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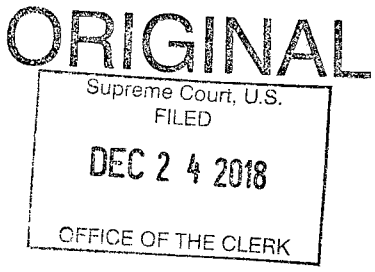

Supreme Court of the United States

STEVEN CLAYTON THOMASON

Petitioner,

v.

United States Court of Appeals for the Eleventh Circuit

Respondent,

On Petition for A Writ of Certiorari

To The 11TH Circuit U.S. Court of Appeals

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Whether a Mortgage Loan Modification from a plaintiff's loan servicer is sufficiently related to the meaning of "real estate-related transaction" under the FHA to give rise to a right of action. **(The 11th Circuit U S Court of Appeals is Undecided on this question and No Published Opinion)**
2. Whether Thomason Criteria for Mandamus to Jury Trial was met?

3. Whether Thomason's Redacted Call Logs within Respa Reports is privileged or frivolous, and should be allowed to proceed to Appeal as an indigent?

4. Whether the 11th Circuit Court's certification that appeal is not taken in good faith conflicts with a Pre Order of the 11th Circuit's Order in Thomason's Appeal 17-13205-J wherein **Judges MARCUS, WILSON AND JULIE CARNES stated the following:** "Rather, this order is reviewable in an appeal from the final judgment, and Thomason can challenge it then".

PARTIES TO THE PROCEEDINGS

The following were parties to the proceedings in the United States Court of Appeals for the Eleventh Circuit:

1. Steven Clayton Thomason filed an appeal from the district court's denial of his petition for a Jury Trial of his Homestead Claims.

2. Indy Mac Bank, Eva Bank, One West Bank, Ocwen Loans LLC, Mortgage Electronic Systems Inc, Deutsche Bank was the named respondents in the lower-court proceedings. District Judge Hon Myron Thompson

3. The following are parties to the proceeding in this Court: Steven Clayton Thomason is the Petitioner. The United States Court of Appeals for the Eleventh Circuit is the Respondent.

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STATEMENT OF JURISDICTION

The United States Supreme Court Exercises Jurisdiction over Final Appeals from the 11th Circuit U.S. Court of Appeals under the All Writs Act, 28 U.S.C. § 1651. The 11th Circuit decision was September 26, 2018 and this Petition is filed 12-19-2018 as such is within the 90 days to seek Review in the U.S. Supreme Court.

STATEMENT OF THE CASE

1. Application by the Appellant for a mandamus to require the 11th Circuit to recall its Judgment and allow Thomason to proceed in Forma Pauperis and to order a Jury trial to hear Appellant's Merits and Legal Claims of dishonest Banking Practices, that sent this Country into a recession and caused thousands of Citizens to loose their home to corrupt banking practices is both regularly found and fair on its face *held* within the appellate jurisdiction of this Court. As long ago as 1918, the Supreme Court recognized mandamus as

the appropriate vehicle to cure erroneous denials of a civil jury trial. (See *In re Simons*, 247 U.S. 231 (1918).)

2. Steven Clayton Thomason filed a Civil Suit on July 11, 2012 alleging Defendants have discriminated in the making and servicing of said mortgage loans and claims under Home Affordable Modification Program (HAMP) and Real Estate Settle Procedures Act (RESPA).
3. OWB then moved to dismiss the Complaint. (Doc 6) On September 5, 2012 Magistrate Judge Moore entered a Report and Recommendation finding the complaint should be dismissed with prejudice. (See Doc 15). On September 19, 2012 Thomason filed a motion to Amend the Complaint to add additional claims and defendants. (See Doc. 17.)
4. On March 28, 2013, the District Court dismissed Thomason's claim with prejudice and denying Thomason's motion to amend. (See Docs. 30-31). On April 29, 2013 Thomason appealed to the Eleventh Circuit. (See Doc. 32)
5. On: 12/16/2014, the Eleventh Circuit Appeals Court also found that Thomason was qualified as a borrower and was entitled to receive Respa information on his two home loans. Thereafter the Court remand with instructions to the district court to allow to amend complaint under Respa and to address proposed new claims and defendants. (Doc 44).
6. On January 14, 2015, pursuant to the Eleventh Circuit's Opinion, the District Court Ordered Thomason to file an amended complaint setting out the factual allegations supporting his claims and adding any desired new defendants.

