIGINAL

IN THE
SUPREME COURT OF THE
UNITED STATES

CHARLES G. KINNEY,
Appellant,

v.

MICHELE RENEE CLARK,
Appellee.

On Petition For Writ Of Certiorari
To The Ninth Circuit Court of Appeals
(#18-56549)

US BAP (#18-1210 *motion to re-open*) into
US District Court (#2:18-cv-7321-PSG)

US Bankruptcy Court, Central Dist. of Cal
#2:10-bk-41323-BR and 2:18-ap-00154-BR

PETITION AND APPENDIX FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

The motion to re-open was because of *crimes* (e.g. fraud) and *judicial* accessories-after-the-fact.

Crimes are being committed *not only* by listed creditors, a contract-attorney/co-planner, and a discharged debtor; *but also* by judges, justices and federal officers who *conceal* the crimes and thus become accessories-after-the-fact (since all are felonies). 18 USC Secs. 152 and 157; Cal. Penal Code Secs. 17, 31 and 33. The felonies and the concealment have been occurring for years.

There is **no** immunity for: (1) judges and justices who act as prosecutors of Kinney rather than act as neutral arbitrators of disputes [e.g. they *not only* concealed the fraud, *but also* knew there was the clear absence of all jurisdiction to issue any fee awards]; (2) listed, unsecured creditors Marcus, discharged debtor Clark, and contract-attorney Chomsky; **and** (3) officers who refuse to enforce bankruptcy laws even though stopping this type of fraud is one of their specific duties.

Michele R. Clark is the 2010 Chapter 7 *no asset* discharged debtor. Her attorneys David Marcus etc were *listed* creditors [who had Clark sign a 2007 hourly-fee retainer with a *charging lien*]. The contract-attorney is Eric Chomsky. Kinney and Kempton were co-buyers of Clark's house in 2005, but creditors Marcus etc kept violating 11 USC Sec. 524(a)(2) by *moving* for more attorney fees. The courts and others continue to *conceal* ongoing fraud and *ignore* 11 USC Sec. 524(a)(1).

PARTIES TO THE PROCEEDINGS

The parties to this proceeding are those specified and appearing in the caption to this petition.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Charles Kinney requests that a "writ of certiorari" issue to review the "final" judgment by the Ninth Circuit Court of Appeal on Jan. 24, 2019 that ***refused*** to allow Kinney's appeal to proceed [App. A (NC #18-56549, Dk #2)] as to the US District Court's "joint" dismissal order by Judge Gutierrez on Nov. 7, 2018 [App. B (USDC 18-07321, Dk #44)] for Kinney's *motion to re-open*. That order also dismissed his counterclaim (NC #18-56552) and removal (NC #18-56551).

The "Big Lie" Turned Into a "Crime"

In 2008, Kinney did not fit the vexatious litigant ("VL") criteria because he didn't have 5 losses in 7 years as an i*n pro se plaintiff*; see Cal. Code of Civil Procedure ("CCP") Sec. 391; John v. Superior Court, 63 Cal.4th 91, 93-95 (Cal. 2016).

Judicial officers needed to create the "big lie" that Kinney was a VL so as to promote Judge Grimes to a Justice and get Carolyn Cooper's cooperation.

From 2008 to 2010, state judges and justices were acting as *prosecutors* not neutral adjudicators. These included Boren [2009-2010], Cheney [2009-2010], Grimes [2007-2008], Lavin [2008], and Rothschild [2008-2010]. Non-judicial participants included Cooper, Clark and their attorneys.

When Clark declared bankruptcy, the state judges and justices didn't want the "big lie" to unravel [e.g. since Kinney didn't have enough "losses" yet], so they became *accessories-after-the-fact* to conceal

felonies by listed creditor Marcus and his helper Chomsky]. The *judicial* participants now included state and federal judges such as Boren [2014], Chen [2018], Cheney [2017], Gee [2019], Gutierrez [2016, 2018], Johnson [2017], Lavin [2012], McElroy [2013], Rothschild [2017], Scheper [many times], and the Ninth Circuit [many times]. They were all acting as *prosecutors* of Kinney [e.g. especially when they created new pre-filing VL orders based on false or misleading facts].

After 2012, these judicial *"prosecutors"* were also committing felonies [e.g. ignoring 11 USC 524(a) and 18 USC Sec. 152 or 157 violations]; they were now *accessories-after-the-fact.* The non-judicial participants [e.g. Chomsky, Clark, Marcus and Takeuchi] were also committing felonies [e.g. up to 5 years in jail; see Cal. Penal Code Sec. 17].

Here, USDC Judge P.S. Gutierrez and the Ninth Circuit have been concealing felonies committed by Clark, Marcus and Chomsky for years.

If the facts are examined fairly, it can be shown Kinney is <u>not</u> a VL under state or federal law. For example, Judge Lavin's 2008 VL ruling refers to cases where Kinney was only the attorney for *defendants* Schmidt and Chiu (so CCP Sec. 391 does not apply). The 2017 ADA class action settlement with Los Angeles shows Kinney's claims against Cooper and the City had merit as to obstructions on *public* rights of way. Kinney's Clean Water Act cases and the 2012 Cal. Coastal Commission's discovery of an *unpermitted* storm basin in Three Arch Bay show his Laguna Beach

cases had merit. Kinney has *never* been allowed a trial or hearing on the merits of these issues with testimony under oath and cross-examination (or an appeal before impartial judges). All of this can be easily fact-checked [e.g. via a Pacer account].

The **only** reason given by the Ninth Circuit was that Kinney's appeal was "so insubstantial" that Kinney could not proceed with it. The **only** case cited was *In re Thomas* [App. A, 1]. However, the case In re Thomas, 508 F.3d 1225 (9th Cir. 2007), does **not** apply to attorney fee orders deemed ***void*** pursuant to 11 U.S.C. Sec. 524(a)(1).

Insubstantial vs. Substantial

Here, adverse economic impacts on Kinney of the ongoing violations of bankruptcy law and fraud ***exceed*** $500,000 due to 13+ ***void*** attorney fee awards for *already-discharged* pre- and post-petition debts that were shifted onto Kinney by the 2010 Chapter 7 *no asset* discharged-debtor Michele Clark **and** her listed, unsecured creditor attorneys David Marcus etc (with help by contract attorney Eric Chomsky as a co-planner of the fee motions and accessory-after-the-fact). $500,000+ is **not** an "insubstantial" *financial* issue.

The bankruptcy law being violated [11 U.S.C. Sec. 524] was created: (1) to enjoin the *exact activity* that continues to be pursued by listed unsecured creditor attorneys Marcus etc [Sec. 524(a)(2)]; and (2) to ***void*** any resulting state or federal court attorney's fee awards or orders [Sec. 524(a)(1)] because the fee motion and resulting award order

concede that debtor Clark is still personally liable to her own listed creditor attorneys Marcus etc.

All the courts involved here have refused to follow explicit bankruptcy laws; see Kinney v. Clark, 12 Cal.App.5th 724 (Cal. 2017) for examples of their ongoing refusal to follow the bankruptcy laws.

These bankruptcy laws have been violated over 13 times. These same violations are also bankruptcy fraud "crimes" which is a felony because of the potential for 5 years in jail [18 U.S.C. Sec. 152 and 157]. These felonies continue to be willfully concealed by Chomsky and others. Those who conceal are accessories-after-the-fact (which is also a felony) [Cal. Penal Code Secs. 17, 31 and 32]. Those are **not** "insubstantial" *legal* issues.

The VL law is being mis-used as *justification* for allowing listed-creditors Marcus etc to continue to violate bankruptcy law and commit crimes against listed-creditors Kinney and his co-buyer Kim Kempton (now deceased) [who purchased Clark's house in 2005], **and** to compel silence upon them by denying their constitutional rights [e.g. 1st, 4th, 5th, 8th and 14th Amendments]. Those are **not** "insubstantial" *retaliation* issues.

