ORIGINAL

NO. 19-6105

IN THE SUPREME COURT OF THE UNITED STATES

IN RE AVRAM MOSHE PERRY, DEBTOR
PETTITIONER/PLAINTIFF

v.

CHASE AUTO FINANCE (JPMC BANK, N.A.), KEY AUTO RECOVERY, JOE AND MATT SCHARLIN, DOES 1 THROUGH 100 KNOWN AND UNKNOWN DEFENDANTS/RESPONDENTS.

RESUBMITTED - A THIRD VERSION OF THE PETITION FOR WRIT OF CERTIORARI THAT WAS TIMELY AND ORIGINALLY FILED-MAILED ON MARCH 30, 2019 FOR AN IMPOSSIBLE AMERICAN JUSTICE,– TO THE COURT OF LAST RESORT. THE SUPREME COURT MAY ISSUE WRITS UNDER THE ALL WRITS ACT, 28 U.S.C. § 1651(A), AN ALTERNATIVE WRIT OR RULE NISI MAY BE ISSUED BY A JUSTICE OR JUDGE OF A COURT WHICH HAS JURISDICTION. (WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FROM THE NINTH CIRCUIT ON ALL MATTERS CERTIFIED BY THE BANKRUPTCY COURT AND DISTRICT COURT.)

(Petitioner is a Pro Se and asks the Supreme Court for some allowance as English his second language and if the court finds it difficult to surmise the important issues here, which touch the lives of many Americans, it may provide for the assistance of counsel to clarify the issues to the court).

Ch. 7 Nos. 1:09-bk-11476-GM; Ninth Circuit Court of Appeals Case No. 17-55518, 17-55519, 17-55520, Order refusing to G=grant Rehearing after District Court Appeal in D.C. Nos. 2:15-cv-07155-FMO, 2:15-cv-09440-FMO, 2:15-cv-09889-FMO were all certified for appeal, after Bankruptcy Court granting Summary Judgment To Defendants and Dismissal, Adversary Proceedings Nos. 1:10-ap-01043-GM (bifurcated Causes of Actions) and Nos. 1:10-ap-0356-GM (from removal of adversary proceeding to the state court pursuant to 28 U.S.C. § 157(a), which was administratively closed without a hearing by the Bankruptcy Judge Geraldine Mund on May 8, 2012 (1:10-ap-0356 was related to Nos. 1:15-AP-01129-GM (Filed bifurcated Causes of Actions) related to U.S Dist. Ct. Case No.: 2:15-cv-05276-FMO, [filed on July 14, 2015] related to USDC Appeal No: cv-15-07155-SIG (transferred to FMO).

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QUESTION(S) PRESENTED

1. **(a):** Whether Congress had provided that in an American civilized federal court system a judge can use an unlimited discretion to outrageously discriminate against pro se, to cause pro se plaintiff irreparable injury, the federal/bankruptcy judge arbitrarily deny procedural due process by forcefully (in spite of plaintiff's protests) arbitrarily draft his/her version of "**Amended Complaint - Revised and Edited Complaint**" using copy and paste from certain portions of plaintiff's 2010 "Original Adversary Complaint," favoring only defendants' 5 years new evidence in support of order to granting their motions for summary judgment? **(b):** If so, whether a federal/bankruptcy judge abused his/her equitable powers under 11 U. S. C. § 105? **(c):** If so, or not, whether a federal/bankruptcy judge has discretion to forbid a plaintiff from amending his own complaint once as matter of course (Fed.R.Civ.P. 15(a)&(b) after filing an adversary complaint, and/or whether such a judge may amend the complaint for the pro se plaintiff? **(d):** Whether the bankruptcy court properly or unfairly exercising its equitable powers by staying the bankruptcy case for 5 years (until 2015) when the state action was already over 5 years earlier (in May 2010) and was never litigated, was the delay was intentional to allow the Circuit Court to create a new compromising case (In Mwangi v. Wells Fargo Bank (In re Mwangi), 764 F.3d 1168, 1170-71 (9th Cir. Aug 26, 2014)? **(e):** If so, whether the bankruptcy court had properly delayed the federal/bankruptcy case for 5 years ignoring 28 U.S. Code § 158. (d)(2)(D), which clearly states: **"An appeal under this paragraph does not stay any proceeding of the bankruptcy court, the district court, or the bankruptcy appellate panel from which the appeal is taken..."**? **(f)**:: Whether debtor's evidence in possessing of a certificate of title ("**Pink-Slip**") as a pecuniary "**party-in-interest**" as defined under 11 U.S.C. § 1107 investing security interest in the "**Pink-Slip**" as if a "**debtor in possession**" entitled him/her to be heard on punitive damages under § 1109(b), as compared to a creditor's promissory note to the security interest who had initiated a wrongful repossession and refused turnover?; **(h):** If so or not, whether a federal/bankruptcy judge discretion to deny debtor offering such evidence of ownership of security interest vested in the "**Pink-Slip**" instead of revested according to In Mwangi v. Wells Fargo Bank (In re Mwangi), 764 F.3d 1168, 1170-71 (9th Cir. Aug 26, 2014)? **(i):** Whether a federal/bankruptcy judge has discretion to deny punitive damages while condoning defendants' fraud after they submit a fake "**Pink-Slip**" as evidence, and falsely claiming in their motion to lift the automatic stay (on April 23, 2009 - granted) to have it in their possession?

2. **(a):** Whether when a federal court denial of abstention without prejudice was appealable in the Circuit Court from any "final judgment, order, or decree of a bankruptcy judge" under 28 U.S.C. §158(a) & §158 (d)? And If so, does forum motions to abstain denied without prejudice are reviewable under 28 U.S.C.

§1334(d)"("Any decision to abstain or not to abstain made under subsection (c) **(other than a decision not to abstain** in a proceeding described in subsection (c)(2)") is reviewable by appeal under section 158(d), 1291, or 1292 of this title or by the Supreme Court of the United States under section 1254 of this title?" **(b):** If so or not, does abstention involve the abdication of federal jurisdiction" after the state causes of action were bifurcated and the state case was no longer "pending and was never litigated on the merits? **(c)**: Whether there are time limitation to respond to a complaint, and how much time does a defendant has to respond to a complaint after he/she filed a motion to abstain under 28 U.S.C. § 1334(c)(2) after it was denied without prejudice?[2] **(d):** If so or not, whether 28 U.S.C. § 1334(c)(2) abstention motions in fact assume the validly of a constituted lawsuit from which abstention was sought, and that if no answer is needed, defendant is in default for not answering, as there are seven (7) motions offered under Fed. R. Civ. P. 12(b), with time limitation and on successive motions under Fed. R. Civ. P. 12(g), Fed. R. Civ. P. Rule 15, and Fed. R. Civ. P. 7, Fed. R. Civ. P. Rule 10, and any other rules should be left inactive? **(e):** if so or not, would filing an answer along with a motion to abstain supplement an answer, binding defendant, and/or would denying motion to abstain without prejudice foreclose both mandatory and discretionary abstention under §1334(c)(2) & §1334(c)(1), when no parallel or pending state court proceeding exist or litigated in the interest of (illusive) justice, or in the interest of comity with State laws, be considered reasonably with in respect to such state laws which effectively conflict with the bankruptcy Code, to allow defendants to utilize the vexatious litigant laws against a defenseless, bankrupt debtor after they lied and issued a fake title and ownership of the property belonging to debtor, in order to be granted an order to lift the automatic stay? (See discussion of California Code of Civil Procedure §**391** et. seq. on pages # 21, 31, 32, 37.)

3. **(a):** Whether a state court orders are preclusive, re judicata when the state court case was dismissed 5 years earlier and a later abstention under 28 U.S.C. 1334(c)(2) was improper? **(b):** If so, whether a debtor may enforce the injunctive provisions of 11 U.S.C. §105 and §524 on the state court order bond requirements under vexatious litigants laws as California Code of Civil Procedure §§ 391 et. seq. when a debtor was not discharged and was pending and granted 3 years later (until 05/9/2013) while the bankruptcy court stayed the state case? **(c):** if so, whether a state court may force a debtor to post tens of thousands of dollars to a wealthy creditors in order to destroy debtor any chance for having a "Fresh Start" as protected under 11 U.S.C. §105 and §524?

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1 28 U.S.C. 1334(c)(2) is reviewable: (other than a decision not to abstain in a proceeding described in subsection (c)(2)) is....reviewable by appeal or otherwise by the court of appeals under section 158(d), 1291, or 1292."

2 Id. discussion on abstention on page 36.

4. **(a):** Whether a debtor have the right to punitive damages under 11 U.S. Code § 1109(b), if a creditor had surrendered ownership and security interest in a "**Certificate of Title**" ("**Pink-Slip**") to a debtor 5 years earlier, supersede any creditor's claims for security interest under contract? **(b):** Whether the 9th Circuit Court **In Mwangi v. Wells Fargo Bank (In re Mwangi), 764 F.3d 1168, 1170-71 (9th Cir. 2014)** decision of retroactive revesting dependant on ownership, when 9th Cir. BAP denied debtor injunctive relief as moot, but allowed damages (November 10, 2009), revesting cannot act as a "**Catch-22**"? **(c):** Whether the 9th Circuit should have used **judicial estoppel** not allow creditors to change positions according to their exigencies circumstances to prejuduce debtors, because reasonable "revesting" can only occur while debtor is in possession and not when possession and control and sale was taken prepetition by creditors? **(d):** According to the 9th Circuit, creditors may use tactical advantage on debtors property, and yet be protected under 11 U.S.C. §§ 362, 522(b), 323, 704 operatively used to delay and obstruct equitable relief offered to debtors, to stop them from demanding later punitive damages for wrongful seizures? **(e):** If so, may a debtor establish a plausible injury under Section §362(k)(1) (title 362 et. Seq.) when creditors failed to seek instruction from the **trustee** and the court and instead took upon himself to commit a wrongful repossession? **(f):** Whether "**revesting**" of a property (of property wrongly seized by the creditors from the debtor and the estate) can only occur during the protections of 11 U.S.C. §362(a)(3) (and et.seq.) and there can be no retroactive "**revesting**" after a forced repossession, and creditor's willful hold and refusal to turnover property and sale? **(f):** If so, whether a debtor who was granted discharge (on 05/09/2013), yet his vehicle sold 4 years earlier, was filed exempt property, can be revested only for purpose of denying punitive damages, as relevant under U.S.C. § 362(a)(3) (and et.seq.)? **(g):** If so, whether the bankruptcy judge order (04/23/2009) granting the motion for relief from automatic stay could cause revesting of any property, after creditor's unlawfully seized the property refused turnover and already sold it 5 years earlier (May 30, 2009), while discharge was pending (granted on May 9, 2013), entitled debtor to punitive damages? **(h):** If so, whether defendants violated provisions of the Bankruptcy laws under the 4th amendment to the United States Constitution (against unreasonable seizures), after a federal Court revested back property to debtor that was exempted, nut was wrongly repossessed, controlled and sold by the creditor who knew well debtor held the real title to the property? **(i):** Whether such debtor loses his possessory interest in the vehicle, and forfeits his rights to sue creditor for punitive damages after the creditor wrongful repossession and control? **(j):** Whether a creditor's violated the automatic stay by the temporary administrative holding was permissible or constitutes a wrongful

exercise of control from the **trustee** and the debtor, when it held no title to the property or security interest? **(k):** Whether such temporary turned permanent justifies "revesting" such property 6 years later, does not serve to maintain the status quo , when creditor acted from improper motives in violation of the automatic stay under U.S.C. §362(a)(1): **"[t]he commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title...."**? **(l)** If so or not, whether or not a debtor or the trustee can sue a creditor who willfully possess, controlled and refuse turnover of property belonging to the estate (and to the debtor) who run afoul of bankruptcy laws cannot avoid punitive damages, and cannot claim to have such property "**revested**" involuntarily back to the debtor after creditor had no security interest in the property and offended the bankruptcy laws? (Debtor here held "**certificate of title**" ("**pink-slip**")) and creditor lied about title to property to take advantage of debtor's inability to possess the property wrongly repossessed. **(m):** Whether creditors can escape paying punitive damages to debtor under 11 U.S.C. § 362(a)(3), after the **trustee** had intentionally abandoned the property of estate? (See trustee discussion herein in pages 16, 17, 18, 19, 28, 30, 43, 45.)

5. **(a):** Whether a federal/bankruptcy court judge denying defendants' forum motions to abstain under 28 U.S.C. §1334(c)(2), denied without prejudice in 2010, required mandatory abstention while the state court proceeding was still pending? Yet, discretionary abstention was impermissible under 28 U.S.C. §1334(c)(1), after the state court proceeding had already terminated 4 years earlier? (b): Whether as a result of that the federal/bankruptcy courts had violated debtor's the 5th and 14th amendments rights for procedural due process by refusing to properly hear his claims? **(b):** If so, does the defendants' 2010 forum motions to abstain supplemented an answer that was never timely filed? If so, does Fed. Rules of Civ. Rule 12 application was mandatory or flexible to allow defendants to file unlimited responses as three (3) sets of **motion to dismiss, two late answers, two amended answers**, and reserved **two motions for summary judgment** and offer new latent evidence, which the judge granted and whether equity was ever served after the Judge drafted the "**Amended Complaint - Revised and Edited Complaint**"? **(c):** If so or not, does a bankruptcy/federal judge violated plaintiff's first Amendment rights to **"abridging the...and to petition the Government for a redress of grievances"? (d):** If so, does the Supreme Court's decisions enforcing procedural due process safeguards stands hollow when federal courts refusing to respect the laws. See Foman v. Davis, 371 U.S. 178, 182 (1962), Bell Atlantic Corp. v. Twombly, 550 U.S. 544 (2007), and Ashcroft v. Iqbal, 556 U.S.

662 (2009)? **(e):** If so, whether such misconduct defeats the purpose of Fed. R. Civ. P. Rule 12(a)(A)(1)(i), Fed. R. Civ. P. 12(g)(2); Fed. R. Civ. P. 15(a)(1)(B), considered the contemplated filing of motions to abstain under 28 U.S.C. § 1334(c)(2) may contradict Fed. R. Civ. P. Rule 12? (f): Whether it is salutary to file an answer and that a litigant takes the risk a waiver if they do not file an answer and instead work as piecemeal consideration by increasing dilatory motion practice to lengthen the litigations, resulting in "undue delay" and prejudice to the other party? Does such conduct departs from the accepted and customary course of judicial proceedings, and if sanctioned, such a departure by a lower Federal Courts should not be tolerated by the United Supreme Court, who should finally exercise its own supervisory power? **(f):** If so, whether a bankruptcy court may try a case in the district court pursuant to 28 U.S.C. § 157(a) in the interest of justice not abstain, once the bankruptcy court refuses, when the state proceeding had terminated 5 years earlier and was no longer "pending" was never litigated, was not disrespectful of state laws or comity, was not prevented from hearing some a core issues affecting "particular proceeding arising under title 11 or arising in or related to a case under title 11, is in the interest of comity?

6. **(a):** Whether the Ninth Circuit refusal to review on final judgment and appeal the interlocutory appeals No. 14-60064 (BAP case no. 14-1283, it initially denied regarding defendants' defaults and default judgments in failing to answer the original adversary complaint? **(b):** If so, whether defenses not raised in a motion to abstain, can reserve the rights to file motions for summary judgment 5 years later, after the Court allowed defendants to file two sets of motions to abstain, 3 sets of motions to dismiss, two late answers and tow amended answers? **(c):** If in the affirmative, did the bankruptcy clerk had properly issued the default judgments against the defendants pursuant to Bk.R.Civ.P. 7055(b)(1)? **(d):** If so, or not, did the judge setting aside the judgment abused her discretion by subsequently staying the case for 5 years (until 2015) had prejudiced the plaintiff and his rights for leave to amend?