7. On March 3, 2015, Plaintiff filed a motion for late filing and a motion to amend the Complaint. (See Docs. 48-49.) The Court granted both motions, and the Amended Complaint was deemed filed. (See Doc. 50)

8. In the initial amended complaint, Meres, Ocwen, Deutsche Bank, and Eva Bank as new defendants.

9. On April 3, 2015 Defendants moved to dismiss the Amended complaint pursuant to Rules 8 and 12(b) (6). (See Doc. 56)

10. Thomason filed a response in opposition to the motion to dismiss on April 20, 2015, and a motion for summary judgment on July 14,2015 (See Doc. 68-69)

11. On March 11, 2016 the Court entered an Order denying Defendants' motion to dismiss with leave to renew and denying Plaintiff's motion for summary judgement as premature. (See Doc.78)

12. Plaintiff was then referred to the Pro Se Assistance Program. (See Doc. 76,79)

13. Thomason filed the most recent Amended Complaint on June 10, 2016. See Doc 89.)

14. Defendants filed a motion to dismiss the Amended Complaint on July 14, 2016. (See Doc. 89.)

15. On March 1, 2017, Magistrate Judge Moore entered a report ad recommendation granting in part and denying in part Defendants motion to dismiss. (See Doc. 108).

16. Count 2 Civil Rights, 42 U.S.C. § 1981, § 1982 survived and Count 3: Real Estate Settlement Procedures Act, 12 U.S.C. § 2601 along with Counts 4,5,6: Fair Housing Act, 42 U.S.C § 3605.

17. Thereafter Defendants filed a motion to dismiss and Motion for Summary Judgment along with memorandum of law. (See Doc 175 & 182)

18. Thomason file a Motion in Opposition for Summary Judgment along with a Motion to allow Discovery to continue along with an Affidavit of Excusable Neglect due to Sickness and Death in Family citing misunderstanding of the Magistrate Judge's Order on Scheduling a conference for Discovery. (See Doc 186)

19. Thereafter the District Court denied all of Thomason's motion to continue the discovery.

20. The Magistrate Judge Moore entered a recommendation dismissing Thomason's claims and The District Court adopted his report and Thomason's Case was closed on March 26,2018.

21. On April 8 & 12, 2018 Thomason Filed Two more Motions to Vacate the Judgment citing Fraud and unsettled material issues that should go to a Jury under State and Federal Law; including a motion under 7th Amendment for a Jury to decide Thomason claims.

22. The District court has denied the Motions to vacate and denied the Motion for a Jury Trial.

FACTS UNDISPUTED AND DESERVE TO GO TO A JURY

23. The Loans sold Plaintiff & his wife was a Predatory Lending Scheme, designed to fail because of all the hidden fees and High Interest Rates and the Fraudulent Misrepresentation in the Closing involving an Oral Promise that was made before signing of the paperwork.

24. The Defendants violated Plaintiff's equal rights to a fair closing by lying about terms and making promises it had no intention of keeping. The nature of the Defendants Fraudulent misconduct against Steven Clayton Thomason is truly unconscionable, intolerable in a civil society, and is justly deserving of this Court's correction of the District Court decision to deny a Jury trial.

25. The Defendant Eva Bank concealed the truth about the 1st Oral contract, misrepresented the facts, and outright lied to Steven Clayton Thomason & wife Priscilla Thomason to advance two mortgages and 2 home loans and a Balloon Payment all with adjustable rates.

26. The Oral Agreement was that if the Thomason's held the two loans for two years Eva Bank agreed to re-finance the two into one loan with a fair interest rate. The Oral Modification was to keep the Thomason's from denying the Home Loans all together as Clayton & Priscilla Thomason had decided to walk away, as it would be too much for him to bear with two minor children and a wife with stage 3 Breast Cancer.

27. Mr. Thomason asked why the Bank could not finance the house with one mortgage and a fair interest rate now as opposed to two years? Eva Bank's reply was because of credit rating. Nevertheless, on Eva Bank's Oral Promise

the Thomason 11-28-2005 signed the two loans and Mortgages with Eva Bank of which carried a Balloon Payment and variable interest rates.

