

No.

In The Supreme Court of the United States

LILLIAN PELLEGRINI,

Petitioner,

v.

FRESNO COUNTY, ET AL.,

Respondents.

**Application for Request to Stay the Ninth Circuit Order in its Entirety
Pending Filing and Granting of Petition for Writ of Certiorari**

DIRECTED TO THE HONORABLE JOHN G. ROBERTS, JR. CHIEF JUSTICE OF
THE SUPREME COURT AND CIRCUIT JUSTICE FOR THE NINTH CIRCUIT

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APPLICATION TO STAY MANDATE IN ITS ENTIRETY ISSUED BY THE
NINTH CIRCUIT COURT OF APPEALS, SAN FRANCISCO PENDING FILING
AND GRANTING OF A WRIT OF CERTIORARI

To the Honorable John G. Roberts, Jr., Chief Justice of the Supreme Court of
the United States for the Ninth Circuit.

Pursuant to 28 USC 2101(f) a stay may be requested pending filing and
granting of a writ of certiorari for review in the U.S. Supreme Court.

This stay is requested after a motion that was timely filed in the Ninth
Circuit Court of Appeals was denied, following the Ninth Circuit's mandate issued
on July 17, 2018.

The Ninth Circuit's mandate required a change from a dismissal with
prejudice for lack of subject matter jurisdiction under *Rooker-Feldman* to one
without prejudice to find a proper forum for a claim brought under 42 USC 1983
and 18 USC 1961 et seq. for conversion and theft through acts of fraud by the
defendants, acting together, to deprive Lillian Pellegrini of her ownership rights
over her sole and separate property with costs and damages. The district court
complied with the mandate. These documents are provided in the appendix.

Contrary to the federal district court's and Ninth Circuit's characterization of
this matter, this case was not and never has been a trust administration matter
concerning the Angelo John Pellegrini and Lillian Dorothy Pellegrini Revocable
Living Trust dated June 18, 1999 (referred to hereafter as the 1999 Trust) because
Lillian Pellegrini's ownership rights in property stolen from her through conversion
and the fraudulent acts of the defendants were not derived from the 1999 Trust or

derived from the decedent through his will or the 1999 Trust. At death, the decedent spouse held no property interests subject to any devise by will or trust; the decedent's estate was not subject to a probate court's jurisdiction or administration. The property stolen is and has always been Lillian Pellegrini's sole and separate property as indicated in her records of title submitted with the Appellant's Excerpts of Record, Volume 2, Tab 1.

The Ninth Circuit did not dispute that the plaintiff described the defendants' fraudulent acts with specificity or dispute that there was sufficient evidence submitted in the Excerpts of Records to support the facts of conversion, acts of fraud, and theft; the defendants do not dispute Lillian Pellegrini's property ownership and that they undertook acts of conversion, fraud, and theft. The state courts actively facilitated and participated in the acts of conversion and theft and continue to permit embezzlement of the funds by denying Lillian Pellegrini and Beverly Pellegrini any opportunity to be heard. Under *Ex parte Virginia*, 100 U. S., 339 (1880) the courts, through its officers and agents, have no 11th amendment immunity when they act beyond their authority to engage in common law torts and are liable for their illegal actions.

The state courts, without statutory authority to exercise any jurisdiction over Lillian Pellegrini, Lillian Pellegrini's property, or the decedent's estate, have consistently and continuously denied Lillian Pellegrini and Beverly Pellegrini any opportunity to be heard. Notice and hearings have been scheduled (except those relating to ex parte petitions and orders), but Lillian Pellegrini and/or Beverly

Pellegrini were prohibited from offering evidence to support Lillian Pellegrini's property rights, were prohibited from calling witnesses, or providing any defense at any time in any forum since the matter was filed in state court when it was known that Lillian Pellegrini was the rightful owner before the action was commenced.

The district court stated that Beverly Pellegrini could have been added as a plaintiff, but denied her intervention by right or to be joined as an indispensable party when Beverly Pellegrini was appointed by Lillian Pellegrini as co-trustee of Lillian Pellegrini's revocable trust with revocability power, from which the property was stolen, and as a beneficiary. The court's conclusion is opposite to this Court's ruling in *Mullane v. Central Hanover Bank and Trust Co.*, 339 U.S. 306 (1950) when all beneficiaries were considered to be indispensable parties whose joinder was required.

The defendants do not dispute Lillian Pellegrini's ownership rights in the assets now held by Fresno County Public Guardian, a court-appointed trustee of a nonexistent trust of which the court knew and had evidence that it was nonexistent and invalid, and of which it had evidence that Lillian Pellegrini was the sole rightful owner of the property taken, and of which the court had no statutory authority to exercise control over Lillian Pellegrini, her property, or to facilitate the conversion of Lillian Pellegrini's property through acts of mail fraud, bank fraud, securities fraud, and tax fraud undertaken to steal Lillian Pellegrini's property and deprive her of its use and wealth creation.