Even though an attorney fee "cost" order is void under 11 U.S.C. Sec. 524(a)(1), and ***even though*** Clark's listed, unsecured-creditor attorneys David Marcus etc are prohibited by 11 U.S.C. Sec. 524(a)(2) from filing any motion which results in attorney's fee award "cost" orders (based on the false premise that Clark still has personal liability

for fees), the unsecured-creditor attorneys Marcus etc keep filing attorney fee motions on behalf of 2010 Chapter 7 discharged debtor Michele Clark.

The Vexatious Litigant Laws

Here, the courts ignore bankruptcy law and then justify their actions by mis-using VL law [e.g. Cal. CCP Secs. 391-391.8] and mis-stating the facts.

Listed-creditors Marcus etc continue to violate bankruptcy law against listed-creditors Kinney and his co-buyer Kim Kempton (now deceased).

Here, the courts continue to *compel silence* upon Kinney **and** deny him all *rights to redress* of grievances [e.g. by denying the right to appeal].

The VL law is also being used by state and federal courts to impose *excessive fines* on Kinney contrary to the 8th Amendment (see US Supreme Court decision in the *Timbs* case decided 2/20/19).

The **state** VL law allows a Calif. court to make a person a VL [e.g. when a federal court has made that person a VL], but without safeguards to keep a VL order from being ***overbroad.*** State Univ. of New York v. Fox, 492 U.S. 469, 482-486 (1989). In contrast to "narrowly tailored" federal VL orders, all Calif. VL orders are "broadly" applied.

The **federal** VL law arises from the All Writ Act (28 U.S.C. Sec. 1651) and under federal law all VL orders must be "narrowly tailored" in scope. De Long v. Hennessey, 912 F.2d 1144, 1146-1149 (9th Cir. 1990). However, in Kinney's situation, the

federal VL orders against him are being ***broadly*** applied to all of his federal cases [e.g. Clean Water Act citizen-lawsuit cases] and applied to include non-parties [e.g. neighbor Carolyn Cooper].

Challenges To The VL Laws

The Calif. VL law has been challenged before. Wolfe v. George, 486 F.3d 1120 (9th Cir. 2007) did consider the VL law, but that case had no *facial* challenge, and the VL law has been substantially changed [e.g. to allow a Court of Appeal Presiding Justice to decide whether an appeal has "merit"].

In 2014, the constitutional framework of VL laws was extensively clarified in Ringgold-Lockhart v. County of LA, 761 F.3d 1057, 1060-1067 (9th Cir. 2014). Based on this case, the Cal. VL law does **not** satisfy the clarified constitutional standards.

Since substantial changes have occurred to Calif. VL law after the 2007 *Wolfe* decision [e.g. in Jan. 2012], and since the *Ringgold-Lockhart* decision explains some issues of the VL law that the *Wolfe* decision never considered, the 2007 *Wolfe* decision is *no longer controlling* as to the current VL law.

No court has ever considered the unconstitutional vagueness of the ***current*** Calif. VL law. Johnson v. United States, 135 S.Ct. 2551, 2557-2563 (2015).

For example, given how the Calif. courts tally up losses under the Cal. VL law and given that Cal. requires an appeal within 60 days of whenever a defendant is dismissed, a plaintiff can become labeled as a VL in one case with 6 defendants by

"losing" against 5 defendants, but "winning" the case against the 6th defendant. Fink v. Shemtov, 180 Cal.App.4th 1160, 1170 (Cal. 2010).

Cal. VL law has also changed a party who is a "defendant" into a "plaintiff"; that shows how *arbitrarily* the VL law is being applied Ogunsalu v. Superior Court, 12 Cal.App.5th 107 (Cal. 2017).

As for ***facial*** challenges to the Cal. VL law, Kinney contends every application of that VL law is unconstitutional because it is: (1) hopelessly vague [e.g. as to wording such as "litigation", "finally determined against", "merit", "reasonable expenses" for security; "presiding justice"]; **and** (2) an "ongoing chill upon speech that is beyond all doubt protected makes it necessary in this case to invoke the earlier precedents that a statute which chills speech can and must be invalidated where its facial invalidity has been demonstrated". Citizens United v. Federal Election Commission, 558 U.S. 310, 331 (2010). There is no doubt that the VL law, and acts by judges and justices using this law, are chilling Kinney's protected speech.

As for ***as-applied*** (factual) challenges to the Cal. VL law, Kinney contends the VL law was and is misapplied to him, contrary to specific language and criteria of the statute [e.g. because in Nov. 2008 Kinney was not a party and, as an *in pro se* plaintiff, did not have 5 out of 7 losses in the last 7 years; **and** because Kinney was not a party in Dec. 2011 when In re Kinney, 201 Cal.App.4th 951, was issued by Cal. Court of Appeal, Second App. Dist. ("COA2") "Presiding Justice" Boren who did

not yet have subject matter jurisdiction to do so]. No court has ever addressed these issues.

The **federal** VL law has been challenged too. It must be applied narrowly per the *De Long* case, but that is not happening as to Kinney.

Ongoing Bankruptcy Law Violations

11 U.S.C. Sec. 524(a)(1) "voids" a court judgment if the ruling decides that 2010 Chapter 7 "no asset" discharged-debtor Clark still has personal liability to a listed-unsecured creditor [e.g. Marcus etc]. That ruling is *void* regardless of the court's rationale used to justify that decision. As to a *void* order, a collateral attack or appeal (*de-facto* or not) is unnecessary; and the *Rooker-Feldman* doctrine does not apply. Orner v. Shalala, 30 F.3d 1307, 1309-1310 (10th Cir. 1994).

11 U.S.C. Sec. 524(a)(2) prohibits any unsecured-creditors from employing any means to obtain any judgment, order or sanction that determines a discharged Chapter 7 "no asset" debtor still has personal liability to that creditor. In re McLean, 794 F.3d 1313, 1321-1325 (11th Cir. 2015). Sec. 524(a)(2) is known as the *discharge injunction.*

For 8+ years, listed unsecured-creditor attorneys David Marcus etc have filed 13+ attorney fee motions on behalf of discharged Chapter 7 "no asset" debtor Michele Clark, based on pre-petition contracts, with help from contract-attorney Eric Chomsky.

Their ***goal*** was to ***shift*** over $500,000 of pre- and post-petition attorney's fees [incurred by Clark] ***onto*** listed unsecured-creditors Kinney and/or Kempton, the co-buyers of Clark's house in 2005. However, 11 U.S.C. Sec. 524(a)(2) ***prohibits*** all of those attorney fee motions. In re Marino, 577 B.R. 772, 782-784 (9th Cir. 2017).

The dockets for cases in state and federal courts confirm that judges *continue* to issue decisions that ***concede*** discharged-debtor Clark is ***still personally liable*** to her own unsecured-creditor attorneys David Marcus etc for their legal work.

Each time creditor Marcus files an attorney's fee "cost" motion to shift Clark's legal bills onto Kinney, Marcus ***concedes*** *(admits)* that his client, discharged-debtor Clark, ***still has some*** "personal liability" to him (Marcus) for his legal work [which violates 11 U.S.C. Sec. 524(a)(2)]. Cal. Civil Code Sec. 1717; Cal. CCP Sec. 1033.5(a)(10); Cen-Pen Corp. v. Hanson, 58 F.3d 89, 92-94 (4th Cir. 1995); Johnson v. Home State Bank, 501 U.S. 78, 84 (1991); Trope v. Katz, 11 Cal.4th 274, 279-289 (Cal. 1995); PLCM Group, Inc. v. Drexler, 22 Cal.4th 1084, 1092-1094 (Cal. 2000); Reynolds Metals Co. v. Alperson, 25 Cal.3d 124, 127-129 (Cal. 1979).