28. Clayton Thomason kept his end of the bargain by making the payments for two years, thereafter returned to Eva Bank only to be told no, stating that the Loan was with IndyMac Bank now; in fact, Eva Bank had sold the Loans within the first year after making the Oral Promise. Mr., Thomason has paid $40,000.00 over 5 years and is told he doesn't own his house.

29. The Thomason's did apply with Indy Mac Bank and told them of the Oral Contract with Eva Bank at the Closing, to no Avail as Indy Mac Bank turn the Thomason's down. 4 years into the loan Priscilla Thomason died from Breast Cancer on October 4, 2009.

30. Clayton Thomason continued struggle to pay the two mortgages and seek a modification with the Defendants based on the Oral Contract and Ms. Thomason's death. Indy Mac Bank customer service had assisted Mr. Thomason with a modification and had told him that due to his hardship his loans would be modified. However, during the modification stage, the Lender said no, and Defendants initiated three illegal Foreclosure Attempts.

31. The Lender refused the modification citing that Clayton Thomason had not signed the Note. Appellant raised the State Law of Survivorship, Operation of law, the Oral Promise and the fact that Clayton Thomason was a signer on the mortgages. The Defendants again declared that Clayton Thomason did not own the home.

32. Thomason was forced to file a Civil Lawsuit to stop the illegal foreclosure and ask the District Court to examine the acts of the Defendants as it concern Federal & State Laws; both Injunctive Relief and common law issues and suit for treble damages for Fraud and Misrepresenting the Facts in the Closing. Thomason also raised his Respa letters requesting information about his mortgages to prove his ownership to facilitate his re-financing before the District Court along with other claims such as the Foreclosure Action contained time-barred debt.

33. Summary judgment is not appropriate in Thomason's case because the pleadings, and disclosure materials on file, and affidavits show that there are several genuine issues as to material facts and that the Defendants are not entitled to a judgment as a matter of law." See Fed. R.Civ. 56(c)(2).

34. Summary judgment is not appropriate due to newly discovered or previously unavailable evidence showing that Priscilla Thomason was in fact disabled and the income was Fraudulently inserted by Eva Banks, Supervisor Ann Steadman. That Eva Bank did in fact breached the Oral Promise, showing ambiguity in the contract between Eva Bank & the Thomason's. Therefore, the entire Mortgage is void due to admitted Fraud & Breached by Defendant Eva Bank.

35. Summary judgment is not appropriate due to a Rule 59(e) motion may be justified by an intervening change in controlling law. The 11th Circuit has an

intervening change in controlling law of this circuit as to Affidavits sufficient to defeat Summary Judgment.

36. Thomason did establish equitable tolling to withstand summary judgment and that two of the elements of equitable tolling are reasonable and good faith conduct in his seeking the Oral Promise made by Defendant Eva Bank.

37. Thomason under the Application of the 7th Amendment has met all four criteria to be able to have a trial heard by a jury under the 7th Amendment.

38. Thomason's claim is a civil claim seeking money to compensate loss from Defendants he's suing.

39. Thomason's claim is based on federal law and is in a federal court.

40. The lawsuit is worth more than $20 and it is still the threshold used to decide if a trial by jury is allowed under the 7th Amendment.

41. The lawsuit is a claim for Fraud in the sale of land & house of which the English common law of 1791 would have allowed it to go to trial by jury under the Constitution of the United States, Thus, any time money is involved, it is a common lawsuit and eligible to be tried by jury.

42. Respect for Juries An important part of the 7th Amendment is that it prohibits judges in any court from overruling a jury's findings unless there was some violation of common law.

WHY WRIT OF MANDAMUS SHOULD ISSUE UNDER 7TH AMENDMENT RIGHT TO A JURY TO DECIDE CLAIMS

43. Comes now Steven Clayton Thomason and serves GROUNDS FOR the following reasons: Litigants denied a civil jury trial *Writ of Mandamus.* Thomason avers that in general, a writ of mandamus is used only in very limited circumstances, typically to order a lower court to perform a nondiscretionary act or to reverse actions that "amount . . . to a judicial 'usurpation of power.' " *Hahnemann Univ. Hosp. v. Edgar*, 74 F.3d 456, 461 (3d Cir. 1996). The writ of mandamus, however, has found a special niche in protecting the right to a jury trial.