The defendants only dispute is that they have no liability in undertaking the fraud and conversion to steal and hold property that they know was converted and stolen. We disagree. We believe that the defendants are fully liable for the conversion, acts of fraud, theft, and money laundering that continues without abatement and that no public or private entity or person can claim immunity under the 11th amendment of the U.S. Constitution, and no court can provide immunity from liability.

We believe that this Supreme Court has authority and the obligation to exercise jurisdiction over this matter to provide relief from the harm in property and liberty through the actions of the defendants in violation of both state and federal statutes and protections of fundamental rights guaranteed under the U.S. Constitution.

We respectfully submit a request to stay the mandate issued by the Ninth Circuit to file a new Writ of Certiorari that will fully address all issues, state and federal, that continue to perpetuate the wrongful conversion of Lillian Pellegrini's property through acts of fraud and abuse resulting in theft and money laundering because we believe, that if review is permitted, the U.S. Supreme Court will permit the relief requested of replacement of all property taken, payment of all costs and liabilities and all damages permitted under state and federal law for redress of the harm undertaken to Lillian Pellegrini's fundamentally protected and guaranteed right of her property ownership.

U.S. SUPREME COURT'S JURISDICTION

The U.S. Supreme Court under 28 USC 1254 has jurisdiction over cases in courts of appeal by writ of certiorari, before or after judgment. The Ninth Circuit Court of Appeals declined an oral argument to hear the matter, made no de novo review or any other standard of review to recover damages for injury when the federal district court cancelled the scheduled hearing to dismiss the complaint with prejudice, citing *Rooker-Feldman* to deny subject matter jurisdiction.

U.S. Supreme Court under 28 USC 1257 has jurisdiction over the final judgment by the highest state court where property rights are claimed under the U.S. Constitution or federal statutes. Congress has enacted statutes of 42 USC 1983 and 18 USC 1961 et seq. to provide private causes of action and to provide redress for harm caused to a citizen through the taking of rightfully owned property by the denial of due process and by fraud and misrepresentations undertaken to convert the property of the rightful owner.

The federal district courts are provided jurisdiction under 28 USC 1331 for all civil matters arising under the U.S. Constitution and laws of the United States. The district courts have jurisdiction under 28 USC 1343, brought by any party, to recover damages for injury to a person or his property or to redress the deprivation under the color of any state law of a constitutionally protected right under 42 USC 1983.

The federal district courts had jurisdiction under Federal Rules of Civil Procedure 60 (b) to redress fraud, whether intrinsic or extrinsic, misrepresentations

or other misconduct undertaken by an adverse party or if the judgment is void. When state courts are without statutory authority to undertake jurisdiction over the party or property, the order issued over the party or property is void. Relief can be requested within one year.

The highest state court denied review in January 2017. Because the state courts offered no opportunity for review of a theft that the state courts facilitated and were participating in, the claim for return of the property with damages filed against Fresno County was brought within the six-month statutory period in August 2016 in federal court under 42 USC 1983.

The state courts, its officers and agents and banking institutions have no authority under state law or federal law to convert property of the rightful owner through false statements and to undertake acts of mail fraud, bank fraud, securities fraud and tax fraud to steal the property. Illegal acts cannot be upheld and do not permit the actors any immunity under the 11th amendment.

NO FORUM, STATE OR FEDERAL, IS AVAILABLE

No court, state or federal, has permitted Lillian Pellegrini to defend her sole and superior rights of title and interest to all property at issue when Lillian Pellegrini's ownership rights were not derived from any trust but were derived from her own title (\$1,227,116.73 held in the UBS Financial Services 1999 Trust account valued at or near the time of distribution in September 2008) and from a right of survivorship when her husband and joint tenant of the assets held in joint tenancy with right of survivorship died under California Civil Code 683 and California

Probate Code 5305. (Real property proceeds of \$684,558.25, of which \$342,279.13 was attributed to the decedent under 26 USC 2040 and \$83,870.38 in net financial assets after expenses, Excerpts of Record, Volume 2, Tab 1, page 1).

When the U.S. Supreme Court decided *Mitchum v. Foster*, 407 U.S. 225 (1972), it upheld 42 USC 1983 as a means to open the federal courts as

“...guardians of the people's federal rights—to protect the people from unconstitutional action under color of state law, "whether that action be executive, legislative, or judicial." *Ex parte Virginia*, 100 U. S., 339, at 346 (1880).”

The U.S. Supreme Court found that intervention in state court proceedings was sometimes necessary to prevent irreparable loss of a person's constitutional rights or redress harm already incurred.

Federal intervention was requested before seeking state appellate review because due process or any opportunity to be heard was prohibited in state court; federal intervention by injunction was denied for lack of jurisdiction. The matter was brought to the state appellate court that permitted the harm without review, without notice, and without a hearing, i.e., without due process, and issued an opinion nine months after permitting the theft that misstated the 1999 Trust to support the conversion and theft through its own gross negligence or deliberate and intentional malfeasance.

Therefore, we have no forum in any state court and no forum in federal court. Despite the federal court having jurisdiction by law, the federal court has abdicated its obligation to hear the matter, and the Ninth Circuit denied the writ of

mandamus and denied oral argument on appeal, thereby, again, denying any opportunity to be heard.