LIST OF PARTIES

1. **PLAINTIFF/PETITIONER:** AVRAM MOSHE PERRY
2. **DEFENDANT/RESPONDENT:** CHASE AUTO FINANCE, **(MORGAN CHASE BANK N.A.)**
3. **DEFENDANT/RESPONDENT:** KEY AUTO RECOVERY

4. **RESPONDENT:** NINTH CIRCUIT COURT OF APPEALS

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THIS CASE PRESENTS A RECURRING QUESTION OF EXCEPTIONAL IMPORTANCE WARRANTING THE COURT'S IMMEDIATE RESOLUTION. 27

A. Post-Petition Contractual Disputes Involving Estate Administration Are Core Proceedings Under 28 U.S.C. 157(B)(2)(A). 29

A. The Decisions Below Conflicts With Decisions of The Second, Third, And Fourth Circuits On A Fundamental Issue of Abstention Laws. But There Is No Bar For Review An Order Denying Abstention Without Prejudice Under 28 §1334(d): "other than a decision not to abstain in a proceeding described in subsection (c)(2)." 31

B. Circuits Courts of Appeals Are Divided And Conflicted On Applications of Default Judgment Over The Standard Applicable To Interplay of Pre-Answer Motions And Motions To Abstain With Or Without An Answer, If And When It Will Result With Considerable Delays Dilatory Motion Practice, Prejudice And Injury To A Plaintiff. 35

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THIS COURT SHOULD RE . ERSE THE NINTH CIRCUIT'S DECISION REFUSAL TO APPLY JUDICIAL ESTOPPEL TO REVESTING OF A PROPERTY INTENTIONALLY WITHHELD BY CREDITORS WHO WRONG WRONGLY REPOSSESED AND REFUSED TURN-OVER .....**Error! Bookmark not defined.**

A. The Supreme Court Must Look How Bankruptcy Courts Allows Creditors To Expose Debtors To "**Catch 22**" And "Double Jeopardy" And Punishment When Using Pre-Petition Wrongful Repossession To Preempts "Debtors In Possession" And By Refusing Post-Petition Turn-Over Cause Irreparable Harm To Expose Debtors To Later Retroactive Revesting Is Unfair, Does Not Rightly Serves The Purpose of Bankruptcy Laws, And Warrants Punitive Damages. 41

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Foman v. Davis, 371 U.S. 178, 182 (1962), Bell Atlantic Corp. v. Twombly, 550 U.S. 544 (2007), and Ashcroft v. Iqbal, 556 U.S. 662 (2009) that required complaints to be test on its merits, and not be tested by using pre-answer motions to abstain under 28 U.S.C. § 1334(c)(2) 23

A defense is unavailable if "its legal basis did not exist at the time of the answer or pre-answer motion." Gilmore v. Palestinian Interim Self-Government Auth., 843 F.3d 958, 964–65 (D.C. Cir. 2016). 35

Apex Oil Co. v. United States Customs Serv. (In re Apex Oil Co.), 122 B.R. 559 (Bankr. E.D. Mo. 1990), rev'd, 131 B.R. 712 (E.D. Mo. 1991) (**bankruptcy court's abstaining in favor of CIT was not in the interest of justice**); 38

Armstrong v. Sears, 33 F.3d 182, 188 (2d Cir.1994) (noting that Fed.R.Civ.P. 12(g) requires consolidation of defenses and Fed.R.Civ.P. 12(h)(1) 40

Bankruptcy Rule 5011(c) provides that a motion to abstain does not stay a case are prone to abuse. See Littenstein v. Dorcich (In re Littenstein), 35 B. R. 123, 124 (9th Cir. BAP 1983) 38

Boggess v. Columbian Rope Co., 167 F. Supp. 854, 856 (S.D.N.Y. 1958) (granting of a stay of trial in a federal court action made conditional upon the defendant's agreeing that discovery would go forward in the federal proceeding, ...36

Carey v. Piphus, 435 U.S. 247, 259 (1978). "[p]rocedural due process rules are meant to protect persons not from the deprivation, but from the mistaken or unjustified deprivation of life, liberty, or property. 25

Carey v. Piphus, 435 U.S. 247, 259 (1978). "[P]rocedural due process rules are shaped by the risk of error inherent in the truth-finding process as applied to the generality of cases." Mathews v. Eldridge, 424 U.S. 319, 344 (1976) 25

Chandler v. State Bar of California, 2008 WL 901865, at *3 (N.D.Cal. March 31, 2008) quoting Canatella v. California, 304 F.3d 843, 850–52 (9th Cir. 2002) (analysis of when state bar disciplinary action commences leads court to find abstention unwarranted, as no state proceeding was ongoing) 37

Fuentes v. Shevin, 407 U.S. 67, 81 (1972). "**At times, the Court has also stressed the dignitary importance of procedural rights, the worth of being able to defend one's interests even if one**

cannot change the result. Carey v. Piphus, 435 U.S. 247, 266–67 (1978); Marshall v. Jerrico, Inc., 446 U.S. 238, 242 (1980) 20
Golden v. Cox Furniture Mfg. Co., 683 F.2d 115, 118 (5th Cir.1982) (stating challenges to service of process must be included at time of first Rule 12 motion) 40
Government of the Virgin Islands v. Sun Island Car Rentals, Inc., 819 F.2d 430, 433 (3d Cir.1987) (defective service waived if not challenged in first defensive pleading); Konigsberg v. Shute, 435 F.2d 551, 551-52 (3d Cir.1970) 40
Hazel-Atlas Glass Co. v. Hartford-Empire Co., 322 U. S. 238, 249-250 (1944) 24
Heckler v. Chaney, 470 U.S. 821 (1985), citing United States v. Wunderlich, 342 U. S. 98, 342 U. S. 101 (1951) 25
Hicks v. Miranda, 422 U.S. 332, 348-50, 95 S.Ct. 2281, 45 L.Ed.2d 223 (1975); Doran v. Salem Inn, Inc., 422 U.S. 922, 928-29, 95 S.Ct. 2561, 2566, 45 L.Ed.2d 648 (1975). "Gilbertson did overrule Green's holding that direct interference is a threshold requirement...of Younger abstention 38
In Container Transport, Inc. v. Scott Paper Co. (In re Container Transport, Inc.), 86 B.R. 804, 808 n.4 (E.D. Pa. 1988) ("**The Defendant therefore should have filed its Answer and the case should have proceeded as if the Motion for Abstention had never been filed, unless a stay had been entered, by the terms of Rule 5011(c).**") 38
In In Mwangi v. Wells Fargo Bank (In re Mwangi), 764 F.3d 1168, 1170-71 (9th Cir. 2014) 26
In Mwangi v. Wells Fargo Bank (In re Mwangi), 764 F.3d 1168, 1170-71 (9th Cir. 2014) 3, 13, 17
In re Littenstein (1983 9th Cir. BAP) 35 B.R. 123 20
In re Murchison, supra at 349 U. S. 136; cf. Tumey v. Ohio, 273 U. S. 510, 273 U. S. 532 (1927): "In pursuit of this end, various situations have been identified in which **experience teaches that the probability of actual bias on the part of the judge or decisionmaker is too high to be constitutionally tolerable** 32
In re Price, 173 B.R. 434, 439 (Bankr. N.D. Ga. 1994) (quoting Allen v. Wright, 468 U.S. 737, 750-51 (1984)). "**A party seeking to invoke.....standing must demonstrate, among other things, that the party has suffered, or is threatened with, 'injury in fact, by which we mean an invasion of a legally protected interest...**'" Price, 173 B.R. at 441 (quoting Northeastern Fla. Chapter of the Assoc. Gen. Contractors of America v. City of Jacksonville, Fla., 113 S. Ct. 2297, 2302 (1993) 17
In Stern, the Ninth Circuit reasoned that allowing a Bankruptcy judge to enter final judgments on all counterclaims raised in Bankruptcy proceedings "would certainly run afoul" of the Supreme Court's decision in Northern Pipeline Construction Co. v. Marathon Pipe Line Co., 458 U.S. 50 (1982) 31
Knaus, 889 F.2d 773 (8th Cir. 1989), at 775 17
Law v. Siegel, 134 S. Ct. 1188 (2014), We have long held that "whatever equitable powers remain in the bankruptcy courts must and can only be exercised within the confines of" the Bankruptcy Code. Norwest Bank Worthington v. Ahlers, 485 U.S. 197, 206, 1195*1195 108 S.Ct. 963, 99 L.Ed.2d 169 (1988); see, e.g., Raleigh v. Illinois Dept. of Revenue, 530 U.S. 15, 24-25, 120 S.Ct. 1951, 147 L.Ed.2d 13 (2000); United States v. Noland, 517 U.S. 535, 543, 116 S.Ct. 1524, 134 L.Ed.2d 748 (1996); SEC v. United States Realty & Improvement Co., 310 U.S. 434, 455, 60 S.Ct. 1044, 84 L.Ed. 1293 (1940) 21
Legislative history expounds upon this statutory language, providing jurisdictional requirement for standing is open to review at all stages of the litigation." National Organization For Women, Inc. v. Scheidler, 114 S. Ct. 798, 802 (1994) 17
Mathews v. Eldridge, 424 U.S. 319, 344 (1976). Id. at 12–13 25
Mathews v. Eldridge, 424 U.S. 319, 344 (1976). Id. at 12–13. Likewise, the Court rejected the argument that remanding the case would not cure the underlying due process violation because the disqualified

judge's views might still influence his former colleagues, as an "inability to guarantee complete relief for a constitutional violation....does not justify withholding a remedy altogether." Id. at 14 26
McCurdy v. American Board of Plastic Surgery, 157 F. 3d 191: 39
Middlesex County Ethics Committee, 457 U.S. at 432 33
Mwangi v. Wells Fargo Bank (In re Mwangi), 764 F.3d 1168, 1170-71 (9th Cir. 2014) 11
New Hampshire v. Maine,[532 U.S. 742, 750 (2001) 18
O'Brien v. R.J. O'Brien & Assocs., 998 F.2d 1394, 1399-1401 (7th Cir.1993) (party must include defense of insufficiency of process in its first Rule 12 motion, or its ability to do so is waived) 40
Puckett v. United States, 556 U.S. 129 (2009) 20
Quin v. Cnty. of Kauai Dep't of Transp, 733 F.3d 267, at 277 27
RTC v. Starkey, 41 F.3d 1018, 1021 (5th Cir.1995) (affirming district court's denial of motion for leave to file motion to dismiss where defendant waived insufficiency of process by failing to raise it in answer.) 40
Sanderford v. Prudential Ins. Co., 902 F.2d 897, 900 (11th Cir.1990) (recognizing that insufficiency of process defense is waiveable) 40
Stern v. Marshall, 564 U.S., 131 S.Ct. 2594 (2011) 31
the courts of appeals are recognized to have an inherent power to recall their mandates, subject to review for an abuse of discretion. Hawaii Housing Authority v. Midkiff, 463 U. S. 1323, 1324 (1983) (REHNQUIST, J., in chambers); see also Hazel-Atlas Glass Co. v. Hartford-Empire Co., 322 U. S. 238, 249-250 (1944) 24
United States v. Olano, 507 U. S. 725, 732–733 20
United States v. One 1978 Piper Cherokee Aircraft, 91 F.3d 1204, 1208 (9th Cir.1996) (objection to sufficiency of process waived if not made in motion pursuant to Rule 12) 40
We Are America v. Maricopa County Bd. Sup'rs 594 F.Supp.2d 1104 (2009), cited "From the Ninth Circuit's standpoint, Doran "clarified that when the federal plaintiff is not a party to the state court action, a mere commonality of interest with a party to the state litigation is not sufficient to justify abstention." Green v. City of Tucson, 255 F.3d 1086, 1100 (9th Cir.2001) (en banc), overruled, in part, on other grounds by Gilbertson v. Albright, 381 F.3d 965 (9th Cir.2004) (en banc) 38
Wooley v. Maynard, 430 U.S. 705 (1977); Steffel v. Thompson, 415 U.S. 452 (1974), the Supreme Court found ..."Younger does not bar federal jurisdiction." Id. at 711. In Ankenbrandt v. Richards, Ankenbrandt, 504 U.S. at 689, a tort action, the Court held the application of Younger abstention to be erroneous since the state proceedings had been concluded 34
Younger had never been applied "**when no state proceeding was pending nor any assertion of important state interests made.**"; D.A. Osguthorpe Family Partnership v. ASC Utah, Incorporated, 705 F.3d 1223, 1232 (10th Cir. 2013) (Rooker-Feldman did not bar federal action because state court proceedings not final while appeal pending); Shafizadeh v. Bowles, 476 F. App'x 71, 72 (6th Cir. 2012) (question remains open) 34
Zelson v. Thomforde, 412 F.2d 56, 58-59 & n. 8 (3d Cir.1969) (per curiam) (deeming defendants' objection to service of process waived where defendants initially moved to dismiss only on statute of limitations grounds) 40

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OPINIONS BELOW

1. The United States Court of Appeals for the Ninth Circuit filed its opinion on August 15th, 2018, Avram Moshe A. Perry v. JPMorgan Chase Bank, N.A.'s Key Auto Recovery, et al., based on In Mwangi v. Wells Fargo Bank (In re Mwangi), 764 F.3d 1168, 1170-71 (9th Cir. 2014).

CASES INVOLVED

A. FEDERAL COURTS:

2. Decision of the United Stated Bankruptcy Court: adversary proceedings Nos. 1:10-ap-01043-GM. Nos. 1:10-ap-0356-GM and Adv. 1:15-ad-01129-GM (bifurcated causes of action).
3. Three appeals were consolidated in the United States District Court: Assigned to Judge Fernando M. Olguin heard: 2:15-cv-07155-FMO; 2:15-cv-09440-FMO; 2:15-cv-09899-FMO.
4. The 9th Circuit consolidated the three United States District Court appeals under Nos. 17-55520 (2:15-cv-09440-FMO); 17-55519 (2:15-cv-07155-FMO); 17-55518 (2:15-cv-09889-FMO).
   (a) From the bankruptcy court order of 08/24/2015, dismissing Adv. 1:15-ad-01129-GM: **2:15-cv-07155-FMO** related to 2:15-cv-05276-FMO-AGR (after the bankruptcy court order on 04/16/2014, Nos. 1:10-ap-01043-GM bifurcating violations of 362 and 542, the 7th cause of action (abuse of process) and the 11th cause of action causes of action, from the 1st, 2nd, 3rd, 4th, 5th, 6th, 8th, 9th and 10th causes of action), Mr. Perry filed in United State District Court who referred it as related Nos. 1:10-ap-01043-GM. The bankruptcy court (not Mr. Perry) opened Adv. 1:15-ad-01129-GM and immediately closed it.
   Case in other court: **9th CCA, 17-55519.**
   USBC Central District of California Los Angeles, 1:09-bk-11476-GM.
   USBC Central District of California Los Angeles, 1:15-ad-01129-GM.

   (b) From the bankruptcy court order of 11/30/2015, granting summary judgment To JPMorgan Chase Bank, N.A: **2:15-cv-09440-FMO** (Lead case: 2:15-cv-07155-FMO) Related Case: 2:15-cv-05276-FMO-AGR (bankruptcy court order on bifurcated causes of action in Nos. 1:10-ap-01043-GM): **9th CCA, 17-55520** related to 1:10-ap-01043-GM.
   USBC Central District - San Fernando Valley, 1:10-bk-11476-GM.

   (c) From bankruptcy court order of 12/14/2015, Granting Summary Judgment To Key Auto Recovery: **2:15-cv-09889-FMO** (Lead case: 2:15-cv-07155-FMO), was confused as erroneously transferred from the United States District Court to the bankruptcy court.

Related Case: 2:15-cv-05276-FMO-AGR.
Case in other court: **9th CCA, 17-55518.**
USBC Central District - San Fernando Valley, 1:09-bk-11476-GM.

BASIS FOR JURISDICTION IN THIS COURT

5. This Court has jurisdiction to review on writ of certiorari based on 28 U.S.C. §1254(1) the Ninth Circuit's August 15th, 2018 decisions. See 28 U.S.C. § 1653. Amendment of pleadings to show jurisdiction: Defective allegations of jurisdiction may be amended, upon terms, in the trial or appellate courts. (June 25, 1948, ch. 646, 62 Stat. 944.)