44. As long ago as 1918, the Supreme Court recognized mandamus as the appropriate vehicle to cure erroneous denials of a civil jury trial. *In re Simons*, 247 U.S. 231 (1918). The court based its conclusion on judicial economy-avoiding duplicative bench and jury trials-and the convenience of prejudgment appeal to litigants. This reasoning survived over the ensuing decades, and in 1959, the Supreme Court affirmed that "[w]whatever differences of opinion there may be in other types of cases . . . the right to grant mandamus to require jury trial where it [has] been improperly denied is settled." *Beacon Theatres Inc. v. Westover*, 359 U.S. 500, 511 (1959). Several years later, the court reiterated that courts of appeals have the "responsibility . . . to grant mandamus where necessary to protect the constitutional right to trial by jury." *Dairy Queen Inc. v. Wood*, 369 U.S. 469, 472 (1962).

45. *Standard for Issuance of Mandamus.* The Supreme Court has not, however, resolved a disagreement over the proper standard for issuance of mandamus when a jury trial denial is challenged. In other contexts, a writ of mandamus is an extraordinary remedy, which requires a high threshold showing that the petitioner has no other adequate means to secure the requested relief and has a " 'clear and indisputable' " right to the relief. See *Mallard v. United States Dist. Ct.*, 490 U.S. 296, 309 (1989).

46. Thomason aver that several have taken the Supreme Court's decisions in *Dairy Queen* and *Beacon Theatres* to mean that the writ should issue if a de novo review shows that the district court erred in denying a jury trial, without the extraordinary showing usually required for mandamus. See, e.g., *Maldonado v. Flynn*, 671 F.2d 729, 732 (2d Cir. 1982).

47. The 9th U.S. Circuit Court of Appeals has stated the principle plainly: "The right to a jury trial . . . has occupied an exceptional place in the history of the law of federal mandamus permitting a writ to issue although the petitioner is unable to show a 'clear and indisputable' right." *Wilmington Trust v. United States Dist. Ct.*, 934 F.2d 1026, 1028 (9th Cir. 1991).

48. The Supreme Court has instructed that "the remedy of mandamus is a drastic one, to be invoked only in extraordinary situations" and "only exceptional circumstances, amounting to a judicial usurpation of power, will justify the invocation of this extraordinary remedy." Allied Chem. Corp. v. Daiflon, Inc., 449 U.S. 33, 34-35 (1980). See also Lopez-Lukis, 113 F.3d 1187,

1187-88 (11th Cir. 1997) ("[M]mandamus is an extraordinary remedy, which is available only to correct a clear abuse of discretion or usurpation of judicial power.

49. Notice the Supreme Court Holding in *Beacon Theatres* to mean that the writ should issue if a de novo review shows that the district court erred in denying a jury trial, without the extraordinary showing usually required for mandamus. The High Court said " In anticipation of a suit by petitioner for treble damages under the Sherman and Clayton Acts, the prospective defendant brought suit against petitioner in a Federal District Court for a declaratory judgment which would have settled some of the key issues in such an antitrust suit and prayed that the bringing of such a suit be enjoined pending outcome of the declaratory judgment litigation. Petitioner filed a counterclaim raising the issues which would have been raised in the antitrust suit for treble damages and demanded a jury trial. Purporting to act in the exercise of its discretion under Rules 42(b) and 57 of the Federal Rules of Civil Procedure, the District Court ruled that it would try in equity, without a jury, the issues common to both proceedings before trying petitioner's counterclaim. The Court of Appeals held that the District Court had acted within the proper scope of its discretion, and it denied petitioner's application for a writ of mandamus requiring the District Court to set aside its ruling. *Held:* the judgment of the Court of Appeals is reversed". Pp. 359 U. S. 501-511.

50. The Supreme Court then outline its decisions by points notice the plain words of the Supreme Court "1. The District Court's finding that the complaint for declaratory relief presented basically equitable issues draws no support from the Declaratory Judgment Act, which specifically preserves the right to a jury trial for both parties." P. 359 U. S. 504. Thomason would claim this provision for his suite as it should proceed to a jury as requested and as is just in law.

51. The Supreme Court then continues by point 2 of its decision it said; "If petitioner would have been entitled to a jury trial in a treble damage suit, he cannot be deprived of that right merely because the prospective defendant took advantage of the availability of declaratory relief to sue petitioner first". P. 359 U. S. 504. Thomason would claim this provision for his suite as it should also proceed to a jury as requested and as is just in law as Thomason has plead Fraud within his Law suit.