OPPORTUNITY TO BE HEARD WAS DENIED

No opportunity to be heard was permitted in Fresno Superior Court or in any other forum, state or federal. While hearings were scheduled, no hearing occurred; no opportunity to be heard was permitted at any time. No evidence can be produced that indicates an actual hearing took place except from the conclusory false statements of the perpetrators of conversion, fraud and theft.

In August 2012, in violation of California Probate Code 48, Marleen Merchant was provided standing. An objection was raised and never heard. The facts did not support standing. No property was distributed to Marleen Merchant or Beverly Pellegrini from the 1999 Trust on the first Settlor/Trustee's death; all property held by the Surviving Settlor/Trustee Lillian Pellegrini was Lillian Pellegrini's sole and separate property, subject to Lillian Pellegrini's full dominion and control, including her discretionary devise.

An objection was also raised regarding the court's lack of statutory authority to exercise jurisdiction under Probate Code 15800 and 15803; the issue was never heard.

An open forum failed to provide an opportunity to be heard regarding title of property. The court, without statutory authority under California Probate Code 16069 to demand an accounting of a Settlor/Trustee who is also the present

beneficiary, demanded that Beverly Pellegrini, an unjoined, indispensable party who was not permitted presence in any court, to prepare and file an accounting under threat of sanctions. Beverly Pellegrini complied; no opportunity to defend the accounting was ever permitted; the accounting issues were never heard.

At trial under the Cardoza Court in January 2015, Lillian Pellegrini called Beverly Pellegrini as a witness to offer evidence of Lillian Pellegrini's title and interest in all property. Beverly Pellegrini was denied the opportunity to provide testimony resulting in no opportunity for Lillian Pellegrini or Beverly Pellegrini to be heard. The Court permitted the conversion of property in violation of California Probate Code 13605 with its ruling issued on the docket before trial at 7:44 a.m. (Excerpts of Records, Vol. 2, Tab 2, page 91.)

The title company, in possession of the recorded deed and a copy of the 1999 Trust, properly transferred the proceeds from the sale of real property to the revocable Survivor's Trust. Judicial notice of the proceeds of \$684,558.25 was proper. The value, however, was consistently misrepresented to augment the taking permitted by Fresno Superior Court. No opportunity to be heard was permitted.

The Family Trust was modified by amendment in 2004 while the decedent was still living. The modification eliminated any beneficiary designation so that any financial assets remaining on the death of the Surviving Spouse as Trustee and sole Beneficiary would never vest. Lillian Pellegrini is the Surviving Spouse and owner of all financial assets that were held in the 1999 Trust and remains alive, well, and competent.

Lillian Pellegrini's sole and separate property of financial assets could not be used to fund the Family Trust. The decedent held no property subject to his control after his death and no assets subject to the funding requirements specified. The decedent had contributed only his present interest in joint tenancy with right of survivorship titled assets; his interest in these assets was extinguished on death. The Court converted Lillian Pellegrini's sole and superior title in her property to that of the decedent to fund the family trust. The Family Trust provided the Surviving Spouse as Trustee to distribute to the Surviving Spouse as beneficiary as much principal and income as she would determine for her needs for support to maintain her accustomed standard of living. As the Family Trust provided no distribution of financial assets after the death of the Surviving Spouse, the Family Trust, in actuality, permitted unlimited use of all principal and income at the sole discretion of the Surviving Spouse. Therefore, for lack of a beneficiary on the Surviving Spouse's eventual death, the Family Trust would never vest in anyone other than the Surviving Spouse, thereby subjecting the Family Trust to termination as an illegal trust and a trust violating the rule against perpetuities. No opportunity to be heard was permitted to show the invalidity of the Family Trust. Marleen Merchant was provided an interest when, in fact, Marleen Merchant held no interest in any financial asset and no standing to assert any interest. Lillian Pellegrini receives no principal or income from the Fresno County Public Guardian as an appointed trustee of the invalid Family Trust, and an opportunity to be heard on this issue continues to be denied.

Fresno Superior Court creates waste through its officers and agents, Fresno County Counsel and Fresno County Public Guardian and embezzlement by all, including Fresno County Treasurer, in violation of California Probate Code 8502. The Fresno County Public Guardian has no fiduciary duties and cannot hold assets without full distribution under California Probate Code 15660.5. The Fresno County Public Guardian has generated less than \$600 in interest income in two years and has extracted more than three quarters of the assets with a fraction paid to officers of Fresno County. No opportunity to be heard for any of the accountings submitted by the Fresno County Public Guardian in 2016 or 2018 were permitted.

A Citizen's complaint was filed before the August 2015 hearing providing evidence of racketeering (Excerpts of Record, Volume 2, Tab 2, pages 62-72); no investigation was conducted.

A hearing scheduled on April 10, 2017 in the federal district court was cancelled; no opportunity to be heard was permitted by Lillian Pellegrini or Beverly Pellegrini in defense of any filings.