The 13+ attorney fee "cost" orders were issued ***after*** Clark's 2010 bankruptcy. Those 13+ orders resulted in over $500,000 in attorney's fees owed by Kinney to Clark. By issuing those 13+ orders, the state courts have engaged in ***willful judicial misconduct***. Dodds v. Commission on Judicial Performance, 12 Cal.4th 163, 166-172 (Cal. 1994);

Broadman v. Comm. on Judicial Performance, 18 Cal.4th 1079, 1091-1113 (Cal. 1998).

Challenges To "Void" Orders

Kinney is challenging all "void" orders that were issued contrary to 11 U.S.C. Sec. 524(a) [which have resulted in the "taking" of Kinney's property and excessive fines]. Thus, Kinney's grievance cannot be a *de-facto* appeal of a valid order because no appeal is ever necessary from a *void* order **and** because full faith and credit *can never* be given to a *void* order. 28 U.S.C. Sec. 1739.

Each of Kinney's complaints is a "***federal claim alleging a prior injury*** [caused by listed-creditors attorneys Marcus] ***that a state court failed to remedy***". Fowler v. Guerin, 899 F.3d 1112, 1118-1119 (9th Cir. 2018); Exxon Mobil Corp. v. Saudi Basic Industries Corp., 544 U.S. 280, 284 (2005); Long v. Shorebank Development Corp., 182 F.3d 548, 554-561 (7th Cir. 1999); In re Schwartz, 954 F.2d 569, 572 (9th Cir. 1992). The courts ignored violations by Marcus of 11 U.S.C. Sec. 524(a)(2). The attorney fee orders were void, but were also a "taking" of Kinney's property.

Kinney is **not** filing appeals for any legal wrongs committed by a state court. Rather, those appeals are about ***legal wrongs committed by debtor Clark (an adverse party) and by her listed, unsecured-creditor attorneys Marcus etc (a non-party).*** Marcus filed motions even though his "puppet" Clark knew that was prohibited by federal law. Kougasian v. TMSL, Inc., 359 F.3d 1136, 1141 (9th Cir. 2004); 11 U.S.C. Sec. 524(a)(2).

Under bankruptcy law, all legal work performed by listed-creditor attorneys Marcus etc for debtor Clark is **deemed to be *fully-discharged pre-petition debt*** in Clark's Chapter 7 "no asset" bankruptcy. Debts cannot be shifted onto another creditor (Kinney). In re Castellino Villas, A.K.F. LLC, 836 F.3d 1028, 1033-1037 (9th Cir. 2016).

State courts have ***never*** accepted 11 U.S.C. Sec. 524(a) restraints and ignored that bankruptcy law has completely preempted state law. In re Gruntz, 202 F.3d 1074, 1078-1084 (9th Cir. 2000).

Here, state courts have issued "final" attorney fee award orders to Clark, but those "final" orders are still ***automatically*** void under Sec. 524(a)(1).

Some courts have argued that these bankruptcy and VL issues are "inextricably intertwined" with "final" state and federal court decisions.

That is an *unsupportable* argument since a ***void*** order cannot be "inextricably intertwined" with a ***valid*** ruling because a *void* order is not accorded any dignity in the judicial system, **and** because *void* orders can be attacked at any time without violating the *Rooker-Feldman* doctrine. Sinochem Intern. Co. v. Malaysia Intern. Shipping Corp., 549 U.S. 422, 430-431 (2007); Kalb v. Feuerstein, 308 U.S. 433, 438, 60 S.Ct. 343, 345-46, 84 L.Ed. 370 (1940); Kougasian v. TMSL, Inc., 359 F.3d 1136, 1141 (9th Cir. 2004); 30A American Jurisprudence, Judgments, Secs. 43, 44, 45 (1958).

Some courts have argued that Kinney cannot go to federal court to challenge *void* state court orders [e.g. made void by 11 U.S.C. Sec. 524(a)(1)]. 28 U.S.C. Secs. 1331, 1343, 1441, 1443, and/or 1452.

That is an *unsupportable* argument since district courts have jurisdiction over bankruptcy law and since *Rooker-Feldman* and other preclusionary rules do **not** apply to a *facial* challenge of the Cal. VL law. District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 482-488 (1983).

Since all state court attorney fee awards in favor of Clark were ***"void"*** after July 2010 [e.g. because those decisions had to presume that discharged-debtor Clark still had "personal liability" to her own listed unsecured-creditor attorneys Marcus], ***nothing*** could be "inextricably intertwined" with those "void" orders. Pennzoil v. Texaco, Inc., 481 U.S. 1, 8-17 (1987). ***No valid order*** ever existed.

Some courts have argued that Kinney's VL status was due to his frivolous actions that had no merit, but those are *vague* terms that are being applied to Kinney *without* any testimony under oath and allowing cross-examination to determine the true facts [see Smith v. Robbins, 528 U.S. 259, 269-276 (2000) for "frivolous" and "without merit", and how those are determined]. The VL law is **not** relevant to Kinney's bankruptcy "creditor" rights.

Ongoing Bankruptcy Fraud

Each time listed unsecured-creditor attorneys Marcus etc file a motion for attorneys fees on

behalf of discharged-debtor Clark, they *admit* that 11 U.S.C. Sec. 524(a)(2) is being violated.

In claiming that Clark still owes them for legal fees is false and deceptive, the post-2010 motions for attorney fees means creditors Marcus etc (and attorney Chomsky) have ***committed bankruptcy fraud***. [e.g. 18 U.S.C. Sec. 152(2) {".. knowingly and fraudulently makes a false oath or account .."}; or Sec. 157(3) {".. makes a false or fraudulent representation, claim, or promise .."}].

The intentional acts by creditors Marcus etc are "*crimes*" with a potential for 5 years in jail; that means the crimes are *felonies* under Cal. law [Cal. Penal Code Sec. 17]. These intentional acts by creditors Marcus and attorney Chomsky are also predicate acts for RICO. Cadle Co. v. Flanagan, 271 F. Supp.2d 379, 383-391 (D. Conn. 2003).

Lies and Misdirection For 8+ Years

Creditors Marcus and contract-attorney Chomsky have lied to state and federal courts for years about their status and the consequences of their actions. Those willfully false and deceptive acts are further evidence of bankruptcy fraud "crimes".

For example, as of July 2012, Marcus represented to LASC Judge Scheper that Marcus could pursue attorney fee claims (based on emails to and from the trustee) even though only the trustee could pursue those claims under the *Bostanian* case.

On Aug. 17, 2012, Chomsky admitted attorneys Marcus etc were listed as unsecured creditors in Clark's 2010 Chapter 7 "no asset" bankruptcy.

However, on Oct. 6, 2016, Chomsky said attorneys Marcus etc "was a secured creditor" to the Ninth Circuit which resulted in an attorney fee award to Clark in Ninth Circuit #14-60081 [Dk #96]. That order is ***void*** pursuant to 11 U.S.C. Sec. 524(a)(1).

On Jan. 2, 2019, Chomsky said discharged-debtor "Clark is a *secured* judgment creditor" to Alameda County Superior Court Probate Dept. That was false since Clark was the 2010 Chapter 7 *debtor*.

Clark's docket for #2:10-bk-41323 shows attorneys Marcus never filed any motion to prove they had a "secured" claim [e.g. under 11 U.S.C. Sec. 506].

In March 2011, the bankruptcy court issued an "appear and defend" order to Clark during a CMC conference, but that was not a proper relief from stay motion under 11 U.S.C. Sec. 362 [with notice to all creditors] as Marcus/Chomsky have argued.