6. Article III of the Constitution provides that: "The judicial power of the United States shall be vested in one Supreme Court and in such inferior courts as the Congress may from time to time ordain and establish." The Supreme Court emphasized that **"[t]he statute governing th[e] [Supreme] Court's jurisdiction...confers unqualified power on this Court to grant certiorari 'upon the petition of any party**.'" See Camreta, 563 U.S. at 700 (emphasis in original) (quoting 28 U.S.C. § 1254(1)).

7. The Supreme Court has jurisdiction to review a case that was certified by the federal courts provided that the case is "**in the court of appeals." In other words, the court of appeals must have jurisdiction over a case for this Court to have jurisdiction by writ of certiorari.** See Nixon v. Fitzgerald, 457 U.S. 731, 741-743 & n.21 (1982); United States v. Nixon, 418 U.S. 683, 690-692 (1974). 28 U.S.C. 158(d)[3] states that "**(t)he courts of appeals shall have jurisdiction of appeals from all final decisions, judgments, orders, and decrees**" entered by a district court or bankruptcy appellate panel on appeal from a bankruptcy court.

8. More generally, 28 U.S.C. 28 U.S.C. §158(d) or 28 U.S.C. §1291 which vested jurisdiction in the courts of appeals over "**appeals from all final decisions of the district courts of the United States,**" except where direct review may be sought in the Supreme Court.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

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3 See 28 U.S. Code § 158. (d)(2)(D): "**An appeal under this paragraph does not stay any proceeding of the bankruptcy court, the district court, or the bankruptcy appellate panel from which the appeal is taken,** unless the respective bankruptcy court, district court, or bankruptcy appellate panel, or the court of appeals in which the appeal is pending, issues a stay of such proceeding pending the appeal." Colo. River Water Conservation Dist. v. United States, 424 U.S. 800, 813 (1976); A stay order is "final for purposes of appellate jurisdiction" where the order puts the litigant "**effectively out of court**." Id. at 9; see also Idlewild Liquor Corp. v. Epstein, 370 U.S. 713, 715 n.2 (1962) "[T]he object of the stay is to require....an essential part of the federal suit to be litigated in a state forum." Moses H. Cone, 460 U.S. at 10 n.11..

9. Relevant provisions of the bankruptcy laws, abstention and pleading procedures are stated as follows: 28 U.S.C. §1334(c)(2); 28 U.S.C. §1452(a)[4]; 28 U.S.C. § 157; 28 U.S.C. § 158(d)(1); Fed. R. Civ. P. 15(a)(1)(B); Fed. R. Civ. P. 12(a)(A)(1)(i); Fed. R. Civ. P. 12(g)(2); 11 U.S.C. § 362(k); 11 U.S.C. § 362(h). In Mosser v. Darrow, 341 U.S. 267, 271 (1951) supreme court jurisdiction under 11 U.S.C. § 606 (now 11 U.S. Code §1109(b), and 11 U.S.C. §1107(a). (Id. Herein on pages 29, 46).

10. The opinion of the court of appeals based on In Mwangi v. Wells Fargo Bank (In re Mwangi), 764 F.3d 1168, 1170-71 (9th Cir. 2014). (Published):

> "The Debtors cannot allege a plausible injury under § 362(a)(3) based on the operation of Wells Fargo's administrative pledge before the account funds revested because the Debtors had no right to possess or control the account funds during this period.")...."We hold that property immediately revests in the debtor when the property is deemed exempt under Nevada Revised Statutes § 21.090(1)(g). The Debtors cannot allege a plausible injury under § 362(a)(3) based on the operation of Wells Fargo's administrative pledge before the account funds revested because the Debtors had no right to possess or control the account funds during this period. Similarly, the Debtors failed to allege a plausible injury under § 362(a)(3) based on the operation of Wells Fargo's administrative pledge after the account funds revested because § 362(a)(3) applies only to estate property. We therefore conclude that the district court properly affirmed the bankruptcy court's judgment of dismissal."

11. The Ninth Circuit contradicted other circuit courts and deprived Mr. Perry's by refusing to hear the other issues on his final appeal. Any "final judgment, order, or decree of a bankruptcy judge" may be appealed. 28 U.S.C. § 158(a), Fed. R. Bankr. P. 8001(a) (district courts from bankruptcy courts); 28 U.S.C. §§ 158(d), 1291 (circuit courts from district courts). An order is "final" for appeal purposes when a decision has been entered that "ends the litigation on the merits and leaves nothing for the court to do but execute the judgment." Coopers & Lybrand v. Livesay, 437 U.S. 463, 467 (1978); In re IBI Sec. Serv., Inc., 174 B.R. 664, 668 (E.D.N.Y. 1994).In bankruptcy proceedings, finality does not require the entire case to be concluded; rather, due to the extended nature and large number of parties involved in a bankruptcy case, finality is applied to discrete disputes that arise within the larger case. Most courts look at contested matters and adversary proceedings as "stand alone units of litigation" and determine whether the order appealed from disposes of all the claims of all the parties.

12. See Fed. R. Civ. P. 54(b); Fed. R. Bankr. P. 7054(a), 9014; In re Klein, 940 F.2d 1075, 1077 (7th Cir. 1991); In re IBI Sec. Serv., Inc., 174 B.R. 664, 668 (E.D.N.Y. 1994) (order of bankruptcy court may be appealed immediately if it disposes of discrete dispute in larger case, such as determination of a creditor's claim or priority); Compare In re Firstmark Corp., 46 F.3d 653, 658 (7th Cir. 1995) (order is appealable if it (1) resolved substantive rights of the parties in any way, and (2) marked the conclusion of what, but for the bankruptcy, would be the equivalent of a standalone suit) with In re Prudential Lines, Inc., 59 F.3d 327 (2nd Cir. 1995) (a final order "must completely resolve all of the issues pertaining to a discrete claim, including issues as to the proper relief"[5]); F/S Airlease II, Inc. v. Simon, 844 F.2d 99, 104

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4 **28 U.S.C. §1452. Removal of claims related to bankruptcy cases: (a) A party may remove any claim or cause of action in a civil action...., if such district court has jurisdiction of such claim or cause of action under section 1334 of this title.**

5 In the 9th Circuit BAP on November 10, 2009, on Mr. Perry's appeal, (BAP # CC-09-1135) ruled that although no equitable relief was available to Mr. Perry from the bankruptcy court granting Chase relief from the automatic stay, and for the sale of his vehicle, debtor's motion to continue stay was moot, but the bankruptcy court's order refusing to grant relief was NOT moot. (Id. p. 12, lines 27-28 and p. 13, lines 1-5): **"To the extent this pleading sought this form of relief (i.e. Money Damages"), the bankruptcy court's order refusing to grant relief is NOT moot**

(3d Cir. 1988) (whether order is appealable determined by looking to the impact of the matter on the assets of the bankruptcy estate, the preclusive effect of a decision on the merits, and whether the interests of judicial economy will be furthered"); In re Stone, 6 F.3d 581, 583 n.1 (9th Cir. 1993) (order is appealable where it (1) resolves and seriously affects substantive rights, and (2) finally determines the discrete issue to which it is addressed) andIn re Martech USA, Inc., 188 B.R. 847, 849 (Bankr. 9th Cir. 1995) ("Orders that determine and affect substantive rights and have the potential to cause irreparable harm to the losing party are immediately appealable so long as they finally determine the discrete issue to which they are addressed."). Rule 54(b), Federal Rules of Civil Procedure, allows an immediate appeal when the court enters final judgment on a single claim and certifies it for immediate appeal. Most courts require that (1) the court order completely dispose of one or more claims, and (2) there are not any just reasons for delay. The certifying court must make a clear and cogent explanation of its reasons and the factual and legal determinations supporting that reasoning. In re Southeast Banking Corp., 69 F.3d 1539, 1545-51 (11th Cir. 1995).

13. The Ninth Circuit refusal to review Mr. Perry's appeals allowed the bankruptcy court to inflict further irreparable harm on Mr. Perry by dismissing his appeals as interlocutory. An order is subject to immediate appeal if it (1) directs the immediate delivery of property, and (2) subjects the losing party to irreparable injury if appellate review must await the final outcome of the litigation. Forgay v. Conrad, 47 U.S. 201 (1848); see HBE Leasing Corp. v. Frank, 48 F.3d 623, 632 n.4 (2d Cir. 1995) (questioning whether Forgay doctrine is "still applicable in a multi-claim or multi-party action" in certain circumstances); Matter of Simpson, 36 F.3d 450, 452 (5th Cir. 1994) (judgment compelling defendant to turn over property is appealable as of right); In re Ashoka Enters., Inc., 156 B.R. 343, 345 (S.D. Fla. 1993) (same).

14. A "collateral order" is appealable if it (1) conclusively determines the disputed question, (2) resolves an important issue completely separate from the merits of the action, and (3) is effectively unreviewable on appeal from a final judgment. Coopers & Lybrand v. Livesay, 437 U.S. 463 (1978); Cohen v. Beneficial Indus. Loan Corp., 337 U.S. 541 (1949); see Swint v. Chambers County Comm'n, 115 S. Ct. 1203 (1995) (order reviewable under Cohen "includes only decisions that are conclusive, that resolve important questions separate from the merits, and that are effectively unreviewable on appeal from the final judgement in the underlying action"); In re Magic Circle Energy Corp., 889 F.2d 950, 954 (10th Cir. 1989) (applying Cohen).

15. To be unreviewable on appeal from a final judgment, the order must deprive the appellant of a right "that is essentially destroyed if its vindication must be postponed until trial is complete." Lauro Lines S.R.L. v. Chasser, 490 U.S. 495, 499 (1989). All three requirements must be met to allow "collateral orders" to be appealable. United States v. Weiss, 7 F.3d 1088, 1089 (2d Cir. 1993). Failure to appeal an order under the collateral order doctrine does not bar a later appeal from the final order. "It is well established ... that 'when the appellant appeals the final judgement, that judgment necessarily incorporates all earlier interlocutory decisions' and '[b]y referring to the final order the [appellants] present the whole case to us on appeal.'" In re Peachtree Lane Assocs., Ltd., 188 B.R. 815, 822 (N.D. Ill. 1995) (quoting Glass v. Dachel, 2 F.3d 733, 738 (7th Cir. 1993)).

16. Under 28 U.S.C. § 1292(a)(1), an interlocutory orders merges into the final judgment and may be reviewed on appeal from that judgment. See Balla v. Idaho State Bd. of Corr., 869 F.2d 461, 467 (9th Cir. 1989): "Courts have inherent power to modify their interlocutory orders before entering a final judgment. Marconi Wireless Telegraph Co. v. United States, 320 U.S. 1, 47-48, 63 S.Ct. 1393, 1414-15, 87 L.Ed. 1731 (1943); John Simmons Co. v. Grier Brothers Co., 258 U.S. 82, 88, 42 S.Ct. 196, 198, 66 L.Ed. 475 (1922). In addition, the Federal Rules of Civil Procedure explicitly grant courts the authority to

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because, assuming that he was damages by Chase's actions, and that Chase's conduct violated state law, it would not be impossible for the Panel to craft a remedy for Perry."

modify their interlocutory orders. See Fed.R.Civ.P. 54(b) (any order which is not certified under Rule 54(b) and which adjudicates fewer than all the claims as to all the parties "is subject to revision at any time before the entry of [final] judgment")"...."The word "judgment" as used in the Federal Rules of Civil Procedure is defined in Rule 54(a). See Financial Services Corp. v. Weindruch, 764 F.2d 197, 198 (7th Cir. 1985) (per curiam) (Weindruch); 10 C. Wright, A. Miller M. Kane, supra. A judgment "includes a decree and any order from which an appeal lies." Fed.R.Civ.P. 54(a). Thus, the word "judgment" encompasses final judgments and appealable interlocutory orders. See Weindruch, 764 F.2d at 198; Morgan Guaranty Trust Co. v. Third National Bank of Hampden County, 545 F.2d 758, 760 (1st Cir. 1976)."....."**Nor are litigants foreclosed from seeking appeals from judgments properly certified under Federal Rule of Civil Procedure 54(b). But when no such appeal is taken from an interlocutory order, "the interlocutory order merges in the final judgment and may be challenged in an appeal from that judgment."** Baldwin v. Redwood City, 540 F.2d 1360, 1364 (9th Cir. 1976) (footnote omitted), cert. denied, 431 U.S. 913, 97 S.Ct. 2173, 53 L.Ed.2d 223 (1977)"; Catlin v. United States, 324 U.S. 229, 233-34 (1945): **Piecemeal appeals present the dangers of undermining the independence of the district judge, exposing litigants with just claims to the harassment and cost of successive appeals, and obstructing judicial efficiency**. See Firestone Tire & Rubber Co. v. Risjord, 449 U.S. 368, 374 (1981). Finality determinations require a balancing of "the inconvenience and costs of piecemeal review on the one hand and the danger of denying justice by delay on the other." Stone v. Heckler, 722 F.2d 464, 467 (9th Cir. 1983) (citations omitted).

17. The rules of finality are designed to create more certainty as to when an order is appealable. See Nat'l Distrib. Agency v. Nationwide Mut. Ins. Co., 117 F.3d 432, 434 (9th Cir. 1997); see also Budinich v. Becton Dickinson & Co., 486 U.S. 196, 202 (1988) ("The time of appealability, having jurisdictional consequences, should above all be clear."). **Failure to challenge district court findings underlying preliminary injunction in interlocutory appeal precluded challenging findings in later appeal**. See Munoz v. Imperial Cty., 667 F.2d 811, 817 (9th Cir. 1982); Conn. Nat'l Bank v. Germain, 503 U.S. 249, 253-54 (1992) (holding that interlocutory appeals under 28 U.S.C. § 1292 may be taken from decisions of district courts reviewing bankruptcy courts decisions); A ruling may be effectively unreviewable after final judgment,....if interlocutory appeal is not permitted." United States v. Saccoccia, 18 F.3d 795, 800 (9th Cir. 1994); cf. United States v. MacDonald, 435 U.S. 850, 857 n.6 (1978) ("extraordinary nature" of claim alone not sufficient to permit immediate appeal); Johnson v. Walton, 558 F.3d 1106, 1108 n.1 (9th Cir. 2009) (appeals previously considered filed interlocutory before final judgment are not forfeited).

STATEMENT OF THE CASE

A. Facts

18. Mr. Perry's case had security interest in his vehicle, while he possesed the "**Cerificate of Title ("Pink-slip")**) since August 18, 2004, when Chase had transferred ownership to him. (the certificate was presnted to the bankruptcy court on April 12, 2013; Appx. #704-705; Appx.#186-186, 187-187 and again on June 22, 2015; Appx.# 129-68, and 130-67) before the repossession of February 6, 2009. Mr. Perry having the title had a "**pecuniary interest**" in his vehicle and in the outcome of the adversary proceeding as a "person aggrieved" with standing to pursue punitive damages and this appeal. See Mosser v. Darrow, 341 U.S. 267, 271 (1951), discussing 11 U.S. Code § 1109(b) - **Right to be heard** ("**An indenture trustee's standing is expressly authorized by 52 Stat. 894, 11 U.S.C. § 606, which provides, "The debtor, the indenture trustees, and any creditor or stockholder of the debtor shall have the right to be heard on all matters arising in a proceeding under this chapter.**"). (Pub. L. 95–598, Nov. 6, 1978, 92 Stat. 2629.)"

19. Courts are guided by two factors: (1) is the appellant a "**party-in-interest**" as defined in 11 U.S.C. § 1109(b), and (2) does the appellant possess a pecuniary interest. In re Salant Corp., 176 B.R.