The U.S. Supreme Court denied the writ of certiorari filed before any hearing on appeal at the Ninth Circuit. Oral argument was scheduled on July 13, 2018 and rescheduled to July 11, 2018 with a demand that all defendants were required to be present; oral argument was cancelled on June 22, 2018 resulting in no opportunity to be heard.

Therefore, regardless of the forum, state or federal, no opportunity to be heard has ever been permitted. Any judgments rendered under such circumstances

are void and unworthy of any merit in any tribunal for extrinsic fraud. *Hovey v. Elliott*, 167 U.S. 409 (1897); *Windsor v. McVeigh*, 93 U.S. 274 (1876); *Spector v. Superior Court*, 55 Cal. 2d 839 (1961); *Estate of Buchman*, 123 Cal. App. 2d 546 (1954).

U.S. SUPREME COURT ACTION IS REQUIRED WHEN STATE COURTS EXCEED THEIR AUTHORITY AND FEDERAL COURTS DECLINE THEIR OBLIGATION UNDER FEDERAL LAW

The U.S. Supreme Court has stated in *Exxon Mobil Corp. v. Saudi Basic Industries Corp.*, 544 U.S. 280, 284 (2005) that was reiterated in *Lance v. Dennis*, 546 U.S. 459 (2006) "this Court has never applied *Rooker-Feldman* to dismiss an action for want of jurisdiction." The dissenting opinion agreed that the *Rooker-Feldman* Doctrine has been the creation of much mischief for 23 years; this matter is no exception to that mischief.

Rooker-Feldman did not apply when the state court lacked jurisdiction over the parties or property or when the judgment is obtained by extrinsic fraud (*GASH Associates v. Village of Rosemont*, 995 F.2d 726 (7th Cir. 1993). When the judgment is obtained by defendants acting illegally, *Rooker-Feldman* does not apply although Circuit Courts claim that intrinsic fraud, alone, subjects the action to preclusion or res judicata (*Noel v. Hall*, 341 F.3d 1148 (9th Cir. 2003). Preclusion and res judicata are determined by state law depending on whether the judgment is void or voidable. Under California preclusion laws as stated by the Ninth Circuit in *Kougasian v. TMSL, Inc.*, 359 F. 3d 1136 (9th Cir. 2003), California requires that

“a litigant must have had an appropriate opportunity to litigate the issue in the earlier suit before he or she will be issue-precluded (collaterally estopped) from relitigating that issue in a later suit.”

When the state court lacks jurisdiction over the parties or the property, the judgment is void; when extrinsic fraud is evident, the judgment is void. Preclusion and res judicata do not apply.

It is asserted, however, that if the illegal act is undertaken to obtain the court’s judgment, through extrinsic or intrinsic fraud or both, federal rules of civil procedure 60(b) permits redress without mention of preclusion. For illegal acts of defendants where an opportunity to be heard is provided, however, preclusion has been upheld in the circuit appellate courts as a means to dismiss the action, thereby thwarting the purpose of enacting 42 USC 1983 and Federal Rules of Civil Procedure 60(b) when state courts act in league with a party to cause mischief. Even in an open forum, if the open forum is skewed toward either side, no fair and impartial hearing has occurred, with or without an opportunity to be heard. Where fraud is undertaken by a party to gain a favorable judgment, such as in the case of *Hazel-Atlas v. Hartford*, 322 U.S. 238 (1944), equity required reversal.

When Congress enacted 42 USC 1983, this court in *Mitchum v. Foster*, 407 U.S. 225 (1972) decided that the anti-injunction act would not apply in 42 USC 1983 actions when irreparable harm was imminent in civil cases under the same standards of review as *Younger v. Harris*, 401 U.S. 37 (1971) in criminal cases. The Court recognized the purpose of Congress’ enacting 42 USC 1983 was to provide a

means of redress or a means to avoid irreparable harm to one's property, life, or liberty when state courts failed to uphold a person's fundamental rights.

Therefore, when the federal and circuit courts have avoided jurisdiction that they have by law, are they not thwarting the very purpose for which Congress enacted 42 USC 1983 and 18 USC 1961 et seq to provide a means of review in the federal courts when no review has been possible in state court for acts against a person's rightful ownership of property through acts of intrinsic and extrinsic fraud?

The dissenting opinion in *Lance* stated that privity of the parties barred the federal district court's jurisdiction. Privity was addressed in the federal district court's opinion, but the argument was incongruent. The district court claimed that despite Beverly Pellegrini being able to be added as a plaintiff, she could not intervene by right or be joined as an indispensable party as Beverly Pellegrini's interest derived from Lillian Pellegrini's present interest. Beverly Pellegrini was appointed by Lillian Pellegrini as a co-trustee and was provided revocability power as co-trustee and as successor trustee over Lillian Pellegrini's revocable trust from which Lillian Pellegrini's property was converted through acts of fraud and stolen. Beverly Pellegrini, however, was not a party to the state court action and both Lillian Pellegrini and Beverly Pellegrini were denied any opportunity to be heard at any time.