In Oct. 2012, the US Bankruptcy Court issued an abandonment order as to only the trustee, but Marcus/Chomsky have argued that gave them the "right" to recover attorney's fees for pre- and post-petition legal work (contrary to bankruptcy law).

Courts Refuse To Follow The Law

At all times, state and federal courts have refused to analyze and protect the rights of listed creditor Kinney. They have ignored inactions by creditors

Marcus [e.g. failure to prove in state court that their charging lien was valid per the *Mojtahedi* case; failure to prove in federal court that they had a "secured" interest per 11 U.S.C. Sec. 506].

Instead, the courts kept granting attorney fee award orders to discharged-debtor Clark for legal work by listed-creditors Marcus etc, and kept ignoring restrictions imposed by bankruptcy law.

Federal courts kept refusing to consider Kinney's removals, civil rights cases, and appeals [e.g. by making *sua sponte* dismissals, arguing these are *de-facto* appeals of state court fee award orders, and/or applying the *Rooker-Feldman* doctrine].

The federal courts have now applied overly-broad pre-filing orders to Kinney [e.g. Ninth Circuit #17-80256; USDC #3:18-cv-1041] and blocked Kinney's cases and appeals based on those pre-filing orders.

The federal courts are now *so bold* that Judge Chen *included a non-party* in his 2018 pre-filing order [i.e. Los Angeles next-door-neighbor Cooper who falsely reported Kinney and Kempton to the State Bar to stop them from having federal ADA and state nuisance laws applied to Cooper's unpermitted, encroaching fences that were built on the *public* right-of-way (and which still exist)].

Scope of the RICO Enterprise

When Judge Chen included *non-party* Cooper in his 2018 VL pre-filing order [USDC 3:18-cv-1041, he *conceded* the RICO "enterprise" against Kinney was broad in scope (see recent SCOTUS petition).

Kinney's civil rights case before Judge Chen was directed only at violations of bankruptcy law, but Cooper was NOT involved in matters related to bankruptcy law. Cooper was involved in: (1) the promotion of LASC Judge Grimes to a Justice; (2) the cover-up by COA2 Justices Rothschild and Chaney by willful misuse of the *Evans* case [for Cooper's and Grimes' benefit]; (3) the cover-up by the City of Los Angeles as to Kinney's rights in public right-of-ways [for Cooper's benefit]; and (4) Cooper's false complaint to the State Bar as to Kinney and Kempton [to silence them as to Judge Grimes, the *Evans* case, and rights-of-way issues]. Cooper was a high-level City of LA employee; and Judge Grimes' husband was an influential real estate developer in LA (and a frequent contributor to Judges' campaigns), so secret communications would have been easy. David Marcus' law firm was involved in denials of Kinney's rights as to streets in Laguna Beach (via the Overton case) and LA (next to Cooper's house) even though Kinney "won" Kempton v. City of Los Angeles, 165 Cal.App.4th 1344 (Cal. 2008). After that "win" in Aug. 2008, LASC Judge Lavin made Kinney a VL in Nov. 2008 for LASC #BC374938 [the fraud case where Marcus was Clark's attorney], even though Kinney *in pro per* did not have 5 losses in 7 years. Judge Lavin cited cases in which Kinney was the attorney for ***defendants*** (e.g. Schmidt and Chiu). Because of Justice Boren's unilateral acts, Kinney was *never* allowed to appeal Lavin's VL order.

The History In This Case

On May 22, 2018, Kinney filed: (1) a removal of one of Clark's attorney fee motions under 28

U.S.C. Sec. 1452; (2) a motion to re-open Clark's bankruptcy; **and** (3) a counter-claim and third-party complaint. Levin Metals v. Parr-Richm. Term., 799 F.2d 1312, 1315-16 (9th Cir. 1986).

On June 6, 2018, US Bankruptcy Judge Barry Russell dismissed all 3 filings. The appeals to BAP and then USDC were summarily dismissed.

On July 17, 2018, District Court Judge Gutierrez dismissed all those matters. [App. B, 3].

On Aug. 1, 2018, Kinney filed 3 appeals to the Ninth Circuit for the dismissal orders.

On Jan. 24, 2019, the Ninth Circuit refused to allow Kinney's appeals #18-56549, 18-56551 and 18-56552 to proceed forward [App. A, 1].

The courts mentioned that Kinney was subject to a pre-filing order for these appeals even though the appeals were from Article I US Bankruptcy Court orders, not from Article III US District Court orders [*see* Ninth Circuit #17-80256 order issued on Jan. 19, 2018]. This is part of the retaliation and cover-up to silence Kinney. The Ninth Circuit has played this game before; see SCOTUS petition for Ninth Circuit #18-16402 and District Court Judge E.M. Chen's dismissal and 2018 pre-filing order in USDC #3:18-cv-1041.

For 8+ years, listed unsecured-creditors attorneys Marcus etc have filed motion(s) for more attorney fees in LASC #BC354136 on behalf of Chapter 7 "no asset" discharged-debtor Clark.

In each situation, Los Angeles County Superior Court ("LASC") Judge Barbara Scheper has issued attorney fee "cost" order(s) against listed creditor Kinney and in favor of debtor Clark and her listed creditor attorneys Marcus etc by ignoring: (A) that the limits of 11 U.S.C. Sec. 524(a)(1) and (2) apply here; and (B) that attorneys Marcus etc have never complied with the *Goncalves* and *Mojtahedi* cases in state court as to their automatic conflict of interest "charging lien" contained in their 2007 hourly-fee retainer with client Clark.

Given these events, these judges and justices are operating on a collaborative basis with respect to punishing Kinney, so Kinney has been unable to determine which judges and justices should be disqualified. Williams v. Pennsylvania, __ U.S. __, 136 S.Ct. 1899 (2016); 14th Amendment.

The courts are punishing Kinney for conducting litigation, and imposing penalties on him, because he is exercising his federal rights [e.g. under the 5th Amendment] that a federal court itself would **not** penalize. Donovan v. City of Dallas, 377 U.S. 408, 412-414 (1964). That violates the Supremacy Clause. U.S. Const. Art. VI, Sec. 2.

Kinney's grievances arise from the intentional acts of a **non-party**, attorneys Marcus etc, who have represented Clark from 2007 onward, and who were listed as "unsecured" creditors in Clark's 2010 Chapter 7 "no asset" bankruptcy.

The state courts fail to remedy that prior injury by non-parties Marcus etc; **and** federal courts refuse

to accept jurisdiction over violations of bankruptcy law and ongoing bankruptcy fraud.

Each time listed-unsecured-creditor attorneys Marcus etc file a motion for attorney's fees on behalf of discharged-debtor Clark, they *admit* that 11 U.S.C. Sec. 524(a)(2) is being violated because ***Clark has no obligations*** to any listed creditor [e.g. Marcus, Kinney, or Kempton] since Clark is a discharged Chapter 7 "no asset" debtor.

Each time a court awards attorneys fees to Clark and her listed-creditor attorneys Marcus etc, that court **admits** that FEDERAL law is being violated since U.S.C. Sec. 524(a) applies to the motion and order because debtor Clark must still have personal liability to creditor Marcus under the 2007 hourly-fee retainer as a *prerequisite* to the granting of any order.

Each time a court awards attorneys fees to Clark and her own listed-creditor attorneys Marcus etc, that court **admits** that STATE law is being violated by those attorneys because they ***never proved*** the validity of their 2007 hourly-fee retainer with the attorney's or charging lien. Goncalves v. Rady Children's Hospital San Diego, 865 F.3d 1237, 1255 fn. 5 (9th Cir. 2017) [citing "*Mojtahedi v. Vargas,* 228 Cal.App.4th 974, 176 Cal.Rptr.3d 313, 316 (2014)"].