131, 133 (S.D.N.Y. 1994); see also Travelers Ins. Co., 45 F.3d at 742 ("one is a 'person aggrieved' if the contested order 'diminishes their property, increases their burdens, or impairs their rights.'"); American Ready Mix, 14 F.3d at 1500 (same). Compare Unsecured Creditors Comm. v. Leavitt Structural Tubing Co., 55 B.R. 710 (N.D. Ill. 1985), aff'd, 796 F.2d 477 (7th Cir. 1986) (official unsecured creditors committee did not have standing to contest confirmation of debtor's reorganization plan) and Salant Corp., 176 B.R. at 135 (equity committee appellant lacks standing) with Official Comm. of Equity Sec. Holders v. Mabey, 832 F.2d 299 (4th Cir. 1987), cert. denied, 485 U.S. 962 (1988) (equity committee appellant has standing)

20. See Bankr. R. 9001(10); H.R. Rep. No. 595, 95th Cong., 1st Sess. 404 (1977) (**Section 11 U.S.C. §1107 "places a debtor in possession in the shoes of a trustee in every way**").11 U.S. Code § 1107 - Rights, powers, and duties of debtor in possession: (a) Subject to any limitations on a **trustee** serving in a case under this chapter, and to such limitations or conditions as the court prescribes, a debtor in possession shall have all the rights, other than the right to compensation under section 330 of this title, and powers, and shall perform all the functions and duties, except the duties specified in sections 1106(a)(2), (3), and (4) of this title, of a **trustee** serving in a case under this chapter.

21. Standing meant having a plausible injury claims are available under Section 11 U.S.C. §362(a)(3) as well as available punitive damages under §362(k)(1), under 11 U.S. Code § 1107(a) and 11 U.S. Code §1109(b) where a debtor has a standing and a right to be heard: "**A party in interest, including the debtor, the trustee, a creditors' committee, an equity security holders' committee, a creditor, an equity security holder, or any indenture trustee, may raise and may appear and be heard on any issue in a case under this chapter**." If a debtor has an right to be heard, he also has the right to sue a creditor and seek damages.

22. To have standing to appeal a bankruptcy court order, a party must be a "**party aggrieved**" by that order. Travelers Ins. Co. v. H.K. Porter Co., 45 F.3d 737 (3d Cir. 1995) (comprehensive discussion of standing requirement for Bankruptcy appeals); In re American Ready Mix, Inc., 14 F.3d 1497, 1500 (10th Cir.), cert. denied, 115 S. Ct. 77 (1994); Int'l Trade Admin. v. Rensselaer Polytechnic Inst., 936 F.2d 744, 747 (2d Cir. 1991). "'**This person aggrieved requirement is more exacting than the requirements for general Article III standing**,'" In re American Dev. Int'l Corp., 188 B.R. 925, 932 (N.D. Tex. 1995) (quoting In re Andreuccetti, 975 F.2d 413, 416 (7th Cir. 1992)); American Ready Mix, 14 F.3d at 1500 (quoting Holmes v. Silver Wings Aviation, Inc., 881 F.2d 939, 940 (10th Cir. 1989)). "**Generally, only persons who are 'directly and adversely affected pecuniarily by an order of the Bankruptcy court have been held to have standing to appeal that order**.'" American Dev. Int'l Corp., 188 B.R. at 932 (quoting Andreuccetti, 975 F.2d at 416).

23. Legislative history expounds upon this statutory language, providing jurisdictional requirement for standing is open to review at all stages of the litigation." National Organization For Women, Inc. v. Scheidler, 114 S. Ct. 798, 802 (1994). "Standing doctrine embraces several judicially self-imposed limits on the exercise of federal jurisdiction, such as the general prohibition on a litigant's raising of another person's legal rights...."

24. In re Price, 173 B.R. 434, 439 (Bankr. N.D. Ga. 1994) (quoting Allen v. Wright, 468 U.S. 737, 750-51 (1984)). "**A party seeking to invoke.....standing must demonstrate, among other things, that the party has suffered, or is threatened with, 'injury in fact, by which we mean an invasion of a legally protected interest**..." Price, 173 B.R. at 441 (quoting Northeastern Fla. Chapter of the Assoc. Gen. Contractors of America v. City of Jacksonville, Fla., 113 S. Ct. 2297, 2302 (1993)).

25. The party seeking damages for a stay violation must establish that: "(1) a violation occurred; (2) the violation was committed willfully, (3) the violation caused actual damages." Rosengren v. GMAC Mortg. Corp., No. CIV. 00-971(DSD/JMM), 2001 WL 1149478, at * 2 (D. Minn. Aug. 7, 2001) (citing Lovett v. Honeywell, Inc., 930 F.2d 625, 628 (8th Cir. 1991) (further citations omitted)). The Knaus court reasoned that **"[a] willful violation of the automatic stay occurs when the creditor acts**

deliberately with knowledge of the bankruptcy petition." Knaus, 889 F.2d 773 (8th Cir. 1989), at 775 (citations omitted). The Knaus court went on to hold that when the debtor informs the creditor of a bankruptcy filing and requests turnover of estate property, but the creditor who refuse turnover to the estate property, withhold the property when it required under 11 U.S.C. §542(a) to seek direction from the **trustee** this constitutes a willful and deliberate violation of the automatic stay. Id.

26. 11 U.S.C. § 362(h) also provides that a willful violation of the automatic stay alone is not enough to warrant punitive damages; there must also be a finding of "appropriate circumstances." Id. at 776. "Appropriate circumstances" warranting punitive damages require "'**egregious, intentional misconduct on the violator's part.**'" Id. (citing United States v. Ketelsen (In re Ketelsen), 880 F.2d 990, 993 (8th Cir. 1989)).

B. In Re Mwangi Net Affect "Would Certainly Run Afoul" of Bankruptcy Laws To Imbolden Creditors To Committ Thievery Of Debotrs' Owned And Paid Property And Then Condone Them Impropertly Witholding Property.

27. In Mwangi v. Wells Fargo Bank (In re Mwangi), 764 F.3d 1168, 1170-71 (9th Cir. 2014) retroactive "revesting" disadvantage debtors by excusing creditors illegal repoesssions and the withholding of turn-overs, and automatically assume revesting in debtors after the expiration of the exemption objection period, victimizing them a second time. This when debtors had no choice or control over the property they have interest in and which was wrongly repossesed, the Mwangi condones theft of debotrs' property and other bad behaviour case, and failed to address why creditors who never attended the **trustee** meetings, who never sought directions from the **trustee** before the **trustee** abondaned the etate? This left debtors with no choice but to pursue bad creditors.

28. In re Mwangi retroactive revesting condones creditors who impropertly repossesed debtorss property, witheld it in violation of 11 §362(a)(3). So, beccause debtors cannot exercise control over "property of the estate" even when they possess certificate of ownership and title, when in such security interest debors as Mr. Perry are a "**party-in-interest**" who has a "**pecuniary interest**" and who have standing and can be heard under 11 U.S. Code §1109(b). The Ninth Circuit failed to apply judicial estoppel and forced a debtor not in possession under Section 11 U.S.C. §1107, "places a debtor in possession in the shoes of a **trustee** in every way" from seeking punitive damages from the creditors who purposly violated the automatic stay. This Supreme Court, in New Hampshire v. Maine,[532 U.S. 742, 750 (2001).] identified several factors that a court should consider, including whether a party's later position was clearly inconsistent with its earlier position; whether the party has succeeded in persuading a court that acceptance of an inconsistent position would create the perception that either the first or the second court was misled; and "whether the party seeking to assert an inconsistent position would derive an unfair advantage or impose an unfair detriment on the opposing party if not estopped."[Id. at 750–51] Further, the Supreme Court opined that judicial estoppel may not apply if a party's prior position was based on mistake or inadvertence.[Ah Quin, No. 10-16000, 2013 WL 3814916 at *3 (quoting New Hampshire v. Maine, 532 U.S. 742, 753 (2001)).]

C. Proceedings Below

29. This case arises almost 10 years ago (January 11, 2009) when Mr. Avram Moshe Perry informed Chase Auto Finance, a subsidiary of JPMorgan Chase Bank, N.A. by letter on December 5, 2008, of his planned to file for bankruptcy protection. So, JP Morgan "jump the gun" by initiating wrongful repossession on February 6, 2009 using their repossession agent Key Auto Recovery they

unlawfully broke into Mr. Perry's home and unlawfully removed his vehicle from an outside gated garage in violation of the 4th amendment to the United States.[6]. As planned, Mr. Perry filed Chapter 7 bankruptcy on February 11th 2009, and he mailed numerous letters to defendants, Chase Auto Finance and Key Auto Recovery to return his vehicle but they refused.

30. Mr. Perry sought an injunctive relief in the bankruptcy court, but the Bankruptcy Judge Geraldine Mund refused to grant him any relief. The bankruptcy court, at defendants' behest refused to stay the state court proceedings and force Chase Auto Finance to turn over the vehicle. So, when on February 17, 2009 Mr. Perry filed his state case, the state Judge Randy Rhodes (who was assigned to the case was previously Mr. Perry's family court judge he sued in 2004 for deprivation of parental rights for granting a wrongful move-away of a shared joint custody agreement) designated him as a vexatious litigant and stopped on its tracks the state case.

31. Mr. Perry first leased and then purchased his 2001 Nissan Pathfinder and for full 8 years of payments made to Chase Auto Finance. But after Mr. Perry informed Chase Auto Finance ("JP Morgan Chase Bank, N.A.'s") of his intention to file for bankruptcy protection, they "beat him to the punch" and repossess his vehicle on February 6, 2009. Chase repossession agent, Key Auto Recovery, LLC., broke into Mr. Perry's private, gated community and stole Mr. Perry's vehicle. A clear violation of the 4th amendment to the United States, because Mr. Perry's 2001 vehicle was almost paid off. On August 18, 2004, Chase Auto Finance surrendered to Mr. Perry his **"Certificate of Title" ("Pink-Slip")**. (Id. Appx. #1)

32. On February 11, 2009, Mr. (as planned) filed a voluntarily a chapter 7 bankruptcy protection petition, and on April 23, 2009 defendants JPMorgan Chase Bank, N.A., filed: "**Notice of motion and motion for relief from the automatic stay with supporting declarations**" (on page 7 of 11 under section 7(a)(1)) and they fraudulently falsified **a "Certificate of Title ("Pink-Slip")** they delivered to Mr. Perry in August 18, 2004:

> "The Property is a motor vehicle, boat, or other property for which a Title Certificate is provided for by state law.[7] True and correct copies of the following items are attached to this motion: **Certificate of Title ("Pink-Slip") attached as Exhibit 2."**

(Id. As Appx. #53).

33. When Mr. Perry had not yet furnished the copy of the signed "**Certificate of Title** ("Pink-Slip") because he moved, the bankruptcy court judge Geraldine Mund never asked him on April 23, 2009, if he has the certificate of title, and granted JPMorgan Chase Bank, N.A. an order lifting the automatic stay, based on as exhibit 2 was a fake copy of a "**Paper Title Request**" (Id. Appx. #181-183). Chase claimed on March 30, 2009, that they did not need the paper certificate because "**California was a paperless title state**" was supported by a false declaration (Id. Appx. #176). Since 2004 until 2009 Chase had known they did have the Certificate of Title ("**Pink-Slip.")** Judge Mund refused to acknowledge

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6 Fourth Amendment to the United States Constitution: "**The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.**"

7 Id. the 9th Circuit BAP 9th Circuit BAP memorandum of November 10, 2009, on Mr. Perry's appeal, (BAP # CC-09-1135). "To the extent this pleading sought this form of relief i.e., "Money Damages"), the bankruptcy court's order refusing to grant relief is not moot because, assuming **Perry could establish** that he was damaged by Chase's actions, and **that Chase's conduct violated state law**, it would not be impossible for the Panel to craft a remedy for Perry."

Chase had committed fraud and cover it up. (Id. Appx. #53)[8] Chase knew Mr. Perry was in possession of Certificate of Title ("Pink-Slip"). Yet, Bankruptcy Judge Mund on April 23, 2009 granted JPMorgan Chase Bank, N.A. an order lifting the automatic stay

34. Mr. Perry asked the **trustee** to demand that chase return his vehicle but the **trustee** refused and on May 5, 2009 abandoned the estate. Mr. Perry filed adversary proceeding No. 1:10-ap-01043-GM on February 5, 2010. Mr. Perry presented to Judge Mund the certificate of title ("Pink-Slip") on April 12, 2013 when submitting his "**Memorandum of Points And Authorizes With Exhibits In Support To Issue** # 3." (Id. Appx. # Dkt. #101, pages 2-4), and in his June 22, 2015, "**Motion To Have Exhibits Related To Issue # 3 To Be Included With The Revised And Edited Amended Complaint**..." (Dkt. #275, pages 14-15).

35. The bankruptcy Judge Mund ignored Mr. Perry's Certificate of Title ("Pink-Slip") until June 24, 2015. (Id. Dkt. #278), and the judge even disputed the validity of Mr. Perry's copy of the signed **Certificate of Title** ("Pink-Slip") because she claimed was not an original. Yet, the original was held by DMV.

36. On March 9, 2010 and March 10, 2010, Chase and Key Auto filed two motions to abstain pursuant to 28 U.S.C. 1334(c)(2), without filing an answer. The defendants had only 21 days after notice to respond and/or answer or otherwise plead under Fed. R. Civ. P. 12, but delayed, causing the bankruptcy judge to stay the adversary for 5 years for no reason, even while the appeals were pending, the adversary could have been heard. See 28 U.S.C. § 158(d)(2)(D). **"An appeal under this paragraph does not stay any proceeding of the bankruptcy court, the district court, or the bankruptcy appellate panel from which the appeal is taken,**..."

37. On a Chase "Reply" on April 23, 2010, defendants JP Morgan Chase justified that they did not need to file answers with their motions to abstain:

> **"CHASE filed the Motion within the time it had to respond to the Adversary Complaint. Nothing more is required, despite PERRY's veiled claim to the contrary in the opposition. PERRY cited to no legal authority to support his procedurally deficient claim for default against CHASE and that request should be summarily denied. CHASE could find no legal authority that states that it was required to file any other type of responsive pleading that the adversary Complaint at the same time it filed its timely Motion for Abstention. In fact, to require any additional responsive pleading would incur unnecessary expense and potentially be prejudicial to CHASE's rights to seek abstention. The only case that CHASE could find that addresses this issue is In re Littenstein (1983 9th Cir. BAP) 35 B.R. 123, which supports CHASE's position."**

38. On November 12 and 13, 2009, the state court judge Randy Rhodes offered defendants to file motions to designate Mr. Perry as a vexatious litigant and on April 27, 2010 Judge Rhodes granted the motions and ordered Mr. Perry who recently filed for bankruptcy protection to post tens of thousands of dollars in security bonds for the wealthy defendants or else on June 29, 2010, the state case would be dismissed. (Id. Appx. # 424-425).[9] When Perry, bankrupt could not afford to post the bond, Judge Randy Rhodes dismissed the state case on May 18, 2010.

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8 The Knaus v. Concordia Lumber Co. (In re Knaus), 889 F.2d 773, 775 (8th Cir. 1989), reasoned that **"[a] willful violation of the automatic stay occurs when the creditor acts deliberately with knowledge of the bankruptcy petition**." Knaus, 889 F.2d at 775 (citations omitted).

9 An order on CCP. § **391** et. seq. does not constitute judgment or res judicata as no issues were ever litigated. California Code of Civil Procedure - CCP **391**.3(b): "If, after hearing evidence on the motion, the court determines that

39. Meanwhile, the bankruptcy case filed on February 11, 2009 was still open and Perry sought relief for the wrongful repossession and for the bankruptcy court to extend the automatic stay, and to delay the defendants to sell my wrongly repossessed vehicle. The bankruptcy Judge Geraldine Mund refused to grant him any relief and Mr. Perry filed a motion for preliminary injunction against the defendants for wrongful repossession of vehicle in February 6, 2009.

40. Judge Mund then denied debtor his motion for preliminary injunction and on March 2, 2009, while defendants advised debtor he cannot seek relief by a motion for preliminary and permanent injunction, but should instead file an adversary proceeding. So, on February 5, 2010 Mr. Perry filed his "Original Adversary Complaint"[10] Nos. 1:10-ap-01043-GM, which Judge Mund delays and which increased the dilatory motion practice, lengthy litigations, avoiding "undue delay" and causing Mr. Perry further prejudice. Defendants filed to file any answers or motions under federal Rules of Civil Procedure 12(b) and instead filed a forum motions to abstain under 28 U.S.C 1334(c). Judge Mund denied the motions to abstain without prejudice, until 5 years of delays had pass.