Marleen Merchant held no interest in any asset held in the 1999 Trust, and all personal property, i.e., all financial assets, are owned solely by Lillian Pellegrini and remain subject to Lillian Pellegrini's full dominion and control, including her

discretionary devise. If the court was correct that Beverly Pellegrini held an interest in privity with Lillian Pellegrini, Marleen Merchant held no interest whatsoever yet Marleen Merchant was provided an interest in a gift that not only had she not received or had any expectancy, she had no authority under the 1999 Trust to anticipate any gift not yet received for any purpose, including payment of a creditor. (Excerpts of Record, Volume 2, Tab 1, p. 112).

The U.S. Supreme Court stated in *Larson v. Domestic and Foreign Commerce Corp.*, 337 U.S. 682 (1949), citing *U.S. v. Lee*, 106 U.S. 196 (1882) stated that where title is held by the plaintiff, the taking of the property by the defendants would be a taking without just compensation and therefore, an unconstitutional action. Since *Lee*, the Court has stated the following:

“Specific relief in connection with property held or injured by officers of the sovereign acting in the name of the sovereign has been granted only where there was a claim that the taking of the property or the injury to it was not the action of the sovereign because unconstitutional or beyond the officer’s statutory powers.”

In *Larson*, the Court upheld the rule applied in the *Goldberg* case [*Goldberg v. Daniels*, 231 U.S. 281 (1913) and to the principals frequently repeated by this Court both before and after the *Goltra* case [*Goltra v. Weeks*, 271 U.S. 536 (1926)]:

“The action of an officer of the sovereign (be it holding, taking or otherwise legally affecting the plaintiff’s property) can be regarded as so “illegal” as to permit a suit for specific relief against the officer as an individual only if it is not within the officer’s statutory powers or, if within those powers, only if the powers, or their exercise in the particular case, are constitutionally void.”

Congress has enacted 42 USC 1983 to cover actions against those officers in a state that abuse the U.S. Constitution and federal and state laws. Therefore, although the cases cited above concern officers of the federal government, the U.S. Supreme Court has also provided relief in cases that involve individual officers of a state acting to abuse constitutionally protected rights of its citizens, and in such cases, the U.S. Supreme Court has found these cases not to be against the state, but against the individuals for their actions in violation of both federally protected rights and federal laws.

The “sovereign” as addressed in the rule in *Larson* is not just the sovereign of the United States but includes the sovereign of individual states. The Court stated in *Scully v. Bird*, 209 U.S. 481 (1908) that the individual officer acting outside his statutory authority does not make the case as one against the State. *Scully v. Bird* involved an Illinois business wanting to sell its syrups in the State of Michigan and the State Commissioner in Michigan failed to uphold the requirements of determining whether or not the syrups manufactured complied with Michigan’s law before the removal of all products from the shelves of Michigan grocers. The matter was found to be one against the commissioner, not the State.

These opinions are consistent with the Court’s finding in *Cohens v. Virginia*, 19 U.S. 264 (1821) stating that this Court, under its appellate jurisdiction can hear all cases in law and equity when a right, protected by the U.S. Constitution, is the basis of the claim whether they arise in federal or state court. State and federal courts can operate concurrently, but when the action is a result of an illegal state

action conducted in state court, it is not about the judgment, but it is about the violations of constitutional protections and guarantees, process undertaken, and violations of federal statutes that permit the appeal and relief. The 11th amendment provides no immunity when a state actor acts outside his authority provided by law or that exercise of that law is repugnant to the U.S. Constitution.

WHY THE U.S. SUPREME COURT SHOULD HEAR THIS MATTER

The U.S. Supreme Court stated in *Windsor v. McVeigh*, 93 U.S. 274 (1876) that “[w]herever one is assailed in his person or his property, there he may defend for the liability and that right are inseparable.”

When the right to be heard either when notice has not been given or when notice has been given but the noticed parties are deprived of an opportunity to be heard, the Court in *Windsor v. McVeigh* found the judgment to be ineffectual for any purpose. A court that departs from established modes of procedure will often render the judgment void.

The Court in *Windsor v. McVeigh* described extrinsic fraud, which renders a judgment void and the party harmed is due relief.

As previously described, neither Lillian Pellegrini nor Beverly Pellegrini were afforded any opportunity in any court, state or federal, to defend Lillian Pellegrini’s sole ownership rights and Lillian Pellegrini’s power and control over her property to the exclusion of any other person or entity, public or private.

DEFENDANTS' FRAUDULENT ACTS AND MISREPRESENTATIONS

The acts of fraud addressed with specificity in the Complaint and Opposition to the Motion to Dismiss and in the Briefs was not disputed by the Ninth Circuit. Pertinent aspects of the defendant's knowledge of Lillian Pellegrini's property ownership is summarized below; greater detail will be provided in the writ of certiorari.

Weintraub Tobin and client Marleen Merchant knew, as of 2008, that the property at issue and all property held in the 1999 Trust was Lillian Pellegrini's sole and separate property before any action was commenced by Weintraub Tobin.