Judges Have No Immunity

State and federal judges and justices, and state and federal officers [e.g. bankruptcy trustee], who issued, affirmed or ignored orders, judgments or

sanctions against co-buyers Kinney and Kempton, ***knew the orders were "void"*** under FEDERAL law [e.g. *knew* there was the ***clear absence*** of all jurisdiction and thus no immunity as explained in USDC 3:18-cv-1041-EMC, Dk #44; see SCOTUS petition for Ninth Circuit 18-16402]; they include:

(a) Los Angeles County Superior Court Judge Barbara Scheper in #BC354136 [Clark's lack of title vs. her unrecorded, secret easement given to neighbor Cooper] and Judge Steven Kleifield in #BC374938 [Clark's fraud and non-disclosure];

(b) Calif. Court of Appeal, Second Appellate Dist., Justices Roger Boren, Frances Rothschild, Victoria Cheney, and Jeffrey Johnson [and others as shown by dockets];

(c) Alameda County Superior Court Judge Delbert Gee in Kimberly Kempton's probate estate #RP13686482 [e.g. as to Clark's "claims"];

(d) former Cal. Attorney General Kamala Harris and current Cal. Attorney General Xavier Becerra [who ignored letters from Kinney];

(e) Cal. State Bar tribunal hearing officers Pat McElroy, Honn, Purcell and Epstein [in the 2012-2014 disbarment proceedings for Kinney];

(f) US Trustee, Central District of California (Los Angeles), Peter C. Anderson [who has the job of uncovering bankruptcy fraud and abuse];

(g) US Bankruptcy Court, Central Dist. of Cal., Judges Richard Neiter and Barry Russell;

(h) US District Court Judges Philip S. Gutierrez, Edward Chen, and Vince Chhabria [and others as shown by dockets];

(i) Ninth Circuit Judges Bea, Bybee, Gould, Levy, Owens, Paez, Silverman, Thomas, and Wallace [and others as shown by dockets]; and

(j) the Justices of this Court [due to inaction].

Likewise, these same people (who issued, affirmed or ignored orders, judgments or sanctions against co-buyers Kinney or Kempton) ***knew the orders were "void"*** under STATE law due to ***failures*** by Clark's attorneys David Marcus etc to comply with the *Goncalves* and *Mojtahedi* cases as to proving their 2007 hourly-fee retainer and its automatic conflict-of-interest attorney's (aka charging) lien were valid and enforceable as of Dec. 2008 onward **before** attorneys Marcus could recover attorney's fees from their client Clark *and* **before** attorneys Marcus could shift attorney's fees owed by Clark onto co-buyers Kinney and Kempton via the 2005 purchase contract.

COA2 Justice Jeffrey Johnson is the same Justice who was named in a 1/4/19 Calif. Comm. on Jud. Performance's Notice of Formal Proceedings (and the same Justice who concurred with *Kinney v. Clark* in 2017). Justice Johnson filed an Answer on 1/22/19. Justice Johnson could be ready to "blow the whistle" on Justices Rothschild and Cheney [e.g. as to LASC Judge Grimes and the *Evans* case], so it was time to get rid of him. This shows that a "culture of silence" exists in COA2.

Likewise, Ninth Circuit Judge Alex Kozinski had been harassing staff and others for 3+ decades. In response to publicity, Judge Kozinski retired in Dec. 2018. This shows that a "culture of silence" exists in the Ninth Circuit.

In 2017, the COA2 Justices gave examples of bankruptcy law violations, but ***ignored ongoing violations*** of 11 U.S.C. Sec. 524(a); see Kinney v. Clark, 12 Cal.App.5th 724 (Cal. 2017) [e.g. see pgs. 728-731 as to an attorney fee order issued in July 2012 in favor of Clark based on Marcus' motion for pre-petition fees when the trustee had the ***sole authority*** to seek those fees because Clark's Chapter 7 discharge didn't occur until Aug. 2012]. Judge Scheper's July 2012 attorney fee order is contrary to Bostanian v. Liberty Savings Bank, 52 Cal.App.4th 1075, 1078-1087 (Cal. 1997) ***and*** void under 11 U.S.C. Sec. 524(a)(1). In addition, Marcus' motion violates 11 U.S.C. Sec. 524(a)(2).

OPINIONS BELOW

The decision(s) sought to be reviewed are the:

1. Jan. 24, 2019 "final" decision by the Ninth Circuit denying Kinney's right to proceed with his appeal because it was "*so insubstantial*" [Ninth Circuit Dk #2; Appendix A, page 1][1].

2. Nov. 7, 2018 dismissal order by US District Court Judge Gutierrez [App. B, 3].

JURISDICTION

The jurisdiction of this Court is invoked under Title 28, United States Code ("U.S.C."), Secs. 1254(1), 1257(a), and/or 2101(c).

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[1] Citation method is Appendix ("App."), exhibit letter, and sequential page number.

Here, the US District Court improperly dismissed Kinney's matters related to bankruptcy [App. B].

Next, the Ninth Circuit improperly denied Kinney any right to continue with his appeal [App. A].

As noted in prior petitions, the courts have not followed **and** are still not following bankruptcy law (or state law) as to listed *creditor* Kinney [e.g. see his petitions 18-1096, 18-1095, 18-906, 18-908, 17-219, 16-252, 16-606, and 16-1182 to name just a few]. Bosse v. Oklahoma, 580 U.S. ___, 137 S.Ct. 1, 196 L.Ed.2d 1 (2016).

The courts made rulings that violated Kinney's federal constitutional rights [e.g. 1st Amendment] and federal civil rights under color of authority or official right [e.g. 42 U.S.C. Sec. 1983], so judicial and sovereign immunities were limited or eliminated [e.g. for ***prospective*** injunctive relief]. Fitzpatrick v. Bitzer, 427 U.S. 445, 448 (1976); Pennhurst State Sch. & Hosp. v. Halderman, 465 U.S. 89, 102-106, 123 n. 34 (1984); Patrick v. Burget, 486 U.S. 94, 101-104 (1988); Pennsylvania v. Union Gas Co., 491 U.S. 1, 57 (1989); F.T.C. v. Ticor Title Ins. Co., 504 U.S. 621, 631-638 (1992).

Ruling(s) that Kinney was attempting to appeal are ***void*** under bankruptcy law which completely pre-empted all state court matters filed after to July 2010 [e.g. LASC BC354136 and BC374938]. Maritime Electric Co., Inc. v. United Jersey Bank, 959 F.2d 1194, 1203-1204 (3rd Cir. 1991); In re Hamilton, 540 F.3d 367, 370-376 (6th Cir. 2008); In re Miles, 430 F.3d 1083, 1087-1089 (9th Cir. 2005);

In re Gonzales, 830 F.2d 1033, 1034-1036 (9th Cir. 1987); Hawaii ex rel Louie v. HSBC Bank Nevada, N.A., 761 F.3d 1027, 1033-1034 (9th Cir. 2014).

Kinney's appeal should have been allowed, and judges and justices should have vacated all "cost" orders in favor of discharged-debtor Clark. Young v. Tri-City Healthcare Dist., 210 Cal.App.4th 35, 41-42 and 49-53 (Cal. 2010); Plaza Hollister Ltd. Ptsp. v. County of San Benito, 72 Cal.App.4th 1, 13-22 (Cal. 1999); Giset v. Fair Political Practices Comm., 25 Cal.App.4th 658, 701 (Cal. 2001).

Once Clark filed a Chapter 7 *no asset* bankruptcy petition in 2010, Clark was ***no longer obligated*** for attorney's fee owed to Marcus etc, **or** under the 2005 purchase contract with co-buyers Kinney etc.