52. The Supreme Court then expands the deep reasoning its decisions, notice the plain words of the Supreme Court in point it said "3. Since the right to trial by jury applies to treble damage suits under the antitrust laws and is an essential part of the congressional plan for making competition, rather than monopoly, the rule of trade, the antitrust issues raised in the declaratory judgment suit were essentially jury questions." P. 359 U. S. 504. Thomason would clearly claim this provision for his suite as it should also proceed to a jury as requested and as is just in law as Thomason has plead Fraud within his Law suit.

53. The Supreme Court stated in point "4. "Assuming that the pleadings can be construed to support a request for an injunction against threats of lawsuits, and as alleging the kind of harassment by a multiplicity of lawsuits which would traditionally have justified equity in taking jurisdiction and settling Page 359 U. S. 501 the case in one suit, nevertheless, under the Declaratory Judgment Act and the Federal Rules of Civil Procedure, neither claim can justify denying petitioner a trial by jury of all the issues in the antitrust controversy". Pp. 359 U. S. 506-511.

54. Appellant Thomason hereby quotes the words of the Supreme Court wherein it stated "Today, the existence of irreparable harm and inadequacy of legal remedies as a basis of injunctive relief must be determined not by precedents under discarded procedures, but in the light of the remedies now made available by the Declaratory Judgment Act and the Federal Rules of Civil Procedure". Pp. 359 U. S. 506-510. This is the direction Thomason seeks for his Suit; may it please the Court, I seek the protection now available by the Declaratory Judgment Act for my injunctive relief within my civil complaint.

55. Therefore as pointed out the Supreme Court would not allow the Erroneous use of discretion by the District Court under Rule 42(b) to deprive the petitioner in *Beacon Theatres Inc. v. Westover*, of a full jury trial of the issues in the antitrust controversy See P. 359 U. S. 508.

56. The Supreme Court in Point 5. Stated that "Mandamus is available under the All Writs Act, 28 U.S.C. § 1651, to require jury trial where it has been

improperly denied. P. 359 U. S. 511.Nevertheless, we have no doubt that the courts below will heed the command of Beacon Theatres, Inc. v. Westover, 359 U.S. 500, 79 S. Ct. 948, 3 L. Ed. 2d 988 (1959), and make certain that appellants' Seventh Amendment right to jury trial of "legal" claims is not lost by a prior determination of "equitable" claims." Thomason would also hope that this Appeals court will send this case back to the District court and ALLOW Discovery and a Trial by Jury to move forward.

57. Thomason's threat to his Seventh Amendment rights have becomes concrete and seeks appropriate remedies currently to preserve his suit and right to proceed to the Jury Phase there is no justification as to the complaint not being clear. The multiple complaints and answers all show that the Defendants know exactly what this law suit is all about. Furthermore, the Supreme Court has stated in Beacon that "We recognize that in appropriate cases common issues impacting upon general liability or causation may be tried standing alone. However, when such a common issue trial is presented through or along with selected individuals' cases, concerns arise that are founded upon considerations of due process". This understanding was Buttressed in Lytle v. Household Manufacturing, Inc., --- U.S. ----, 110 S. Ct. 1331, 108 L. Ed. 2d 504 (1990).

58. Due process Concerns, and Fundamental fairness contained in a system that permits the extinguishment of claims or the imposition of liability. Such a procedure is inherently unfair when the substantive rights of both plaintiff

and the defendant are resolved in a manner that lacks the requisite level of confidence in the reliability of its result. The Supreme Court recognize that due process concerns seem to blur distinctions between procedural and substantive due process. Notice the Plain Language of the Court. "However, our difficulty in compartmentalization does not detract from the validity of our concern that is ultimately based on fundamental fairness. The elements of basic fairness contained in our historical understanding of both procedural and substantive due process therefore dictate that when a unitary trial is conducted where common issues, issues of general liability, or issues of causation are coupled with a sample of individual claims or cases, the sample must be one that is a randomly selected, statistically significant sample. See Hilao, 103 F.3d at 782-84, 786.