The 1999 Trust account was transferred to UBS Financial Services to actively manage Lillian Pellegrini's solely owned assets held in CD accounts upon maturity for capital growth and wealth. UBS Financial Services recommended counsel to distribute the 1999 Trust assets in 2008 and knew that a Family Trust was not created and could not be created using Lillian Pellegrini's sole and separate property. UBS Financial Services also notarized the addendum to Lillian Pellegrini's revocable trust when Beverly Pellegrini was appointed as co-trustee that specifically prohibited any and all interference without full liability.

Assets held in Lillian Pellegrini's revocable trust were liquidated without notice, without authorization, without statutory authority in violation of the Securities and Exchange Act of 1934, Section 10(b). The Bank of New York Mellon received the stolen funds from UBS Financial Services to be deposited in a UBS

account at the Bank of New York Mellon and was informed the transfer was not authorized and to return the funds through a stop payment.

Comerica Bank and two additional banks are participants in the theft as of 2018, Bank of America and California Bank and Trust. Each of these banks holds a different named trust account using the funds stolen from the unauthorized liquidation of assets using the identical EIN fraudulently procured in May 2017. Comerica opened the Pellegrini Family Trust, a bogus trust, using Lillian Pellegrini's individual social security number without Lillian Pellegrini's authorization. Comerica knew, after seeing the title records in 2016, that Lillian Pellegrini was the rightful owner of the assets held at Comerica.

Bank of America holds another bogus trust account, the Pellegrini Revocable Living Trust Family Trust dated February 2016 using the identical fraudulently procured EIN in May 2017. California Bank and Trust opened a trust account in 2018 with the identical EIN but would not disclose the name on the account except to say that it was not the same name or similar name as that at Comerica or Bank of America or the bogus name printed on the check issued by UBS Financial Services in 2016. Both banks agree that the funds held are stolen but will not return them to the rightful owner Lillian Pellegrini. The statements concerning these accounts are sealed records held at Fresno Superior Court. The banks, court, or its officers and agents refuse to release any information to Lillian Pellegrini or Beverly Pellegrini, including the 1999 Trust document that was revoked before any action commenced under Lillian Pellegrini's power to control all assets contributed

by Lillian Pellegrini as owner and held in the 1999 Trust as Settlor/Trustee and sole beneficiary.

FEDERAL COURTS TAKE JUDICIAL NOTICE OF STATE COURT'S INTENTIONAL MISREPRESENTATIONS

When a court has no statutory authority to exercise jurisdiction over the party or her property, and when the jurisdiction undertaken is fraught with fraud, both intrinsic and extrinsic, the judgment has no merit in any tribunal whatsoever. In *Hovey v. Elliot*, 167 U.S. 409 (1897), the court citing *Galpin v. Page*, 16 Wall 350 (1873) stated that

“It is a rule as old as the law, and never more to be respected than now, that no one shall be personally bound until he has had his day in court, by which is meant, until he has been duly cited to appear, and has been afforded an opportunity to be heard. Judgment without such citation and opportunity wants all the attributes of a judicial determination; it is judicial usurpation and oppression, and never can be upheld where justice is justly administered.”

When the state appellate court, without a hearing and without review misrepresents the 1999 Trust document to uphold the conversion, acts of fraud, and theft that occurred while the matter was under its jurisdiction, the state appellate court has been an active participant in facilitating the wrongdoing of the lower state court by perpetuating false statements that have been proven false through evidence of titles, deeds, and ownership records. A state court's opinion issued that misrepresents the contents of a document in its possession is subject to collateral attack. The district court abuses its discretion to cite the false facts when their

veracity is subject to attack and when the defendants have not disputed the facts as stated by the Plaintiff.

The state court's opinion is without merit when based on the lower court's findings obtained by eliminating any opportunity to be heard even with no evidence disputing the evidence of title in the state court's possession and when the lower state court had no statutory authority to exercise jurisdiction over the Lillian Pellegrini as the sole owner of the property to issue any opinion or judgment. The judgment that is a nullity is not at issue; at issue is the process without statutory authority to render the opinion and permit theft through conversion and fraud employed to render the opinion or judgment void.

FEDERAL COURT ABUSES ITS DISCRETIONARY AUTHORITY WHEN ADOPTING ANOTHER COURT'S VOID JUDGMENT OR OPINION

The District Court stated that it did not take judicial notice of the state court's opinion for the facts contained therein even though the district court based its decision on the facts contained in the state court opinion when the defendants did not dispute the facts stated in the complaint. In *Lee v. City of Los Angeles*, 250 F. 3d 668 (9th Cir. 2001), the court stated that when defendants seek dismissal based on a 12(b)(6) motion, facts extraneous to the complaint that are not excluded subject the motion as one for summary judgment unless the material is submitted as part of the complaint or if the materials are matters of public record. In the present matter, the federal district court stated that its basis of judicial notice was because the materials were part of the public record. The federal district court, however, abused its discretion for the following reasons:

i. The district court cited the state court opinion, which was issued almost 3 months after the federal complaint for the claim on stolen property had been filed. Therefore, the plaintiff was not even aware of the facts used by the state appellate court because no review or hearing had been undertaken when the federal complaint was filed or at anytime after the complaint was filed.