41. On April 28, 2010, Judge Mund denied defendants Motion to abstain without prejudice and stayed the adversary complaint pending the outcome of the state court trial. The judge denied the motions to abstain without prejudice on May 26, 2010, conducted status conference and further stayed the adversary indefinably, even while the state action was already over for 4 years. On May 10, 2010, Mr. Perry filed motions to find defendants were in default and the bankruptcy court issued default judgments.

42. On July 7, 2010, Judge Mund set aside the default and informed Mr. Perry she does not wanted anything "hanging over" defendants heads. Mr. Perry informed Judge Mund that he could not afford to post the security bond for the defendants because he did not have such money, and Judge Mund responded that unless the state case was dismissed, she will not make the defendants to responded (answer) to Mr. Perry's "**Original Adversary Complaint**" pursuant to Fed. R. Civ. P. 12. The Judge said she would give them notice: **"[t]hen I will give them notice of a time to file their response. Okay**." (Id. Appx. #181 Transcripts of July 7, 2010, on p. 5, lines 18-21.) Yet, for no reason Judge Mund waited another two years to call on the state court Judge Randy Rhodes on May 8, 2012 and another three years to "know" the state case was over. The judge administratively closed adversary proceeding Nos. 1:10-ap-0356-GM on May 16, 2012. (Dkt. #62 - the removal adversary proceeding of the state court case for jury trial pursuant to 28 U.S.C. § 157(a).

43. Then on April 10, 2015 Judge Mund failing to resolve the "Original Adversary Complaint" the judge drafted (without Mr. Perry's consent) a "Amended Complaint – Revised Amended Complaint" from potions of Mr. Perry's "Original Adversary Complaint" and she offered defendants to file motions for summary judgment she thereafter granted on November 13, 2015 and December 14, 2015.[11]

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the litigation has no merit and has been filed for the purposes of harassment or delay, **the court shall order the litigation dismissed**.

[10] Fuentes v. Shevin, 407 U.S. 67, 81 (1972). "**At times, the Court has also stressed the dignitary importance of procedural rights, the worth of being able to defend one's interests even if one cannot change the result.**" Carey v. Piphus, 435 U.S. 247, 266–67 (1978); Marshall v. Jerrico, Inc., 446 U.S. 238, 242 (1980). Puckett v. United States, 556 U.S. 129 (2009) the Supreme Court discussed "**Plain-error review**" that involves four prongs: (1) there must be an error or defect that the appellant has not affirmatively waived, United States v. Olano, 507 U. S. 725, 732–733; (2) it must be clear or obvious, see id., at 734; (3) it must have affected the appellant's substantial rights, i.e., "**affected the outcome of the district court proceedings**," ibid.

[11] See Marshall v. Jerrico, 446 U.S. 238, 248–50 (1980). 556 U.S. No. 08–22, slip op. at 14. Chief Justice Roberts, joined by Justices Scalia, Thomas, and Alito, dissented, asserting that "**a 'probability of bias'** cannot be defined in any limited way," "**provides no guidance to judges and litigants about when recusal will be constitutionally required**," and "**will inevitably lead to an increase in allegations that judges are biased, however groundless those charges may be.**" Slip. op. at 1 (Roberts, C.J., dissenting). The majority countered that "[t]he facts now before us are extreme in any measure." Slip op. at 17.

44. The bankruptcy grant of summary judgment to defendant JPMorgan Chase Bank N.A., on November 13, 2015 and defendant Key Auto Recovery on December 14, 2015 from the bankruptcy court Judge Geraldine Mund drafting an "**Amended Complaint - Revised and Edited Complaint**" on April 10, 2015, (Id. Dkt. # 250-251) using a copy and paste[12] taken from parts of Mr. Perry's "**Original Adversary Complaint**" of February 5, 2010, abused the court's exercise of equitable powers under 11 U. S. C. § 105[13] in aid resurrecting defenses for the defendants by revising the pleading process under Fed. R. Civ. Proc. Rule 12, Rule 12(g), after they failed to answer the original complaint, filing only a forum motion to abstain, and is repugnant to procedural due process. [14]

45. If there was any problem with Mr. Perry's 2010 "**Original Adversary Complaint**" Judge

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12 A debtor have rights and remedies accorded to him under bankruptcy laws which a bankruptcy judge (Judge Geraldine Mund) could not circumvent in her drafting the "**Amended Complaint - Revised and Edited Complaint**" upon which the judge advised defendants to file motions for summary judgment she thereafter granted. See Stern v. Marshall, 131 S. Ct. 2594, 2620 (2011); see also id., quoting Reid v. Covert, 354 U.S. 1, 39 (1957) (plurality opinion) ("**A statute may no more lawfully chip away at the authority of the judicial branch than it may eliminate it entirely. 'Slight encroachments create new boundaries from which legions of power can seek new territory to capture**'")

See Law v. Siegel, 134 S. Ct. 1188 (2014): **We have long held that "whatever equitable powers remain in the bankruptcy courts must and can only be exercised within the confines of" the Bankruptcy Code.** Norwest Bank Worthington v. Ahlers, 485 U.S. 197, 206, 1195*1195 108 S.Ct. 963, 99 L.Ed.2d 169 (1988); see, e.g., Raleigh v. Illinois Dept. of Revenue, 530 U.S. 15, 24-25, 120 S.Ct. 1951, 147 L.Ed.2d 13 (2000); United States v. Noland, 517 U.S. 535, 543, 116 S.Ct. 1524, 134 L.Ed.2d 748 (1996); SEC v. United States Realty & Improvement Co., 310 U.S. 434, 455, 60 S.Ct. 1044, 84 L.Ed. 1293 (1940). **Bankruptcy court may not use equitable doctrines (injunctive relief arises in equity) to overcome or circumvent statutory requirements or proscriptions**.

13 The bankruptcy courts stay here for 5 years was unjust. See Celotex Corp. v. Edwards (93-1504), 514 U.S. 300 (1995): "One might argue, technically, that though the proceeding to execute on the bond is "related to" the Title 11 case, the stay proceeding "arises under" Title 11, or "arises in" the Title 11 case. See In re Monroe Well Serv., Inc., 67 B. R. 746, 753 (Bkrtcy. Ct. ED Pa. 1986). We need not and do not decide this question here."....." Much of our discussion dealing with the jurisdiction of the Bankruptcy Court under the "related to" language of §§ 1334(b) and 157(a) is likewise applicable in determining whether or not the Bankruptcy Court's Section 105 Injunction has "only a frivolous pretense to validity." GTE Sylvania, 445 U. S., at 386 (internal quotation marks and citation omitted). The Fourth Circuit has upheld the merits of the Bankruptcy Court's Section 105 Injunction, see Willis, 978 F. 2d, at 149–150,....But we need not, and do not, address whether the Bankruptcy Court acted properly in issuing the Section 105 Injunction."
Justice Stevens dissenting: **"In my view, the word "entities" includes courts. Indeed, the Bankruptcy Judge's order tracks § 362(a)'s automatic stay provisions, which provide, in part, that the automatic stay is applicable "to all entities" and which enjoin "the commencement or continuation....of a judicial, administrative, or other action or proceeding against the debtor."** 11 U. S. C. § 362(a)(1). The Courts of Appeals have uniformly held that "entities," as used in § 362, include courts. See, e. g., Maritime Electric Co., 959 F. 2d 1194, 1206 (CA3 1991) (**"§ 362's stay is mandatory and 'applicable to all entities', including state and federal courts"**); Pope v. Manville Forest Products Corp., 778 F. 2d 238, 239 (CA5 1985) (**"just the entry of an order of dismissal, even if entered sua sponte, constitutes a judicial act toward the disposition of the case and hence may be construed as a 'continuation' of a judicial proceeding**"); Ellis v. Consolidated Diesel Electric Corp., 894 F. 2d 371, 372–373 (CA10 1990) (District Court's entry of summary judgment violated § 362(a)'s automatic stay); see also Maritime Electric Co., 959 F. 2d, at 1206 (collecting cases). Cf. 2 Collier ¶ 101.15, at 101–62 to 101–63 (" 'Entity' is the broadest of all definitions which relate to bodies or units").

14 In Camreta v. Greene, 563 U.S. 692, 709 n.7 (2011) (quoting 18 J. Moore et al., Moore's Federal Practice § 134.02[1][d] (3d ed. 2011)). "[a] decision of a federal district court judge is not binding precedent in either a different judicial district, the same judicial district, or even upon the same judge in a different case." Id. at 709 & n. 7 (internal quotations omitted).

Mund should have let him have his right to amend[15] once as matter of course, and grant summary judgment from it, not wait 5 years and deprive him procedural due process.

46. The bankruptcy court Judge Mund's order of April 16, 2014 (Dkt. #122 on page 33) forbid Plaintiff from amending his original Adversary Complaint once as matter of course: "**Plaintiff given leave to file supplement to the Complaint (i) asserting a cause of action under 11 U.S.C. 362 and 542 (ii) amending abuse of process cause of action with factual allegations that are not patently incorrect on the record or dismissing that cause of action under applicable law that provides a plausible cause of action. Leave Is Not Given For Any Other Additions Or Amendments To The Complaint.**"

47. It was made clear to those circuits like the 9th Circuit applying impossible stringent amendment rules to affect Mr. Perry's as a plaintiff request to amend once as matter of law should have been permitted[16] as the following cases directed, Foman v. Davis, 371 U.S. 178, 182 (1962)[17], Bell Atlantic Corp. v. Twombly, 550 U.S. 544 (2007), and Ashcroft v. Iqbal, 556 U.S. 662 (2009) that required complaints to be test on its merits, and not be tested by using pre-answer motions to abstain under 28 U.S.C. § 1334(c)(2) after 5 years the "**Original Adversary Complaint**" was filed on February 5, 2010.

48. Since JPMorgan Chase Bank and Key Auto Recovery only filed in 2010, forum motions to abstain under 28 U.S.C. 1334(c)(2), without an answers is salutary to a waiver under Fed. R. Civ. P. 12(a)(A)(1)(i), Fed. R. Civ. P. 12(g)(2); Fed. R. Civ. P. 15(a)(1)(B), should work to limit piecemeal consideration of a case to prevent prejudice and dilatory motion practice resulting in lengthy litigation and needless and frivolous requests for relief under Fed. R. Civ. P. 59 and 60.

49. Mr. Perry filed his "**Original Adversary Complaint**" he was not allowed to amend once as matter of course and to "defend one's interests even if one cannot change the result," Fuentes v. Shevin, 407 U.S. 67, 81 (1972). Judge Mund denied every request he made for his right to amend.. Plaintiff's right to amend once as matter of course was blatantly ignored that the 9th Circuit Court disregards of past Supreme Court decisions in regard to procedural due process under Foman v. Davis, 371 U.S. 178, 182 (1962), Bell Atlantic Corp. v. Twombly, 550 U.S. 544 (2007), and Ashcroft v. Iqbal, 556 U.S. 662 (2009).

50. Since filling the adversary Nos. 1:10-ap-01043-GM, Mr. Perry met with a biased bankruptcy Court Judge Geraldine Mund who appeared amused when she ridicule his pains staking efforts to defend his case, she would often would tell the defendants that he is only an annoyance.

51. On November 30, 2016, the Bankruptcy Judge Geraldine Mund's filed a "Certification of Appeal on Court's Own Motion Fed.R.Bank.P. 8006(e)" in the United States District Court, and on April 25, 2017, district court Judge Fernando M. Olguin Certified the appeals pursuant to 28 U.S.C. § 158(d)(2)(E)(i),: Covered cases: 2:15-9440-FMO (17-55519), 2:15-cv-09899-FMO (17-55519) were consolidated under 2:15-cv-07155-FMO (C.D. Cal.)(17—55520), dated: April 25, 2017. On March 31, 2017, Mr. Perry appealed the Central District Court of California judgment sought.

52. 9th Circuit Court of Appeals In re: Avram Moshe Perry v. Key Auto Recovery in Appeal No. 17-55518; In Re: Avram Moshe Perry v. JP Morgan Chase Bank N.A.; Key Auto Recovery, in

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16 "Rule 8, Fed. R. Civ. P., specifies that a complaint must "contain.....**a short and plain statement of the claim showing that the pleader is entitled to relief**." Fed.R.Civ.P. 8(a)(2)."...."**a court must accept all well-pleaded factual allegations in the complaint**"

17 Foman v. Davis, 371 U.S. 178, 182 (1962).The Supreme Court has elaborated on the standard to be applied when considering amendment requiring leave of court: "**In the absence of any apparent or declared reason—such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc.—the leave sought should, as the rules require, be "freely given."**

Appeal No. 17-55519; Appeal No. 17-55520 declined to review issues preserved as interlocutory for the final appeal:

> **"Perry's requests that this court review prior orders of the bankruptcy court, order disqualification of the bankruptcy judge, sanction appellees' attorneys, reinstate federal claims, enter judgment in Perry's favor, and take judicial notice, set forth in his opening and reply briefs, are denied."**

53. In 9th Cir. # 11-60068 dismissed as interlocutory (remand order of October 28, 2010 in case Adv. 1:10-ap-01356_GM was filed by defendants under the wrong bankruptcy case No.: 1:09-bk—11456, instead of the correct case No.: 1:09-bk-11476-GM);

54. In 9th Cir. #12-55672 dismissed as interlocutory from adv. 1:10-ap-01356-GM, appeal from a motion for clarification and dismissal of a remand order, which states defendants filed under a wrong bankruptcy case No.: 1:09-bk—11456, instead of the correct case No.: 1:09-bk-11476-GM case number.

55. In 9th Cir. #12-55672 concerned an appeal denying without prejudice defendants' motion to abstain was under 28 U.S.C. 1334(c) was appealable under 28 U.S.C. 1334(d) ("**Other than a decision Not To Abstain**"), was reviewable by appeal or otherwise by the court of appeals under section 158(d), 1291, or 1292 of this title or by the Supreme Court of the United States under section 1254 of this title.

56. In BAP 9th Cir. #BAP CC-12-1313 was dismissed as interlocutory: affirming the 9th Cir. validity of the BAP order in #CC-10-1395 stated the wrong bankruptcy case No.: 1:09-bk—11456, instead of the correct case No.: 1:09-bk-11476-GM case number;

57. BAP 9th Cir. #CC-12-1314 regarding bankruptcy judge order dismissing adv. No.: 1:10-ap-0104.

58. In GM and adv. No.: 1:10-ap-o1356-GM 05/08/2012 without hearing or notice, then administratively closing Nos. 1:10-ap-0356-GM without notice or hearing on 05/16/2012;

59. In 9th Cir. BAP CC-10-1395 regarding remand order was appealed affirmed by the to the district court (CV-12-2599-R) regarding Mr. Perry's newly discovered evidence of his possession "Certificate of Title" ("Pink-Slip") and ownership since 08-18-2004 over the 2001 Nissan Pathfinder in adv. No.: 1:10-ap-01043-GM and adv. No.: 1:10-ap-o1356-GM, was ignored by the bankruptcy court in granting summary judgment to the defendants in 2015;

60. In 9th Cir. #14-60082 was dismissed as interlocutory (BAP No. 1459), whether the state court bond requirement order on 04/27/2010 to post tens of thousands of dollars violated the injunctive powers of 11 U.S.C. §524[18], when applied on a chapter 7 debtor Mr. Perry before he was granted discharge on May 9, 201

61. In 9th Cir. #14-60083 was dismissed as interlocutory. (BAP Case No. 14-1378) Adv. 1:10-ap-01043-GM (1:09-bk-11476-GM). (The bankruptcy court's decision to close the bankruptcy case without due process notice[19] to debtor Mr. Perry in light of application of 11 U.S.C. § 524(a) to the state bond requirement on 04/27/2010 to post tens of thousands of dollars on bankrupt before he was granted discharge on May 9, 2013; failing to give notice of discharge; Mason Mason v. Integrity Insurance Company, 709 F. 2d 1313: "**In fact, the only truly final order in a bankruptcy proceeding occurs when the order closing the case is filed, 11 U.S.C. Sec. 350.**"

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18 11 U.S.C. § 524(a) injunctions operates to protect "**fresh-start" doctrine** in Local Loan Co. v. Hunt 292 U.S. 234 (1934).