Listed-unsecured-creditor attorneys Marcus etc ***never*** proved their lien was valid or secured. 11 U.S.C. Secs. 506; FRBP 3001, 3002 and 6009; U.S. v. Ron Pair Enterprises, Inc., 489 U.S. 235, 238-240 (1989); Saltarelli & Steponovich v. Douglas, 40 Cal.App.4th 1, 3-7 (Cal. 1995); Mojtahedi v. Vargas, 228 Cal.App.4th 974, 976-980 (Cal. 2014).

The rulings by COA2 and Cal. Supreme Court were abuses of discretion as to ***void*** orders made by LASC Judge Scheper. Olson v. Cory, 35 Cal.3d 390, 400-401 (Cal. 1983).

The denial of Kinney's appeal rights [e.g. his petition for review of void orders] violated his First Amendment rights. United Mine Workers v. Illinois State Bar Ass'n, 389 U.S. 217, 222 (1967);

Moy v. United States, 906 F.2d 467, 470 (9th Cir. 1990); Thomas v. Collins, 323 U.S. 516, 530 (1945).

Any issues regarding Clark's bankruptcy or her discharge are still controlled by bankruptcy law, and all courts must follow that law. American Railway Express Co. v. Levee, 263 U.S. 19, 20-21 (1923); Cohen v. California, 403 U.S. 15, 17-18 (1971); Michigan-Wisconsin Pipe Line Co. v. Calvert, 347 U.S. 157, 159-161 (1954).

The powers of the state appellate court are limited by explicit limitations in state statutes, explicit limitations found in decisions by the state supreme court, and/or by civil and constitutional rights of the appellants. Canatella v. State of California, 304 F.3d 843, 847-854 and n.6 and 14 (9th Cir. 2001).

The courts have again denied Kinney's First Amendment rights with respect to bankruptcy law violations and to overbroad applications of VL laws [e.g. by denying his right to appeal]. Boddie v. Connecticut, 401 U.S. 371, 382-383 (1971).

Kinney's Cases/Appeals Had Merit

Kinney's cases and appeals had "merit" [e.g. given ongoing fraud]. 11 U.S.C. Sec. 350; FRBP 5010. Kinney was a "creditor" contrary to Bankruptcy Court Judge Neiter's Oct. 18, 2012 abandonment order; that order does not give Clark any "right" to shift discharged debt or attorney's fees onto Kinney. Kinney as a "creditor" has standing to protest ongoing violations of bankruptcy law by debtor Clark, creditor Marcus, and Chomsky.

These felonies also violate 18 U.S.C. Secs. 1346 and/or 1951, and create new civil rights and RICO claims [e.g. since creditor attorneys Marcus etc and contract-attorney Chomsky have operated a RICO "enterprise" to extort money from Kinney via ***void*** attorney fee awards]. United States v. Inzunza, 638 F.3d 1006 (9th Cir. 2009); United States v. Frega, 179 F.3d 793 (9th Cir. 1999).

Here, listed unsecured-creditor attorneys Marcus etc and Chomsky are violating 18 U.S.C. Secs. 152 and/or 157 with respect to: (i) making false oaths under 18 U.S.C. Sec. 152(2); (ii) making false declarations under 18 U.S.C. Sec. 152(3); (iii) presenting false claims under 18 U.S.C. Sec. 152(4); (iv) receiving material property from debtor Clark under 18 U.S.C. Sec. 152(5); **and/or** (v) repeatedly making false or fraudulent representations under 18 U.S.C. Sec. 157(3).

Ongoing Crimes

Under **federal law**, contract-attorney Chomsky (who was hired after July 2010) is the *second* person necessary to create and participate in a RICO "enterprise" as to bankruptcy fraud for the improper enrichment of listed-creditor Marcus; and that is a predicate act for a civil RICO action. 18 U.S.C. Secs. 1961 etc; Cadle Co. v. Flanagan, 271 F. Supp.2d 379, 383-391 (D. Conn. 2003).

Under **state law**, a felony results from a law that has more than 1 year of jail time. Thus, contract-attorney Chomsky has been and continues to be an accessory-after-the-fact **and** co-planner of new felonies with listed unsecured-creditor attorneys

David Marcus et al [e.g. due to their exposure to 5 years in jail via 18 U.S.C. Sec. 152 or 157]. Cal. Penal Code Secs. 17, 31 and 32; People v. Partee, 21 Cal.App.5th 630, 633-642 (Cal. 2018).

Overview of Retaliation

All of these judicial officers ***knew*** that:

A. In the 1998 to 2000 time frame, Kinney was the attorney for commercial fisherman Van Scoy as to Shell Oil's excessive toxic selenium discharges into SF Bay, but Van Scoy's claims against a state agency were *never* sent back to state court after the Ninth Circuit agreed the Regional Water Quality Control Board had 11th Amendment immunity.

B. In the 2002 to 2006 time frame, Kinney *never* got the Orange County Superior Court and the Court of Appeal, Fourth App. Dist. ["COA4"], to make CCP Sec. 1060 determinations in a 2001 case filed by Three Arch Bay Community Services District ("TABCSD") against Kinney [e.g. for ongoing nuisances caused by TABCSD; and for an encroaching fence built by Overton; see Kinney v. Overton, 153 Cal.App.4th 482 (Cal. 2007)].

C. In the 2007 to 2010 time frame, LASC Judge Elizabeth Grimes, LASC Judge Luis Lavin, LASC Judge Richard Fruin, Jr., and Justices in the COA2 retaliated against Kinney [e.g. by ignoring Kempton v. City of Los Angeles, 165 Cal.App.4th 1344 (Cal. 2008); when making Kinney a VL].

There were 100% directly-inconsistent decisions by Judge Grimes and COA2 as to the failure by

seller Michele Clark to give "clean" or clear title to co-buyers Kinney etc because Clark gave an undisclosed and unrecorded easement to the next-door neighbor Carolyn Cooper for two encroaching fences. This was an intentional misapplication of the *Evans* case [Evans v. Fraught, 231 Cal.App.2d 698, 705 (Cal. 1965)] as to "clean" title vs. Clark's unrecorded easement; and the COA2 still refuses to correct that error. Moore v. Kaufman, 189 Cal.App.4th 604, 614-617 (Cal. 2010).

LASC Judge Lavin ruled Kinney was a VL on Nov. 19, 2008 without supporting facts [e.g. Kinney was no longer a party]; and COA2 Justice Boren unilaterally dismissed Kinney's appeal(s) from 2009 onward regarding that 2008 VL order [***even though*** Cal. Const., Art. VI, Sec. 3, requires a 3 justice panel to make a decision; **and** any pre-filing order is subject to a mandatory injunction under CCP Secs. 525 and 916(a), so the VL order is **not** final until an appeal occurs]. Paramount Pictures Corp. v. Davis, 228 Cal.App.2d 827, 837-838 (Cal. 1964).

LASC Judge Fruin ignored Cal. Civil Code Sec. 3483 for a fence built by neighbor Cooper in a public right-of-way on a street abutting Kinney's LA property; and Kinney's 2008 published opinion.

D. In the 2010 to 2012 time frame, LASC Judge Scheper, the COA2 (including Justice Roger Boren), and US Bankruptcy Court Judge Richard Neiter ignored state and bankruptcy law as to Kinney.

LASC Judge Scheper granted a 7/10/12 attorney's fee award to Clark contrary to bankruptcy law.

Justice Boren of the COA2 issued In re Kinney, 201 Cal.App.4th 951 (Cal. 2011) for which the facts were misstated and in which Kinney was not a party.