STATE OF ALABAMA RIGHT TO A JURY

59. Thomason's claims also raise State Law and the Constitution of Alabama 1901 provides a right to jury trials in cases involving purely legal claims, and equitable claims. Law and equity were See Wooten v. Ivey, 877 So.2d 585, 588 (Ala. 2003). merged in 1973 with the adoption of the Alabama Rules of Civil Procedure, after which jury trials were a constitutional right if the issue was the sort that would have been tried to a jury before the adoption of those rules. Following Beacon Theatres and Dairy Queen, the Supreme Court of Alabama holds that when both legal and equitable claims are joined in one action, the trial judge must arrange the order of trial.

60. "This Court has long recognized that Article I, § 11, Constitution of Alabama of 1901, provides the right to a jury trial in those cases that involve purely legal claims".[1] See Ex parte Thorn, 788 So. 2d 140, 142 (Ala.2000)(quoting W & H Mach. & Tool Co. v. National Distillers & Chem. Corp., 291 Ala. 517, 520, 283 So. 2d 173, 175-76 (1973)(citing in turn Tillery v. Commercial Nat'l Bank, 241 Ala. 653, 4 So. 2d 125 (1941); Alford v. State, 170 Ala. 178, 188, 54 So. 213, 215 (1911); Montgomery & Florida Ry. v. McKenzie, 85 Ala. 546, 549, 5 So. 322 (1888); see also Rule 38, Ala. R. Civ. P. It is equally well settled that the constitution does not provide a right to a jury trial for the resolution of factual issues for parties alleging equitable claims. See Ex parte Thorn, 788 So. 2d at 143 (citing Finance, Inv. & Rediscount Co. v. Wells, 409 So. 2d 1341, 1343 (Ala.1981) (citing in turn Pugh v. Calloway, 295 Ala. 139, 325 So. 2d 135 (1976).

61. However, since the merger of law and equity in 1973 with the adoption of the Alabama Rules of Civil Procedure, see Rule 2, Ala. R. Civ. P., courts have been presented with cases that contain both issues to be tried by a jury and issues to be tried by the court. In those cases, the test for determining whether a party has a right to a trial by jury is: "`[I]f an issue is of a sort which [before the adoption of the Alabama Rules of Civil Procedure] would have been tried to a jury, then the party has a constitutional right ... to have it tried to a jury under the merged procedure." Ex parte Thorn, 788 So. 2d at 143 (quoting Committee Comments to Rule 38, Ala. R. Civ. P.).

62. When legal and equitable claims are presented in one action, the trial court must resolve the equitable claims in a way that does not impinge on a party's right to a jury trial as to the legal claims. See Ex parte Taylor, 828 So. 2d 883 (Ala.2001); Ex parte Thorn, 788 So. 2d at 140. Purely legal claims, as well as factual issues common to the legal and equitable claims, must be determined by a jury; the remaining issues are then to be decided by the trial court. See Ex parte Taylor, 828 So. 2d at 883; Ex parte Thorn, 788 So. 2d at 140.decision on the equitable issues does not operate to deny a jury trial of the legal issues. Factual issues common to the legal and equitable issues must first be decided by the jury. We express no opinion on whether the mix of claims that collectively make up the consolidated case lend themselves to the sampling techniques required to conduct a bellwether trial or whether this is an appropriate case for a stand-alone, common-issue trial. "Accordingly, when both legal and equitable claims are joined in one action, then, the trial judge must arrange the order of trial so that the judge's decision on the equitable issues does not operate to deny a trial by the jury of the legal issues. See Beacon Theatres, Inc. v. Westover, 359 U.S. 500, 510-11, 79 S. Ct. 948, 3 L. Ed. 2d 988 (1959) (stating that `only under the most imperative circumstances, ... can the right to a jury trial of legal issues be lost through prior determination of equitable claims'); accord Crommelin v. Fain, 403 So. 2d 177, 185 (Ala.1981). Thomason is entitled to this provision under Trial by Jury in Alabama.

63. A jury first must decide any factual issues that are purely legal in nature, along with any factual issues common to the legal and equitable claims. See Dairy Queen, Inc. v. Wood, 369 U.S. 469, 479, 82 S. Ct. 894, 8 L. Ed. 2d 44 (1962) (holding that because the factual issues relating to the petitioner's breach of contract claim `[were] common with those upon which [the] respondents' claim to equitable relief [was] based, the legal claims involved in the action [had to] be determined prior to any final court determination of respondents' equitable claims'); see also 9 Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 2302.1, at 29 (2d ed.1995); 1 Champ Lyons, Jr., Alabama Rules of Civil Procedure Annotated § 2.2 at 24 (3d ed. 1996) (`[Beacon Theatres] held that the questions of fact common to the legal and equitable [claims] must be decided first by the jury, for to permit the court to make findings on these common issues of fact would deprive the litigant of his right to [a] jury trial.') Therefore, Thomason's rights and claims must proceed to the Jury so that findings can be made.