19 See Memphis Light, Gas Water Division v. Craft, 436 U.S. 1, 21 n. 26 (1978), Notice in a case of this kind does not comport with constitutional requirements when it does not advise the party of the availability of a procedure to protect its interests.

62. The Court of Appeals order did not respect rehearing en banc on January 3, 2019, was modified on 01/07/2019 (Dkt. 386). The Court of Appeal ignored Appellant filed motion to stay the mandate and issued a mandate on January 11, 2019.[20]

63. The "federal claims" includes numerous appeals that were dismissed as interlocutory are merge into a final order. 9th Cir. #11-60011 (BAP CC-10-1265 adv. No.: 1:10-ap-01043-GM) was dismissed as interlocutory of Mr. Perry's appeal regarding bankruptcy court order setting aside clerk's entry of default judgment against the defendants' failure to file an answer or a pre-answer motions under Rule 12(b) to the original adversary complaint No.: 1:10-ap-01043-GM by filing forum motions to abstain under 28 U.SC. 1334(c)(3), such interlocutory order is reviewable from a final order under 28 U.S.C. §1334(d): "([o]ther than a decision not to abstain in a proceeding described in subsection (c)(2)"[21]

REASONS FOR GRANTING THE PETITION

64. The court of appeals erred in several ways, and all errors implicate direct disagreement with the among the circuits and blatantly disregards of past Supreme Court decisions in regard to procedural due process under Foman v. Davis, 371 U.S. 178, 182 (1962), Bell Atlantic Corp. v. Twombly, 550 U.S. 544 (2007), and Ashcroft v. Iqbal, 556 U.S. 662 (2009). Without such guidance, litigants in different circuits are left with numerous and completely different standards — one of which prevents some cases from ever being tested on their merits. The 9th Circuit Court blatantly disregards past Supreme Court decisions in regard to procedural due process[22] under Foman v. Davis, 371 U.S. 178, 182 (1962), Bell Atlantic Corp. v. Twombly, 550 U.S. 544 (2007), and Ashcroft v. Iqbal, 556 U.S. 662 (2009).

A. The Bankruptcy Court Judge Mund To Draft An Arbitrary Biased Copy And Paste "Amended Complaint - Revised and Edited Complaint" Without Plaintiff Involvement, Then Ordered Defendants To File Motions for Summary Judgment, They Failed To Reserved, Which The Bankruptcy Judge Granted.

65. At issue is also the constitutionality of honorable bankruptcy court Judge Geraldine Mund devising a creative way using by copy and paste an "**Amended Complaint - Revised and Edited**

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20 "**Although some Justices have expressed doubt on the point**, see, e. g., United States v. Ohio Power Co., 353 U. S. 98, 102103 (1957) (Harlan, J., dissenting), **the courts of appeals are recognized to have an inherent power to recall their mandates, subject to review for an abuse of discretion**. Hawaii Housing Authority v. Midkiff, 463 U. S. 1323, 1324 (1983) (REHNQUIST, J., in chambers); see also Hazel-Atlas Glass Co. v. Hartford-Empire Co., 322 U. S. 238, 249-250 (1944). **We deal not with the recall of a mandate to correct mere clerical errors in the judgment itself,** similar to those described in Federal Rule of Criminal Procedure 36 or Federal Rule of Civil Procedure 60(a)....See § 2244(b)(2)(B). **It is true that the miscarriage of justice standard we adopt today is somewhat more lenient than the standard in § 2244(b)(2)(B)**. See, e. g., § 2244(b)(2)(B)(i) (**factual predicate for claim must "not have been discover[able] previously through the exercise of due diligence**").

21 28 U.S.C. 1334(c)(2) is reviewable: (other than a decision not to abstain in a proceeding described in subsection (c)(2)) is....reviewable by appeal or otherwise by the court of appeals under section 158(d), 1291, or 1292."

22 In Carey v. Piphus, 435 U.S. 247, 259 (1978). "[P]rocedural due process rules are shaped by the risk of error inherent in the truth-finding process as applied to the generality of cases." Mathews v. Eldridge, 424 U.S. 319, 344 (1976).

Complaint" in April 10, 201[redacted]d. Dkt. 250). The bankruptcy Judge [redacted]aldine Mund's 2015 conduct was repugnant to the Constitution of the United State and was a gross abuse of discretion[23] and improper use of procedural due process. A bankruptcy court may not use its equitable power to circumvent any section of the bankruptcy code or rules. See Norwest Bank Worthington v. Ahlers, 485 U.S. 197, 206, 108 S. Ct. 963, 969, 99 L. Ed. 2d 169 (1988). An independent action requires a "**grave miscarriage of justice."** Beggerly, 524 U.S. at 47.

66. In Carey v. Piphus, 435 U.S. 247, 259 (1978). "[p]rocedural due process rules are meant to protect persons not from the deprivation, but from the mistaken or unjustified deprivation of life, liberty, or property."....."[P]rocedural due process rules are shaped by the risk of error inherent in the truth-finding process as applied to the generality of cases." Mathews v. Eldridge, 424 U.S. 319, 344 (1976). Id. at 12–13. Likewise, the Court rejected the argument that remanding the case would not cure the underlying due process violation because the disqualified judge's views might still influence his former colleagues, as an "**inability to guarantee complete relief for a constitutional violation....does not justify withholding a remedy altogether."** Id. at 14.

67. Foman v. Davis, 371 U.S. 178, 182 (1962): "Rule 15(a) declares that leave to amend "shall be freely given when justice so requires"; this mandate is to be heeded. See generally, 3 Moore, Federal Practice (2d ed. 1948), §§ 15.08, 15.10. If the underlying facts or circumstances relied upon by a plaintiff may be a proper subject of relief, he ought to be afforded an opportunity to test his claim on the merits. In the absence of any apparent or declared reason -- such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc. -- the leave sought should, as the rules require, be "freely given." Of course, the grant or denial of an opportunity to amend is within the discretion of the District Court, but outright refusal to grant the leave without any justifying reason appearing for the denial is not an exercise of discretion; it is merely abuse of that discretion and inconsistent with the spirit of the Federal Rules. The judgment is reversed, and the cause is remanded to the Court of Appeals for further proceedings consistent with this opinion."

68. Plausibility Standard Under Bell Atlantic Corp. v. Twombly, 550 U.S. 544 (2007): "We reversed on the ground that the Court of Appeals had impermissibly applied what amounted to a heightened pleading requirement by insisting that Swierkiewicz allege "specific facts" beyond those necessary to state his claim and the grounds showing entitlement to relief. Id., at 508. Here, in contrast, we do not require heightened fact pleading of specifics, but only enough facts to state a claim to relief that is plausible on its face. Because the plaintiffs here have not nudged their claims across the line from conceivable to plausible, their complaint must be dismissed."

69. Ashcroft v. Iqbal, 556 U.S. 662 (2009): "With exceptions inapplicable here, Congress has vested the courts of appeals with "jurisdiction of appeals from all final decisions of the district courts of the United States." 28 U. S. C. §1291. Though the statute's finality requirement ensures that "interlocutory

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23 See Heckler v. Chaney, 470 U.S. 821 (1985), citing United States v. Wunderlich, 342 U. S. 98, 342 U. S. 101 (1951): "**Discretion may well be necessary to carry out a variety of important administrative functions, but discretion can be a veil for laziness, corruption, incompetency, lack of will, or other motives, and for that reason "the presence of discretion should not bar a court from considering a claim of illegal or arbitrary use of discretion**." L. Jaffe, Judicial Control of Administrative Action 375 (1965). Judicial review is available.....in the absence of a clear and convincing demonstration that Congress intended to preclude it precisely so....., whether in rulemaking, adjudicating, acting or failing to act, do not become stagnant backwaters of caprice and lawlessness. **"Law has reached its finest moments when it has freed man from the unlimited discretion of some ruler, some civil or military official, some bureaucrat. Where discretion is absolute, man has always suffered. At times, it has been his property that has been invaded; at times, his privacy; at times, his liberty of movement; at times, his freedom of thought; at times, his life. Absolute discretion is a ruthless master. It is more destructive of freedom than any of man's other inventions**."

appeals—appeals before the [redacted] of district court proceedings—are the ...ception, not the rule," Johnson v. Jones, 515 U. S. 304, 309 (1995), it does not prevent "review of all prejudgment orders." Behrens v. Pelletier, 516 U. S. 299, 305 (1996). Under the collateral-order doctrine a limited set of district-court orders are reviewable "though short of final judgment." Ibid. The orders within this narrow category "are immediately appealable because they 'finally determine claims of right separable from, and collateral to, rights asserted in the action, too important to be denied review and too independent of the cause itself to require that appellate consideration be deferred until the whole case is adjudicated.' " Ibid. (quoting Cohen v. Beneficial Industrial Loan Corp., 337 U. S. 541, 546 (1949)).

THE DECISION BELOW CONFLICT WITH THE SUPREME COURT DECISION OF MOSSER V. DARROW, 341 U.S. 267, 271 (1951), AND DECISIONS OF THE THIRD, SIXTH, SEVENTH, CIRCUITS ON A FUNDAMENTAL ISSUE OF BANKRUPTCY LAW.

70. In In Mwangi v. Wells Fargo Bank (In re Mwangi), 764 F.3d 1168, 1170-71 (9th Cir. 2014), the Ninth Circuit reasoned that initially after the petition was filed, the account funds constituted property of the estate, not of the debtor, and the funds only revested automatically the funds in the debtors after the expiration of the deadline for objections to the claim of exemption, and deprived debtors from suing for damages. But In re Mwangi ignored that the creditors as JP Morgan Chase Bank refused withholding of turn-over to the estate of to the debror falsely claiming for adequate protection. During that period the debtors could not demonstrate their interests and how they were injured the creditor get rid of the property/funds during that time period, leaving no choice or interest to the estate or to the debtor where most appeal deemdd moot. This practice is immoral and agaisnt and repugnance to any bankrutocy laws or justice.

71. However, the bankrutocy court and the Ninth Circuit ignored that Mr. Perry's case had security interest in his property under his Cerificate of Title ("Pink-slip") and the **trustee** did not forced turn-over, and JP Morgan Chase Bank, N.A's did not seek under §542(b) direction from the Chapter 7 **trustee** who abondon the estate, leaving the debtor to care for his own interests. Additionally, the Ninth Circuit ignored in In re Mwangi that some property as in the case of Mr. Perry was not in the nature of a debt owed to the estate, **but rather a tangible asset as a vehicel to be physically turned over, which JP Morgan Chase Bank, N.A's withheld, and refused turn-over under 11 U.S.C. §542**, eventually mooting an appeal and selling stolen debtor Mr. Perry's property in a private sale, this was a violation of the automatic stay.

72. See In Mosser v. Darrow, 341 U.S. 267, 271 (1951), conflicting with In re Mwangi where under 11 U.S. Code §1109(b) a debtor has a right to be heard: **"A party in interest, including the debtor,** the **trustee**, a creditors' committee, an equity security holders' committee, a creditor, an equity security holder, or any indenture **trustee, may raise and may appear and be heard on any issue in a case under this chapter**. (Pub. L. 95–598, Nov. 6, 1978, 92 Stat. 2629.)" Standing having a plausible injury claims are available under Section 11 U.S.C. §362(a)(3) as well as available punitive damages under §362(k)(1). **Thus, if a debtor has an right to be heard, he also has the right to sue a creditor and seek damages.**

THIS CASE PRESENTS A RECURRING QUESTION OF EXCEPTIONAL IMPORTANCE WARRANTING THE COURT'S IMMEDIATE RESOLUTION.

73. In In re Mwangi disadvantage debtors while creditors who wrongly withheld and refused

turnover, the Ninth Circuit ta[redacted] the position that revesting to the debt[redacted] retroactivley after the expiration of the exemption objection period, and after the sale, even when defendants never attended the **trustee** meetings, and withheld the property from the debtor, but it also means that the property cannot be automatically retroactivley become again property of the debtors, after the **trustee** already abondaned the etate, the stay provisions of §362(a)(3) are inappropriatly been misinterpted. Creditors witholding impropertly debtors' property, preventing debtors from obtaining or exercising control over "property of the estate" cannot complain later about "revesting." The 9th Circuit refused to excerice judicial estoppel[24] on creditos from changing their positions.

74. The Ninth Circuit in In re Mwangi cannot fairly claim that 11 U.S.C. §362(a)(3) was not violated by the bank since the funds (they claimed was property withhled) when the property belonged to the debtors was withheld by the creditos who refused turnover. Why then the **trustee** abandones the estate if it has value. Thus, bankruptcy court rejecting punitive damages based on a bank's promise was not temporary "freeze" of funds but a permanent one, subjecting debtors to malicious and purposeful injury without recourse against against bad creditors, had embolden creditors to continue to instituted unilateral policies and flagrant disregard in violating the Bankrutocy Code.

75. There is no reasonable way to reconcile the divergent analysis of the right of a Chapter 7 individual debtor to assert a damage claim for a stay violation that occurred at a point where only the estate had an interest in the property subject to the violation and In re Mwangi. That conflict should require review by the United Stated Supreme Court.

76. Withholding turn-overs as in the case of Mr. Perry, In Mwangi v. Wells Fargo Bank (In re Mwangi), 764 F.3d 1168, 1170-71 (9th Cir. 2014) ignored that creditor refusal to turn-over the funds in the account to the Chapter 7 **trustee** also conflicted with 11 U.S.C. §§ 522(b), 323, 704. In re Weidenbenner, 521 B.R. 74 (Bankr. S.D.N.Y. 2014), which held the bank had willfully violated the automatic stay and was liable to the debtors for damages based on its imposition of a five-day administrative "pledge" or hold on the Chapter 7 debtors' bank account, causing a check to bounce. In contrast o In Mwangi, in Weidenbenner the debtors owed no debt to the bank, and the debtors could demonstrate actual injury from the five-day freeze as one of their checks drawn on the account bounced and a penalty fee was imposed on them by the party to whom the check was issued.

77. The court In re Weidenbenner rejected all arguments raised by the bank in defense of the debtors' stay violation claims, including the argument that it complied with §542(b) through its request to the **trustee** for instructions on the disposition of the funds, in part because the bank in that case acknowledged that where account funds total less than $5,000, the bank did not impose an administrative pledge to hold the funds in the account pending instructions, a line unilaterally drawn that the court found no justification for in the provisions of the Bankruptcy Code.

78. The In re Weidenbenner court rejected the argument by the Ninth Circuit and other courts that the debtors had no standing to assert a claim for the alleged stay violation since the funds were property of the estate, not of the debtors, at the time the alleged violation occurred. Instead, In re Weidenbenner court relied on the language of §362(k) of the Bankruptcy Code permitting recovery for stay violations and the "**practical realities of debtors' lives**" to support the court's interpretation that the debtors had standing to seek damages for violations of the stay that affected the estate but where the debtors themselves suffered injury.

79. In Mwangi v. Wells Fargo Bank (In re Mwangi), 764 F.3d 1168, 1170-71 (9th Cir. 2014,

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24 In a 2013 decision, the Ninth Circuit cautioned against overly harsh application of **judicial estoppel** against bankruptcy debtors. See Quin v. Cnty. of Kauai Dep't of Transp, 733 F.3d 267, at 277. "Judicial estoppel is an equitable doctrine invoked by a court at its discretion."[Id. at *2 (quoting New Hampshire v. Maine, 532 U.S. 742, 750 (2001)).] The purpose of judicial estoppel is to "protect the integrity of the judicial process by prohibiting parties from deliberately changing positions according to the exigencies of the moment."[Id. (quoting New Hampshire v. Maine, 532 U.S. 742, 749–750 (2001)]

conflicts with Claridge Associates, LLC, et al. v. Anthony Schepis (In re Pursuit Capital Management, LLC), Adv. P. No. 16-50083 (LSS) (Bankr. D. Del. Nov. 2, 2018), which extended the Third Circuit's holding in Official Committee of Unsecured Creditors of Cybergenics Corp. v. Chinery, 330 F.3d 548 (3d. Cir. 2003) (en banc) to chapter 7 cases discussed derivative standing when a debtor unreasonably fails to bring suit after having "colorable" claims.