Judge Neiter issued the Oct. 18, 2012 abandonment order in which he "held" that Kinney was not a "creditor" in Clark's 2010 Chapter 7 bankruptcy which is *blatantly false* because Kinney was specifically listed by Clark, and his "status" as a creditor cannot be changed by an abandonment order issued after Clark's Aug. 2012 discharge.

E. In the 2013 to 2017 time frame, LASC Judge Scheper, the COA2, the COA4, the district courts, and the Ninth Circuit ignored both state law and federal bankruptcy law in regards to Kinney.

F. After Nov. 2008, the intentional misapplication of the VL law [e.g. by imposing VL law upon an attorney who was not a party] was being used to "justify" ***compelled silence*** imposed on Kinney.

G. After 2012, the intentional misapplication of bankruptcy law by state and federal courts [e.g. by saying Kinney was not a listed creditor] was used to "justify" ***compelled silence*** on Kinney.

H. Kinney's losses were caused by the intentional misapplication of law [e.g. the *Evans* case; the VL law used against an attorney] or by misstatements of fact [e.g. which ignored Kinney was listed as a bankruptcy "creditor" by debtor Clark, and was not a party in several cases even though Kinney was treated as a party by Justice Boren].

I. The retaliation against Kinney has been justified by the improper use of the VL law which then led to Cal. State Bar disbarment proceedings.

J. No opponent or judicial officer has ever cited legal authority that 42 U.S.C. Sec. 1983 civil right claims against a state actor [e.g. acting as a prosecutor under color of authority] can be totally ***precluded*** by simply labeling Kinney's appeals as *de-facto* appeals of prior state court decisions [e.g. since federal civil rights laws are separate and district from the state laws or rights].

K. No opponent or judicial officer has ever cited legal authority that 42 U.S.C. Sec. 1983 civil right claims against a state or federal actor [e.g. acting as a prosecutor under color of authority] can be totally ***precluded*** by the use of *Rooker-Feldman* or other preclusion doctrines [e.g. since there has *never* been a trial or hearing on the merits of any issue with testimony under oath and cross-examination].

For example, the *Rooker-Feldman* doctrine does not apply when a Judge or Justice does an "executive action" such as unilaterally denying Kinney a right to appeal based on a VL law [e.g. for LASC #BC354136]. Verizon Maryland, Inc. v. Public Service Commission, 535 U.S. 635, 644 n. 3 (2002).

If Kinney is not a party in the particular case [e.g. LASC Case #BC374938], the *Rooker-Feldman* doctrine does **not** apply to a federal court lawsuit filed by Kinney [e.g. a civil rights case]. Johnson v. DeGrandy, 512 U.S. 997, 1006 (1994).

L. The 2005 purchase of Clark's Los Angeles Fernwood property by buyers Kinney and Kempton was made *irrelevant* to ongoing retaliation by bankruptcy-debtor Michele Clark and her listed creditor attorneys Marcus etc (and by COA2 Justices, Cal. Supreme Court Judges and federal court Judges) ***after*** Clark declared Chapter 7 bankruptcy on July 28, 2010.

M. The 2005 real estate contract "fee" clause is unenforceable by buyers Kinney or Kempton (and by seller Clark) because all debts and obligations of seller Clark under that 2005 purchase contract with buyers Kinney and Kempton, and under her 2007 hourly-fee retainer with attorneys Marcus etc, were completely eliminated so all "attorney's fee" clause(s) are unenforceable from July 2010 onward by operation of bankruptcy law.

N. These acts are damaging Kinney's ongoing interstate businesses [e.g. in Colorado]. Keith v. Kinney, 961 P.2d 516 (Colo. App. 1997); Kinney v. Keith, 128 P.3d 297 (Colo. App. 2005); Keith v. Kinney, 140 P.3d 141 (Colo. App. 2006).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This Court has jurisdiction to address violations of state or federal law by state or federal courts [e.g. Cal. Court of Appeal; Cal. Supreme Court, District Courts; Ninth Circuit].

The federal courts have exclusive and original jurisdiction under 28 U.S.C. Sec. 1331, 1343,

1441, 1443 and 1452, and under 42 U.S.C. Sec. 1983 etc, to consider violations of federal *constitutional* rights [e.g. 1st Amendment rights] **and** to consider violations of other federal laws [e.g. violations of the Commerce Clause; of the "honest services" law; of the Hobbs Act; of 11 U.S.C. Sec. 524(a)(1) and (2); **and** of bankruptcy fraud which is a crime under 18 U.S.C. Secs. 152 etc]. However, the courts are ignoring all that.

STATEMENT OF THE CASE

This petition involves courts who deny Kinney's attempts to appeal orders by using overbroad VL laws against Kinney and who violate bankruptcy law; **and** federal courts who refuse to enforce bankruptcy laws as to shifting debts onto Kinney that are deemed fully discharged as to Chapter 7 debtor Clark [e.g. by dismissing Kinney's appeal].

SUMMARY OF LOWER COURT PROCEEDINGS

In May 2018, Kinney filed a removal of Clark's state court motion for more fees, a motion to re-open Clark's bankruptcy, and a counter-claim.

In June 2018, Bankruptcy Court Judge Russell dismissed all matters.

On July 17, 2018, District Court Judge Gutierrez dismissed all matters. [App. B, 3].

On Jan. 24, 2019, the Ninth Circuit denied Kinney the right to continue his appeal with a "*so insubstantial*" rationale [App. A, 1].

This petition addresses the: (1) ongoing retaliation against Kinney by *forcing his silence;* (2) ongoing federal law violations to his detriment as a listed-creditor; (3) "taking" of his property [e.g. over $500,000]; **and** (4) damaging of his existing interstate commerce businesses. This was done by ignoring Kinney's rights as a listed creditor in Clark's 2010 Chapter 7 "no asset" bankruptcy.

STATEMENT OF FACTS

The state courts may not exercise jurisdiction inconsistent with the Constitution of the United States, the Calif. Constitution, or applicable statutes under state or federal law. The federal courts may not ignore its jurisdiction to adjudicate ongoing violations of bankruptcy law and fraud.

In July 2010, Clark filed a Chapter 7 "no asset" bankruptcy petition; she listed Kinney and Marcus as creditors. As a result, all pre-petition contracts [e.g. 2005 real estate purchase contract between seller Clark and buyers Kinney etc; and 2007 hourly-fee retainer between client Clark and attorneys Marcus] are ***unenforceable*** as to fees.

As ***admitted*** in the 2017 state court opinion, after Clark's bankruptcy in 2010 and discharge in 2012, the courts have continued to grant attorney's fee "cost" award orders in favor of debtor Clark and creditor Marcus (and against creditor Kinney) based on pre-petition contracts [e.g. for post-petition legal work by Marcus] which are *automatically void* under 11 U.S.C. Sec. 524(a)(1).

Discharged-debtor Michele Clark and her listed unsecured-creditor attorneys David Marcus etc have continued to file motions for attorneys fees based on pre-petition contracts that are *prohibited* by 11 U.S.C. Sec. 524(a)(2).

On 11/7/18, Judge Gutierrez ignored this [App. B].

On 1/24/19, Kinney's appeal was not allowed to continue in the Ninth Circuit [App. A].

REASONS FOR GRANTING THE WRIT OF CERTIORARI

Certiorari Should Be Granted Because Both State and Federal Courts Continue to Ignore Federal and State Law Which Violates Kinney's First Amendment Rights; And The Method and Application of "Alleged" Due Process By The Courts Severely Impairs Meaningful Review of Important Questions of Federal Law, And Severely Impairs Rights Guaranteed Under The First, Fourth, Fifth, Eighth And Fourteenth Amendments; And Is In Conflict With Decisions Of This Court And Other United States Court Of Appeals.