ii. The lower state court issued no opinion; it had only issued orders after denying any participation by Lillian Pellegrini or Beverly Pellegrini in the proceedings, thereby eliminating any opportunity to be heard. The injunction order indicating that notice and a hearing were dispensed with was provided as evidence that due process was eliminated when due process of notice and a hearing is required by law. In fact, no opportunity to be heard has ever been provided in any court, state or federal.

iii. The facts stated in the opinion are misstatements of the actual 1999 Trust document, which was in the possession of the state appellate court. While Lillian Pellegrini's ownership rights existed before the 1999 Trust was created and her ownership interests were maintained by the 1999 Trust (Excerpts of Record, Volume 2, Tab 1, p. 111), the state appellate court's falsifying passages in the 1999 Trust document when the 1999 Trust had been revoked before any action commenced after full distribution of all assets subject to Lillian Pellegrini's ownership rights and control were either evidence of gross negligence by the state appellate court or intentional wrongdoing as a coverup for the theft through acts of fraud that the state appellate court permitted to occur.

When a court cites the facts stated in a document to uphold a motion to dismiss when the facts have been stated to be false with specificity and facts that are not supported in the actual 1999 Trust document cited, there can be no judicial notice of the documents submitted by the defendants. In *Lee*, the court found that the lower district court erred in dismissing the complaint based on extrinsic materials and taking judicial notice of disputed matters of fact to support its finding. In the present matter, proven false facts issued by state courts while eliminating an opportunity to be heard, thereby nullifying the opinion and the judgments, were upheld in the district court to dismiss Lillian Pellegrini's complaint and sustained by the Ninth Circuit. We believe the material incongruity between the *Lee* case and the present matter subjects the matter to review.

CIRCUITS SPLIT ON WHAT CONSTITUTES PROPER JUDICIAL NOTICE AND PUBLIC RECORDS

The Ninth Circuit disagrees with the consensus and findings of the Eleventh and Fourth Circuits in agreement that filings of another court are not public records. The Court in *U.S. v. Jones*, 29 F.3d 1549 (11th Cir. 1994) relied on the matter of *Nipper v. Snipes*, 7 F.3d 415 (4th Cir. 1993) regarding Federal Rules of Evidence 201 (judicial notice) and Federal Rules of Evidence 803 (8)(c) (public records).

Filings of another court, subject to collateral attack because the issuing court had no statutory authority to exercise jurisdiction over the Plaintiff/Appellant Lillian Pellegrini or Lillian Pellegrini's property ownership, which was not derived

from the 1999 Trust, cannot be subject of judicial notice because the orders issued without jurisdiction are void. The facts are falsified and are therefore disputed; the content contains misstatements proven to be misstatements and false statements as well as proving the acts of fraud conducted by the defendants; and the disputes in material facts would not permit a motion on summary judgment to be upheld.

The district court took judicial notice of filings prepared by Weintraub Tobin and Fresno County Counsel that were supplied by UBS Financial Services and Bank of New York Mellon (Excerpts of Record, Volume 1, Tab 2, Federal District Court Opinion, p. 2; 4-6); neither UBS Financial Services nor the Bank of New York Mellon nor Keesal Young & Logan were parties to the state court action and could not confirm with evidence any statements contained in the documents for which judicial notice was requested. The district court cites the conclusions in these documents without any proof offered in the defendants' motions to dismiss or in their briefs that support the conclusions in the judicially noticed documents.

The claims and conclusions cannot be supported with any evidence. What was claimed to have transpired in the state courts never occurred; Lillian Pellegrini and Beverly Pellegrini were never permitted any opportunity to participate in the proceedings at any scheduled hearing.

While this Court in *Anderson v. Bessemer City*, 470 US 564 (1985) has supported the Fourth Circuit's criticism of permitting a prevailing party to write the findings and prepare the orders, this Court has found it not necessary to apply more stringent review.

We believe that the standard of review employed by this Court is insufficient in cases where the judgment is void because of lack of authority by the issuing court to exercise jurisdiction and when extrinsic and intrinsic fraud were used to obtain the orders, judgments, and findings for which judicial notice was taken. In this situation, it is not discretionary error but is actually exceeding its jurisdiction by giving merit to documents without merit and that are void.

COURT FILINGS ARE NOT PUBLIC RECORDS

In *U.S. v. Jones*, 29 F. 3d 1549 (11th Cir. 1994), the court agreed with the 4th Circuit holding that judicial findings of facts in orders of another court in another case are hearsay and are not subject to the public record exceptions as they are not factual findings.

The district court and the Ninth Circuit held that such filings are subject to judicial notice as public records. We believe that the Ninth Circuit cannot support the district's court's holding that the documents attached by the defendants were public records subject to judicial notice.

Without these facts from the judicially noticed documents, the only facts that could be sustained were the facts stated in the complaint by plaintiff/appellant Lillian Pellegrini. The defendants offered no evidence to contradict the Plaintiff's facts because no evidence exists.