80. In Mwangi v. Wells Fargo Bank (In re Mwangi), 764 F.3d 1168, 1170-71 (9th Cir. 2014) also conflicts with In re Trailer Sources, Inc., 555 F.3d 231 (6th Cir. 2009), where the Sixth Circuit specifically extended the equitable powers sanctioned in Cybergenics II to chapter 7 cases. In re Mwangi), also conflicts with the Fourth Circuit in Mar-Bow Value Partners LLC v. McKinsey Recovery & Transformation Services US LLC (In re Alpha Natural Resources Inc., Nos. 17-2268; 17-2269 (4th Cir. Sept. 6, 2018), conflicts with 11 U.S. Code § 1109 and with other circuit courts. The Fourth Circuit affirmed a decision by the district court that an appellant must have a "**pecuniary interest**" in the outcome of the appeal in order to be a "**person aggrieved**" with standing to pursue the appeal. A debtor-in-possession of title or right may exercise the role of the **trustee** who abandon the estate, can sue and be sued on behalf of the estate, see 11 U.S.C. 323, 11 U.S.C. 1107, 1108, and is "**considered an officer of the court subject to the supervision and control of the Bankruptcy Court and the provisions of the Bankruptcy Court and the provisions of the Bankruptcy Code**," In re V. Savino Oil & Heating Co., 99 Bankr. at 524.

81. See Mosser v. Darrow, 341 U.S. 267, 271 (1951), discussing 11 U.S. Code § 1109(b) - Right to be heard ("**An indenture trustee's standing is expressly authorized by 52 Stat. 894, 11 U.S.C. § 606, which provides, "The debtor, the indenture trustees, and any creditor or stockholder of the debtor shall have the right to be heard on all matters arising in a proceeding under this chapter.");** In re Arnold Print Works, Inc., 815 F.2d 165, 170 (1st Cir. 1987); In re Beck Indus., Inc., 725 F.2d 880, 888 (2d Cir. 1984) (Friendly, J.); Act of July 1, 1898, ch. 541, Section 1, 30 Stat. 544 (designating a **trustee** as an "officer"), The efforts of a **trustee** or debtor-in-possession to protect and preserve the res of the estate by insuring its assets fit squarely within long-accepted notions of "administration of the estate." Cf. In re Hood, 92 Bankr. 648, 651 (Bankr. E.D. Va. 1988). The preservation of the estate is so central to the bankruptcy proceedings that if the **trustee**/debtor-in-possession fails adequately to perform this task, the Code allows any "entity" to receive compensation for "administrative expenses" incurred for the "preservation of the estate." 11 U.S.C. 503(b)(1)(A).

82. In California Employment Development Department v. Taxel (In re Del Mission Ltd.), 98 F.3d 1147 (9th Cir. 1996) "**[t]o effectuate the purpose of the automatic stay [i.e., to alleviate financial strains on the debtor], the onus to return estate property is placed upon the possessor; it does not fall on the debtor to pursue the possessor.**" Id. at 1151, conflict with In re Metromedia Fiber Network, Inc., 290 B.R. 487 (Bankr. S.D.N.Y. 2003) (**holding that creditor must turn over estate property and that creditor could not retain possession until debtor first provided adequate protection**); In re Zaber, 223 B.R. 102, 105 (Bankr. N.D. Tex. 1998) ("**Like § 363, § 542(a) titled 'Turnover of property to the estate' requires no preliminary action on the part of the debtor. The statute contains no provision requiring adequate protection as a prerequisite to turnover.**") (footnote omitted); In re Berscheit, 223 B.R. 579, 581 (Bankr. D. Wyo. 1998) (adopting reasoning in Knaus and rejecting creditor argument that turnover not required until adequate protection requirements of § 363 are met); In re Foust, No. 98-50774 SEG, 98-5032 SEG, M198-00185, 2000 WL 33769159, at 4, 6 (Bankr. S.D. Miss. July 18, 2000) (rejecting creditors' argument that they were justified in retaining seized collateral until their motion for relief from stay and adequate protection was heard and holding that "postpetition retention of estate property without court authority following a prepetition seizure constitutes an exercise of control over property of the estate and is a violation of the automatic stay.").

A. Post-Petition Contractual Disputes Involving Estate Administration Are Core Proceedings Under 28 U.S.C. 157(B)(2)(A).

83. Another question presented here was whether this dispute over a post-petition contract to insure the res of the bankruptcy estate may be adjudicated in bankruptcy court as a core proceeding. See, e.g., In re Hipp, Inc., 895 F.2d 1503, 1514 (5th Cir. 1990); Vreugdenhil v. Hoekstra, 773 F.2d 213, 215 (8th Cir. 1985). In the exercise of their jurisdiction in both core and non-core proceedings, district courts can call for assistance from adjuncts known as bankruptcy courts.

84. The Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. No. 98-353, 98 Stat. 333, vests jurisdiction over bankruptcy proceedings and the debtor's property in the United States District Courts. 28 U.S.C. 1334(a), (b) and (d). The 1984 Act divides the district courts' bankruptcy jurisdiction into two categories: cases under title 11 and core proceedings, on the one hand, and non-core proceedings that are merely "related to" title 11 cases, on the other hand. 28 U.S.C. 157(b)-(c).

85. Bankruptcy courts are staffed by judges appointed for a fixed term of 14 years by the United States Court of Appeals for the Circuit, and they are removable by the same authority. 28 U.S.C. 152(a) and (e). Bankruptcy courts can adjudicate only such proceedings as are referred to them by the district courts. 28 U.S.C. 157(a)-(c). Even proceedings that are core or are integral to the administration of the bankruptcy estate are not before the bankruptcy court unless the district court orders the reference. See In re Interpictures, Inc., 86 Bankr. 24, 28-29 (Bankr. E.D.N.Y. 1988).

86. Although bankruptcy courts may participate in core and non-core proceedings, their role depends significantly on the nature of the proceeding. Bankruptcy courts may "hear and determine" core proceedings, subject to at least appellate review by the district court. 28 U.S.C. 157(b)(1). In contrast, the bankruptcy court may only submit recommended findings to the district court in non-core proceedings; absent consent of the parties, the district court must review contested non-core matters de novo before entering final judgment. 28 U.S.C. 157(c)(1).

87. The 1984 Act does not define "core" proceedings, but it does describe them as "arising under title 11, or arising in a case under title 11." 28 U.S.C. 157(b)(1). The Act also sets forth a non-exhaustive list of 15 illustrative core proceedings, including such basic matters as "allowance(s) or disallowance(s) of claims against the estate," 28 U.S.C. 157(b)(2)(B), and of direct relevance to this case "matters concerning the administration of the estate," 28 U.S.C. 157(b)(2)(A). The statute further provides that **"(a) determination that a proceeding is not a core proceeding shall not be made solely on the basis that its resolution may be affected by State law**." 28 U.S.C. 157(b)(3). The balance of the bankruptcy jurisdiction is comprised of non-core proceedings, which the 1984 Act describes as those "otherwise related to a case under title 11," 28 U.S.C. 157(c)(1).

88. For the reasons stated below, infra, the present proceeding between Mr. Perry and JP Morgan Chase Bank, N.A.'s involved a contract entered into by the debtor, Mr. Perry who was in-possession of a "**Certificate of Title**" ("**Pink-Slip**") on behalf of the estate to insure the assets of the estate, over the vehicle that was wrongly repossessed by the JPMorgan Chase bank in February 6, 2009, refused turnover and withheld it from the **trustee** until the private sale on May 21, 2009, clearly qualified as a matter "arising in a case under title 11."

89. Mr. Perry's case was a core proceeding under 28 U.S.C. 157(b)(2)(A), and not a candidate for mandatory and discretionary abstention under 28 U.S.C. 1334(c)(2), and the bankruptcy court had only discretionary abstention on July 14, 2014, there was no jurisdictional obstacle bars for the Ninth Circuit review any interlocutory appeal on the discretionary abstention on July 14, 2014, when it merged into the final judgment.

90. However, the bankruptcy court here found that this proceeding was not core, but is merely "related to" a case under title 11, then the prerequisite for mandatory abstention has been met, and the district court's decision was not reviewable, "by appeal or otherwise," in the court of appeals. Cf. Thermtron Products, Inc. v. Hermansdorfer, 423 U.S. 336, 343 (1977) (discussing effect of bar on review of remand orders under similarly worded in 28 U.S.C. 1447(d)). In that event, the Supreme Court should

vacate the court of appeals' judgment and remand with instructions to dismiss the appeal for want of jurisdiction. See Bender v. Williamsport Area School Dist., 475 U.S. at 549.

91. Petitioner Mr. Perry here had explicitly said during the litigations/appeals that he was appealing from the bankruptcy court's abstention order of May 26, 2010 (Id. Dkt. #25) "**Order denying without prejudice the motion of defendants JP Morgan Chase Bank N.A. and Key Auto Recovery for court to abstain from hearing adversary proceeding pursuant to 28 U.S.C.A. section 1334(c),**" and whether the second discretionary abstention order of July 14, 2014 (Id. Dkt. #161) was improper because the state court litigation case was not pending and was already been dismissed on May 18, 2010 (Id. Appx. #), after Mr. Perry bankrupt could not afford to post thousands of dollars for the wealthy defendants based on the state court April 27, 2010 pursuant to Cal. Code of Civil Proc. §**391** et. seq, the bankruptcy court order stayed the state case for 5 years when it finally dissolved the stay before the second abstention of 2015.

A. The Decisions Below Conflicts With Decisions of The Second, Third, And Fourth Circuits On A Fundamental Issue of Abstention Laws. But There Is No Bar For Review An Order Denying Abstention Without Prejudice Under 28 §1334(d): "other than a decision not to abstain in a proceeding described in subsection (c)(2)."

92. Congress sought to remedy the constitutional defect in 28 U.S.C. § 1471 with the passage of the Bankruptcy Amendments and Federal Judgeship Act of 1984 ("BAFJA"). The Cain Partnership, Ltd. v. Pioneer Investment Services Co. (In re Pioneer Investment Services Co.), 946 F.2d 445, 448 (6th Cir. 1991). Under the Code, as amended by BAFJA, the jurisdiction of all cases under title 11, and all civil proceedings arising under title 11, or arising in or related to cases under title 11 is governed by 28 U.S.C. §§ 1334(a)-(b). Id. Yet, on June 23, 2011, the United States Supreme Court issued its decision in Stern v. Marshall, 564 U.S., 131 S.Ct. 2594 (2011).[25]

93. Since then the holding in Stern significantly limited the exercise of jurisdiction by the Bankruptcy courts under 28 U.S.C. § 1334(b) in adversary proceedings, "**(Other than a decision Not To Abstain"** under the plain language of 28 U.S.C. §1334(d). Id. "**(other than a decision not to abstain in a proceeding described in subsection (c)(2)."**

94. The bankruptcy court in this case denied defendants' motions for mandatory abstention without prejudice under subsection 28 U.S.C. §1334(c)(2) (Id. Dkt. #___ on page 6 (Appx. #336)). But 5 years later on July 14, 2014 the bankruptcy court used discretionary abstention under 28 U.S.C. §1334(c)(1), with respect to the 1st, 2nd, 3rd, 4th, 5th, 6th, 8th, 9th and 10th causes of action. (Id. Dkt. #161) Under §1334(c)(1) Bankruptcy courts may abstain from hearing a proceeding arising under the Code or arising in or related to a case under the Code if such abstention is in the interest of justice, comity with state courts, or respect for state law. 28 U.S.C. § 1334(c)(1). The court may abstain from the entire bankruptcy case in some circumstances. 11 U.S.C. § 305.

95. But see the plain language of 28 U.S.C. §1334(d) "(**Other than a decision Not To Abstain in a proceeding described in subsection (c)(2) is...reviewable by appeal or otherwise by the court of appeals under section 158(d), 1291, or 1292 of this title or by the Supreme Court of the United States under section 1254 of this title.**"

96. The bankruptcy court order of May 26, 2010, made findings regarding the conditions prerequisite to mandatory abstention, ibid. (only while state law issues, timely adjudication was available

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25 In Stern, the Ninth Circuit reasoned that allowing a Bankruptcy judge to enter final judgments on all counterclaims raised in Bankruptcy proceedings "would certainly run afoul" of the Supreme Court's decision in Northern Pipeline Construction Co. v. Marathon Pipe Line Co., 458 U.S. 50 (1982).

in state court, etc.), and characterized the proceeding as a "**related proceeding**" that did "**not exist independently from Title 11 or the bankruptcy case itself,**" (Id. Dkt. # 25). The defendants likewise understood the bankruptcy court to have denied their abstention without prejudice on May 26, 2010, under both subsections of 28 U.S.C. 1334(c)(1) and (2). ("The District Court also determined to abstain pursuant to 28 U.S.C. Section 1334(c)(1) and (2).)"

97. Although the district court's mandatory abstention decision is "not reviewable by appeal or otherwise" under Section 1334(c)(2), the terms of that provision do not bar review of the district court's antecedent jurisdictional determination that the proceeding is merely "related to" a case under title 11. Cf. Thermtron Products, Inc. v. Hermansdorfer, 423 U.S. 336, 345-352 (1976) (district court orders remanding non-civil rights case on grounds not permitted by 28 U.S.C. 1447(c) are not rendered unreviewable by 28 U.S.C. 1447(d), which provides that Section 1447(c) orders are "not reviewable on appeal or otherwise"). To the contrary, the implied reviewability of permissive abstention decisions suggests that the bar to review of mandatory abstention decisions suggests that the bar to review of mandatory abstention decisions should not be extended beyond the precise category of decisions encompassed by Section 1334(c)(2).

98. The circuit courts to have addressed this issue have distinguished between review of the mandatory abstention decision itself, which is barred, and review of the district court's jurisdiction to order mandatory abstention, which is not barred. See In re Bobroff, 766 F.2d 797, 800-802 & n.3 (3d Cir. 1985) (mandatory abstention under 28 U.S.C. 1334(c)(2) presupposes that case is merely "related to" bankruptcy proceeding; predicate determination is reviewable even though abstention decision is not); Pacor, Inc. v. Higgins, 743 F.2d 984, 987-989 (3d Cir. 1984) (same, under provisions of 1978 Act).

99. In the context of the bankruptcy court initially denying without prejudice defendants mandatory abstention on May 26, 2010, then staying the case for 5 years, then using dictionary abstention on July 14, 2014 under 28 U.S.C. §1334(c)(1), defeats the purpose of abstention, when the state court case no longer exist, it contradicts mandatory abstention under 28 U.S.C. §1334(c)(2). See Mr. Perry's "**Memorandum in Opposition to Abstention to the State Causes of Actions; Motion to Reconsider Tentative Ruling of April 16, 2014, in Regards to Issue #3 Exhibits Filed by Plaintiff Avram Moshe Perry**." (Id. Dkt. #147) on page 3:

> **"In fact, no issue was actually litigated the prior state action because it was dismissed. Therefore, issue of preclusion does not bar claims against Chase Bank and Key Auto Recovery. A dismissal not on the merit is not a final adjudication which will bar subsequent suit....the stat court dismissal was not on the merits – and the bankruptcy court should not be bound by the determination of California Code of Civil Procedure §391.2...."**

100. To that Judge Geraldine Mund had on July 14, 2014 intentionally and untruly responded (Id. Dkt. #161) on page 5:

> **"Plaintiff has failed to provide any arguments that address the Court's analysis in the Memorandum of Opinion that led the Court to conclude that discretionary abstention was appropriate**. Thus, for the reasons stated in the Memorandum of Opinion at pages 28:23 through 31:15, the Court will exercise its discretion to abstain from hearing the causes of action in this proceeding other than stay relief violations, the 7th cause of action and the 11th cause of action."