64. Once those factual findings are made, the trial judge must determine the remaining equitable issues. See Dairy Queen, 369 U.S. at 470, 82 S. Ct. 894. "... In addition, those factual questions that are purely legal in nature, as well as those common to the legal and equitable issues, must first be decided by the jury. Dairy Queen, Inc., supra."

65. Thomason avers as did the High Court wherein it stated in Beacon "We are sympathetic to the efforts of the district court to control its docket and to

move this case along. We also are not without appreciation for the concerns a district court might have when it concludes that some of the issues raised may be motivated by delay tactics. However, our sympathies and our appreciation for the efforts of the district court in this case do not outweigh our due process concerns". Thomason filed this Law Suit in 2012 no one is more eager to get this matter resolved not dispose of as common trash but to be decided by a Jury of my peers.

The Civil Rights Act of 1991 42 U.S.C. § 1981

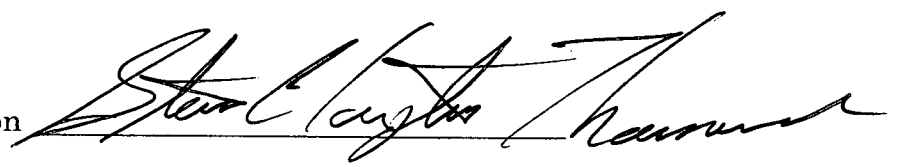
66. Thomason claim also fall under 42 U.S.C. 1981 of which was amended in 1991 therefore to buttress his right to a Jury trial Thomason shows the following: The Civil Rights Act of 1991 now permits Title VII cases to be tried by jury. 42 U.S.C. § 1981a(c). ("Put simply, the plaintiff in any Title VII case may establish a violation through a preponderance of evidence (whether direct or circumstantial) that a protected characteristic played 'a motivating factor.'"); *see also E.E.O.C. v. Abercrombie & Fitch Stores, Inc.*, 135 S. Ct. 2028, 2032 (2015).

CONCLUSION

67. Wherefore Thomason would ask this U.S. Supreme Court to issue this Writ under its Holding in Beacon Theatres, Inc. v. Westover, wherein this High Court Stated that "Mandamus is available under the All Writs Act, 28 U.S.C. § 1651, to require jury trial where it has been improperly denied. P. 359 U. S. 511. Therefore, make certain that Thomason's Seventh Amendment right to

jury trial of "legal" claims is not lost. Thomason's suit has been dismissed and there is no other remedy as to enforce Thomason's right to a Jury Trial as Motions to Vacate and Set Aside and Motion for New Trial have all been denied by the District Court "Therefore denying Thomason's right to a Jury of his claims is judicial usurpation of power. See Coffman, 766 F.3d 1246, 1248 (11th Cir. 2014). Thomason has no other adequate means to attain the relief he desires and that his right to the issuance of the writ is clear and indisputable." Wherefore pray that this Judicial Body is satisfied, and that the writ is appropriate under the circumstances.

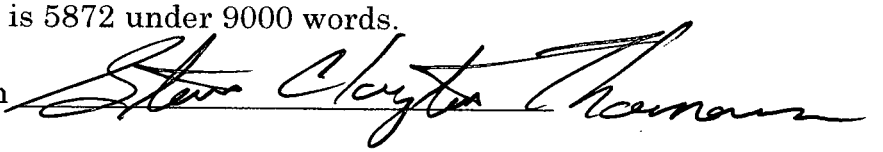
Respectfully Submitted

Steven Clayton Thomason 

CERTIFICATION OF FONT

AND TYPE STYLE & PAGE LIMITS Rule 33.2 (b)

I certify that the document is filed in Century Schoolbook that access and that the word count is 5872 under 9000 words.

Steven Clayton Thomason 

CERTIFICATE OF SERVICE

I hereby certify that on the ~~18th~~ 24th day of December 2018 a copy of the foregoing pleading was mailed to the 11th Circuit U.S. Court of Appeals mailed by first class mail to the following Respondents' addresses:

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