The judges and justices have *compelled silence* upon Kinney in direct violation of the *Janus, NIFLA* and *Riley* decisions **and** in direct violation of bankruptcy law given Kinney's *undisputed* status as a "listed" creditor. Janus v. American Federation of State, County and Municipal Employees, Council 31, 585 U.S. __ (2018); National Institute of Family and Life Advocates v.

Becerra, 585 U.S. ___ (2018); Riley v. National Federation of the Blind of North Carolina, Inc., 487 U.S. 781, 796-797 (1988).

The judges and justices have acted as *prosecutors* of Kinney, **not** as *neutral arbitrators* of disputes, when they denied his appeal rights. The courts have also violated Kinney's federal constitutional and civil rights, the "honest services" law, and the Hobbs Act. Supreme Court of Virginia v. Consumers Union, 446 U.S. 719, 736 and n. 15 (1980); Hafer v. Melo, 502 U.S. 21, 25-31 (1991); Devereaux v. Abbey, 263 F.3d 1070, 1074 (9th Cir. 2001); Canatella v. State of California, 304 F.3d 843, 847-854, n. 6 and 14 (9th Cir. 2002); Bauer v. Texas, 341 F.3d 352, 356-360 (5th Cir. 2003); In re Justices of Supreme Court of Puerto Rico, 695 F.2d 17, 24 (1st Cir. 1982); United States v. Murphy, 768 F.2d 1518, 1523-1539 (7th Cir. 1985); Zarcone v. Perry, 572 F.2d 52, 54-57 (2nd Cir. 1978).

The courts were retaliating against Kinney (as done by *In re Kinney* and *Kinney v. Clark* rulings). That has caused irreparable injury, and injury to his property, interstate businesses, cases, appeals, and past clients. 42 U.S.C. Sec. 1983; Hernandez v. Sessions, 872 F.3d 976, 994 (9th Cir. 2017).

The courts' actions were done to restrict Kinney's First Amendment rights [e.g. as to his appeals], to restrict his fair access to the courts, **and** to retaliate against him. Hooten v. H Jenne III, 786 F.2d 692 (5th Cir. 1986); United States v. Hooten, 693 F.2d 857, 858 (9th Cir. 1982); Sloman v. Tadlock, 21 F.3d 1462, 1470 (9th Cir. 1994);

Soranno's Gasco, Inc. v. Morgan, 874 F.2d 1310, 1313-1320 (9th Cir. 1989); Lacey v. Maricopa County, 693 F.3d 896, 916 (9th Cir. 2012).

Kinney has the right "to petition the Government for a redress of grievances" including a right to a review by appeal which is being ***consistently denied*** to Kinney without just cause in both state and federal courts. That First Amendment Right is "one of the most precious of the liberties safeguarded by the Bill of Rights". BE & K Constr. Co. v. NLRB, 536 U.S. 516, 524 (2002) [quoting United Mine Workers v. Illinois Bar Assn., 389 U.S. 217, 222 (1967)].

A standard of strict scrutiny should be applied to procedural barriers made by rule or statute, as applied in appellate courts, which chill or penalize the exercise of First Amendment rights, and act to limit review by a higher court. "The consideration of asserted constitutional rights may not be thwarted by simple recitation that there has not been observance of a procedural rule with which there has been compliance in both substance and form, in every real sense." NAACP v. Alabama ex rel. Flowers, 377 U.S. 288, 297 (1964).

Fundamental to the 14th Amendment's right to due process of law is the opportunity to be heard. Grannis v. Ordean, 234 U.S. 385, 394 (1914).

When a person is deprived of his rights in a manner contrary to the basic tenets of due process, the slate must be wiped clean in order to restore the petitioner to a position he would have

occupied if due process had been accorded to him in the first place. Peralta v. Heights Med. Ctr., Inc., 485 U.S. 80, 86-87 (1988).

Although a particular court is not required to provide a right to appellate review, procedures which adversely affect access to the appellate review process, which the court has chosen to provide, requires close judicial scrutiny. Griffin v. Illinois, 351 U.S. 12 (1956). This applies to the state courts in California and to federal courts.

An appeal cannot be granted to some litigants and capriciously or arbitrarily denied to others without violating the federal Equal Protection Clause. Smith v. Bennett, 365 U.S. 708 (1961).

Certiorari should be granted to provide guidance on the method and manner in which the federal and state courts apply, restrict or summarily deny the right of access to the courts and force silence on "difficult" attorneys and *pro se* litigants.

As to actions by the courts, an appearance of impropriety, whether such impropriety is actually present or proven, weakens our system of justice. "A fair trial in a fair tribunal is a basic requirement of due process." In re Murchison, 349 U.S. 133, 136 (1955).

The courts have ignored that post-2010 award orders were all "void" [e.g. 11 U.S.C. 524(a)(1)]; and "void" orders cannot support subsequent decisions. Sinochem Intl. Co. v. Malaysia Intl. Ship Corp., 549 U.S. 422, 430 (2007); Plaza Hollister Ltd. Ptsp v.

Cty of San Benito,72 Cal.App.4th 1, 13-22 (Cal. 1999); Airlines Reporting Corp. v. Renda, 177 Cal.App.4th 14, 19-23 (Cal. 2009).

The courts have ***ignored*** Kinney's right to be free from retaliation, and the ***obligation*** of federal courts to determine all issues. In re Isaacs, 895 F.3d 904, 910-911 (6th Cir. 2018); In re McLean, 794 F.3d 1313, 1321-1325 (11th Cir. 2015); Bulloch v. United States, 763 F.2d 1115, 1121-1122 (10th Cir. 1994); McCarthy v. Madigan, 503 U.S. 140, 146 (1992); Colorado River Water Conservation District v. United States, 424 U.S. 800, 817-818 (1976).

The *Bosse* decision requires courts to follow the law, but none have done that as to *"creditor"* Kinney. Bosse v. Oklahoma, 580 U.S. __, 137 S.Ct. 1 (2016); Orner v. Shalala, 30 F.3d 1307, 1309-1310 (10th Cir. 1994).

CCP Sec. 391(b) states: "'Vexatious litigant' means a person who...(1) In the immediately preceding seven-year period has commenced, prosecuted, or maintained **in propria persona** at least five litigations ... that have been (i) **finally determined** adversely to that person...[*i.e. AFTER completing an appeal*]...(2)...repeatedly relitigates or attempts to relitigate, **in propria persona**,... (*or*) (3) In any litigation while acting **in propria persona,** repeatedly files...motions" [*example* and **emphasis** *added*].

Since Kinney's appeals were **all** prematurely dismissed or prevented, **none** of his cases after Jan. 2009 were "finally determined" [e.g. App. B, 4-

5]. Attorneys with clients [e.g. Lavin's 2008 order], **and** client "puppets" with attorneys [baseless and willfully inflammatory *In re Kinney* phrasing], are excluded from VL laws. Kinney was **never** a VL so all pre-filing orders are **void** [e.g. clear absence of all jurisdiction]. This creates First Amendment retaliation claims [e.g. the State Bar also used unjustified VL labels to disbar Kinney].

CONCLUSION

The following (and petition) should be granted.

This Court should *void* all orders, judgments and sanctions issued after July 28, 2010 in favor of Chapter 7 discharged-debtor Clark as to any *debts owed* to her unsecured-creditor attorneys Marcus [11 U.S.C. Sec. 524(a)(1)].

This Court should *rule* that unsecured-creditor attorneys Marcus and contract-attorney Chomsky have *repeatedly* violated 11 U.S.C. Sec. 524(a)(2) by filing motions for attorney's fees for Clark.

This Court should *advise* the US Attorney's Office and FBI of this fraud (18 U.S.C. Secs. 152, 157 and 158).

Dated: 4/16/19 By:___/s/_____
Charles Kinney