The orders submitted by defendants cannot be public records under Rules of Evidence 803(8)(c). The defendants submitting the filings for purposes of judicial notice are hearsay. They were not parties to the actions and were not present at

any proceeding. No hearing occurred as no hearing permitting Lillian Pellegrini or Beverly Pellegrini any opportunity to be heard ever occurred. Such documents are not worthy of merit in any tribunal and in the 11th and 4th Circuits, these documents could not be judicially noticed as public records.

We believe that the only critical records are those of title indicating Lillian Pellegrini's ownership and interest of all assets contributed to the 1999 Trust and those assets that were her sole and separate property that were converted through acts of fraud and stolen. While we are able to show the falsification of the 1999 Trust document by the state appellate court, of which facts were submitted in correspondence to the Internal Revenue Service under Notice 97-24, we believe that title and interest alone should be sufficient to grant relief and payment of the claim when the paragraph in the 1999 Trust maintaining the character of the property transferred to the 1999 Trust, which retains the contributing Settlor's ownership and interest in the property (Excerpts of Record, Volume 2, Tab 1, p. 111).

LIKELIHOOD OF GRANTING RELIEF ON FILING WRIT OF CERTIORARI

When public officers and private actors in regulated industries undertake the fraudulent actions to convert and steal property, acting in conjunction with state officers of the courts, the private actors and the officers of the court are in violation of 42 USC 1983. When state court officers act outside the limitations of their statutory authority, no immunity can be granted.

In *Larson supra*. the Court, in its appendix, lists the cases where the court has upheld the lack of immunity where jurisdiction was entertained, providing no

immunity: where officers' actions exceeded their statutory authority; where officers sought shelter behind statutory authority or sovereign command for the commission of a common law tort; officers were not relieved of liability from common law tort because he was acting for the sovereign; cases where the officer(s) were held liable for common law tort but the opinion made reference to a situation involving an unconstitutional taking.

Fresno Superior Court and its officers permitted the fraud and conversion by upholding conversion of Lillian Pellegrini's title in her sole and separate property to be property of the decedent to exercise jurisdiction, resulting in a manipulation and falsification of facts and law to obtain jurisdiction that the court did not have.

Fresno Superior Court engages its agent of the Fresno County Public Guardian to act as trustee of a trust that was not only proven and known to be nonexistent, it was an invalid trust as of 2004, before the decedent died. Injunctions were issued in 2015 without notice and without hearings, when notice and hearings are required by law, to exercise control over Lillian Pellegrini's sole and separate property with intent to deprive Lillian Pellegrini of her ownership rights.

The financial and banking institutions were not parties to the action. UBS Financial Services held a contract with Lillian Pellegrini and Beverly Pellegrini to forbid any access to their accounts, including employees of UBS Financial Services without full liability for any injury to property. UBS Financial Services engaged in mail fraud to uphold the false statements in the May 15, 2015 order issued from

Fresno Superior Court that did not comply with the order. (Excerpts of Record, Vol. 1, Tab 5, p. 73-74). UBS Branch manager, without authorization, took instructions from third parties Marleen Merchant and Fresno County Public Guardian with evidence provided by Keesal Young & Logan in, for lack of words to describe it, a ***wrongful death ransom***; Lillian Pellegrini's response to this notice was filed in the Fresno Superior Court and the State Appellate Court. (Excerpts of Record, Vol. 2, Tab 2, p. 22-28).

The theft occurred January 21-28, 2016. A claim was filed in February against Fresno County after a conference call in the Public Administrator's office, who agreed, that wrongdoing was conducted by Fresno County Counsel and Fresno County Public Guardian (Excerpts of Record, Vol. 1, Tab 5, p. 47-60). The claim was denied March 15, 2016; a complaint was filed in federal district court in August 2016 within the six-month statute of limitations period. In the interim, officers of the State of California, including the Governor, members of the state legislature, attorney general, judicial council, and federal departments of oversight, members of Congress, and Executive Departments were also contacted; agencies with the statutory obligation to investigate conducted no investigation.

CONCLUSION

In summary, Lillian Pellegrini has a constitutional right to own property undisturbed, without interference, without taking when due process is denied, and if that taking is conducted, Lillian Pellegrini has a right to compensation. The price of that compensation was in excess of \$14 million as of 2016 when the claim was

filed; the value of that compensation has increased through the taking of investments that continued to increase in value, producing capital wealth and income, for which the claim provided. Public officers and private parties acted together, each playing independent roles in concert with each other, to convert Lillian Pellegrini's property and steal it through acts of mail fraud, bank fraud, securities fraud and tax fraud with evidence provided in the Excerpts of Record, Volume 2, Tab 2 and 3, and Excerpts of Record Volume 3.

We believe that by granting this writ of certiorari, the U.S. Supreme Court will grant us an opportunity to be heard and grant us relief. An opportunity to be heard is long overdue; the taking is an abomination of Lillian Pellegrini's constitutional rights to own property without interference.

We respectfully request that this stay be granted regarding the Ninth Circuit's mandate in its entirety while we respectfully request permission to submit a new petition for writ of certiorari for which we believe the U.S. Supreme Court will grant the payment of the claim based on Lillian Pellegrini's rights as owner of the property at issue under the U.S. Constitution and under federal and state laws.

Respectfully submitted,

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