101. Mr. Perry had to battle two hostile defendants' lawyers, and a bias and hostile bankruptcy judge Geraldine Mund who **exemplified unfairness, repugnance to the law and arbitrary rulings showing falsity by the bankruptcy court judge on page 3:**

> **"The Court exercise it discretion pursuant to 28 U.S.C. 1334(c)(1) and abstain from hearing the 1st, 2nd, 3rd, 4th, 5th, 6th, 8th, 9th and 10th causes of action in this proceeding."** (Id. Dkt. #161, pages 3-4)

102. The first decision to abstention should have "end(ed) the litigation on the merits," and is appealable, but the bankruptcy court judge Geraldine Mund refused. See Catlin v. United States, 324 U.S. 229, 233 (1945), and constituted a final judgment that would ordinarily be appealable under 28 U.S.C. 1291. See Moses H. Cone Memorial Hosp. v. Mercury Construction Corp., 460 U.S. 1, 8-10 (1983) (**Pullman abstention decision is a "final decision" for purposes of 28 U.S.C. 1291 because party is "effectively out of court"**); Idlewild Bon Voyage Liquor Corp. v. Epstein, 370 U.S. 713, 715 n.2 (1962) (same). Moreover, because interlocutory rulings "merge" into a final judgment and become reviewable at that time, the district court's withdrawal of the reference became reviewable when it abstained in favor of the state court litigation. But abstention is improper when the state court proceedings was already over, closed and/or dismissed.

103. Withrow v. Larkin, 421 U.S. 35 (1975)" A "**fair trial in a fair tribunal is a basic requirement of due process.**" In re Murchison, 349 U. S. 133, 349 U. S. 136 (1955). See in Gibson v. Berryhill, 411 U. S. 564, 411 U. S. 579 (1973)Not only is a biased decisionmaker constitutionally unacceptable, but "our system of law has always endeavored to prevent even the probability of unfairness." (Citation) In re Murchison, supra at 349 U. S. 136; cf. Tumey v. Ohio, 273 U. S. 510, 273 U. S. 532 (1927):

> **"In pursuit of this end, various situations have been identified in which experience teaches that the probability of actual bias on the part of the judge or decisionmaker is too high to be constitutionally tolerable. Among these cases are those in which the adjudicator has a pecuniary interest in the outcome, [Footnote 14] and in which he has been the target of personal abuse or criticism from the party before him. [Footnote 15]."** (Citation).

104. Additionally, a district court's abstention order constituted a final decision for purposes of 28 U.S.C. 1291 review from a final decision, jurisdiction to review that judgment (and the interlocutory order that merged into it) is limited by 28 U.S.C. 1334(c)(2), but not based on "([o]ther than a decision not to abstain in a proceeding described in subsection (c)(2)"[26]. That Section provides: "Any decision to abstain made under this subsection is not reviewable by appeal or otherwise."

105. To determine the effect of this provision, it is important to understand the two forms of abstention under §1334(c), a review is barred in subsection (c)(2) applies only to mandatory abstention under that subsection, not to permissive abstention under subsection (c)(1). The bankruptcy court did not invoked mandatory or a permissive abstention in this case on May 26, 2010, and subsection (c)(2) only bars review by the Ninth Circuit if the condition precedent to mandatory abstention did not exist. Because the mandatory abstention was denied on May 26, 2010, as specified in that subsection, that condition was not met in this case, and the bankruptcy court's discretion abstention order of July 14, 2014 was improper, and the order was final and appealable, when the state court case was already over since 2010, and therefore it merged into the final judgment and was reviewable on appeal.

106. 28 U.S.C. §1334 outlines two very different forms of abstention. Subsection (c)(1) authorizes **permissive abstention**. It allows a district/bankruptcy court, in the interests of justice or comity, to abstain from hearing a proceeding "arising under title 11 or arising in or related to a case under

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[26] 28 U.S.C. 1334(c)(2) is reviewable: (other than a decision not to abstain in a proceeding described in subsection (c)(2)) is....reviewable by appeal or otherwise by the court of appeals under section 158(d), 1291, or 1292."

title 11." In other words, it permits a district court to abstain in any case within the congressional grant of bankruptcy jurisdiction. See 28 U.S.C. §157(a), §1334(a)-(b). In contrast, subsection (c)(2) sets forth a rule of **mandatory abstention**. It states that a district court "shall abstain" from hearing a proceeding "related to a case under title 11 but not arising under title 11 or arising in a case under title 11," under certain circumstances. Those circumstances are the timely motion of a party, the proceeding being based "**upon a State law claim or State law cause of action**," the lack of any federal jurisdictional basis other than the bankruptcy jurisdiction, and the commencement of and ability to "**timely adjudicate**" action in state court. 28 U.S.C. 1334(c)(2).

107. The jurisdictional bar to review of abstention decisions applies only to **mandatory abstention** decisions, because they are the only "decision(s) to abstain made under this subsection" that is, subsection §1334(c)(2). **By implication, therefore, permissive abstention decisions under subsection (c)(1) are reviewable as final decisions**. See In re China Peak Resort, 847 F.2d 570, 572 (9th Cir. 1988) holding permissive abstention decisions reviewable). See generally, General Motors Corp. v. United States, 110 S. Ct. 2528, 2532 (1990) ("(W)here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.").

108. **Federal courts rely on a basic principle to abstain from ruling on a claim that raised issues that was not appropriately been addressed by a state court. The Younger doctrine, for example, logically assumes the existence of an ongoing state proceeding—the first Middlesex factor.**[27] **If no state court proceeding is actually pending at the commencement of the federal litigation, declaratory, injunctive or compensatory relief may be available to the federal plaintiff.** See Wooley v. Maynard, 430 U.S. 705 (1977); Steffel v. Thompson, 415 U.S. 452 (1974), the Supreme Court found ..."Younger does not bar federal jurisdiction." Id. at 711.

109. In Ankenbrandt v. Richards, Ankenbrandt, 504 U.S. at 689, a tort action, the Court held the application of Younger abstention to be erroneous since the state proceedings had been concluded. The Court reasoned that Younger had never been applied "**when no state proceeding was pending nor any assertion of important state interests made.**"; D.A. Osguthorpe Family Partnership v. ASC Utah, Incorporated, 705 F.3d 1223, 1232 (10th Cir. 2013) (Rooker-Feldman did not bar federal action because state court proceedings not final while appeal pending); Shafizadeh v. Bowles, 476 F. App'x 71, 72 (6th Cir. 2012) (question remains open).

110. In this case, Section 1334(c)(2) does not bar review of the district court's judgment because the condition precedent to mandatory abstention is not present. The district court assumed, see Pet. App. A24-A25, and we agree, that cases "related to" a case under title 11 (and therefore candidates for mandatory abstention under 28 U.S.C. 1334(c)(2)) roughly correspond to non-core proceedings, which 28 U.S.C. 157(c) defines as "a proceeding that is not a core proceeding but that is otherwise related to a case under title 11" (emphasis added). Conversely, the balance of bankruptcy jurisdiction – which encompasses "cases under title 11" and "civil proceedings arising under" or "arising in" cases under title 11, see 28 U.S.C. 1334(a) and (b) -- is subject to permissive abstention. 28 U.S.C. 1334(c)(1). Although no single characteristic connects the statutory list of core proceedings, 28 U.S.C. 157(b)(1) uses the terms "arising under" and "arising in a case under title 11" in describing core proceedings. In sum, the distinction between a matter "arising under or in" a case under title 11 and a matter that is "related" to a case under title 11, appears to be essentially the same distinction as that between core and non-core proceedings. See In re Wood, 825 F.2d 90, 96-97 (5th Cir. 1987); Central Maine Restaurant Supply v. Omni Hotel Management Corp., 73 Bankr. 1018, 1022 (D. Me. 1987); In re Corporacion de Servicios Medicos Hospitalarios de Fajardo, 60 Bankr. 920, 929 (D.P.R. 1986); 1 Collier on Bankruptcy Paragraph 3.01(2)(b)(ii), at 3-37 to 3-39 (15th rev. ed. 1990).

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27 Middlesex County Ethics Committee, 457 U.S. at 432.

B. Circuits Courts of Appeals Are Divided And Conflicted On Applications of Default Judgment Over The Standard Applicable To Interplay of Pre-Answer Motions And Motions To Abstain With Or Without An Answer, If And When It Will Result With Considerable Delays Dilatory Motion Practice, Prejudice And Injury To A Plaintiff.

111. Bankruptcy Judge Mund granted defendants' motions to set aside the default judgment the bankruptcy court clerk had issued on May 23, 2010, had resulted in prejudice to the Plaintiff Mr. Perry, the non-defaulting party. The question what standard governs pre-answer motions to abstain without leave to amend has produced intra as well as inter-circuit conflict, as different panels of the circuit have taken opposing views on the question on what is the interplay of motions to abstain under 28 U.S.C. § 1334(c)(2) and to Bk. R. Civ. P. 7055 for default judgment, when it increases dilatory motion practice, lengthy litigation, the Supreme Court should finally grant this petition on those issues.

112. As with the case of defendants' failure to answer the "Original Adversary Complaint" and preserve evidence and defenses, this the bankruptcy Judge Mund found excusable, allowing in 2015 declaration and evidence by Chase Senior Trial Manager Jeff Allsop presented on August 6, 2015 as evidence on (Id. Dkt. #292). Yet, when Mr. Perry presented the bankruptcy court with the "Certificate of Title ("Pink-Slip")" on April 13, 2013, (Id. Dkt. #102, page 44-45, and again on June 22, 2015, Dkt. #275 page 14-15), stating Chase declared under penalty of perjury that it had the Certificate of Title ("Pink-Slip")," the bankruptcy judge had ignored it, and found it was inexcusable and could not be used as evidence. (Id. Dkt. #328, page 15:

> **"Perry never raised the argument in opposition to Chase's motion for relief from the automatic stay.[BK.dkt.19.] (He did cite the DMV Account View print out of from February 13, 2009, but used it to argue that Chase had violated the stay by ordering paper title.) By failing to raise this title argument at the time the relief from stay was litigated, Perry lost his opportunity to do so."**

113. The Eleventh Circuit has repeatedly acknowledged that most failures to follow court orders are not willful, as long as the defendant was not given ample opportunity to comply and failed to do so. Compania Interamericana, 88 F.3d at 952; Robinson v. United States, 734 F.2d 735, 739 (11th Cir. 1984); Katz v. MRT, LLC., 2008 U.S. Dist. LEXIS 45586, L 2368210, *3 (S.D.Fla. June 10, 2008). Tyco Fire & Sec. v. Alcocer, 2009 U.S. Dist. LEXIS 27720, 8-9 (S.D. Fla. Mar. 23, 2009); See West v. United States, No. 13-16909 (9th Cir. April 3, 2017) "In determining whether 'intent' and 'prejudice' are present, we apply another two-part test: first, whether the affected party had notice of the issue on appeal; and, second, whether the affected party had an opportunity to fully brief the issue." Ahlmeyer v. Nevada Sys. of Higher Educ., 555 F.3d 1051, 1055 (9th Cir. 2009) (quoting Lynn v. Sheet Metal Workers' Int'l Ass'n, 804 F.2d 1472, 1481 (9th Cir. 1986)); European Community v. RJN Nabisco, Inc., 355 F.3d 123, 128, 139 (2d Cir. 2004) (holding that there was no procedural basis for dismissal when the plaintiffs' deadline for service had not expired), cert. granted, vacated on other grounds & remanded, 544 U.S. 1012 (2005); cf. Franklin v. Murphy, 745 F.2d 1221, 1226 (9th Cir. 1984) (explaining that it was error to dismiss a complaint without notice before the plaintiff served it when the plaintiff had paid filing fees). Link v. Wabash R. Co., 370 U.S. 626 (1962), citing Anderson National Bank v. Luckett, 321 U. S. 233, 321 U. S. 246."**[t]he fundamental requirement of due process is an opportunity to be heard upon such notice and proceedings as are adequate to safeguard the right for which the constitutional protection is invoked.**"

114. Defendants failed to answer Mr. Perry's "Original Adversary Complaint" of February 5, 2010, and they waived their right to preserve any defenses as stated in Judge Mund's orders of November

13, 2015 and December 14, 2015, after Judge Mund drafted the "**Revised and Edited Complaint**" on April 14, 2015. Id. Fed. R. Civ. P. Rule 12(h)(2) plainly stating that: "Waiving and Preserving Certain Defenses." (2) When to Raise Others. Failure to....state a legal defense to a claim may be raised: (A) in any pleading allowed or ordered under Rule 7(a)[28]; (B) by a motion under Rule 12(c); or (C) at trial." Nothing in Rule 12 mentions abstention motion under 28 U.S.C. § 1334. Fed. R. Civ. P. Rule 12(h)(3) states: Lack of Subject-Matter Jurisdiction. If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action." See Notes of Advisory Committee on Rules—1966 Amendment to Fed. R. Civ. P. Rule 12.

115. Defendants JP Morgan Chase Bank or Key Auto Recovery had never filed any answers in 2010 in adversary proceeding Nos. 1:10-ap-01043-GM or Nos. 1:10-ap-0356-GM under Rule 12(b). Fed.R.Civ.P. 12(h)(1). Rule 12(h)(1) refers to Rule 12(g)(2), which states that, subject to two exceptions, "**a party that makes a motion under this rule must not make another motion under this rule raising a defense or objection that was available to the party but omitted from its earlier motion.**" Fed.R.Civ.P. 12(g)(2). Fed. R. Civ. P. Rule 7(a) plainly state that only an answer can preserve defenses, not motions to abstain pursuant to 28 U.S.C. §1334(c). **A defense is unavailable if "its legal basis did not exist at the time of the answer or pre-answer motion.**" Gilmore v. Palestinian Interim Self-Government Auth., 843 F.3d 958, 964–65 (D.C. Cir. 2016).

116. As this portion of the rule makes plain, it is "defenses" that are properly brought in lieu of answer. Black's Law Dictionary defines "defense" as "[t]hat which is offered and alleged by the party proceeded against in an action or suit, as a reason in law or fact why plaintiff should not recover or establish what he seeks." Black's Law Dictionary 419 (6th ed. 1990). Generally, in their commentary on Rule 12(b) of the Federal Rules of Civil Procedure, Wright and Miller noted: "that [i]n accord with the policy of minimizing dilatory motion practice, Rule 12(b) expressly permits the pleader to raise the seven enumerated defenses by motion," and go on to observe that "[f]ederal courts also traditionally have entertained certain pre-answer motions that are not expressly provided for by the rules." 5 Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 1360 at 632, 633 (1969).

C. There Is No Compelling Reasons Why The Supreme Court Construe A Motion To Abstain As Properly Filed Along Under Fed. R. Civ. P. Rule 12(B) In Lieu of An Answer in light of congressional Intents On Limitation on Further Motions Under Fed. R. Civ. P. Rule 12(g)(2).

117. 28 U.S.C. § 1334(c)(2) abstention motions assumes a validly of a constituted lawsuit before the court abstention is sought, an answer is needed to make the other seven (7) motions offered under Fed. R. Civ. P. 12(b), with the limitation of time and on successive motions under Fed. R. Civ. P. 12(g), Fed. R. Civ. P. Rule 15, and Fed. R. Civ. P. 7, Fed. R. Civ. P. Rule 10. Denying mandatory abstention under without prejudice §1334(c)(2) on May 26, 2010, and the later discretionary abstention under §1334(c)(1) on July 14, 2014 was foreclosed when there was no pending parallel state court proceeding that was ever litigated in the interest of justice, or in the interest of comity with State courts or respect for State law such as California Code of Civil Procedure §**391** et. seq.?

118. 28 U.S.C. § 1334 (c)(2) amended statutory language authorizes Bankruptcy courts to enter binding orders on motions to abstain and permits the appeal of these orders to the district court. But in Mr. Perry's case the bankruptcy court orders of and the Court of appeal refusal to review the issues raised as

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[28] **Fed. R. Civ. P. Rule 7(a) PLEADINGS. Only these pleadings are allowed:** (1) a complaint; (2) an answer to a complaint; (3) an answer to a counterclaim designated as a counterclaim; (4) an answer to a crossclaim; (5) a third-party complaint; (6) an answer to a third-party complaint; and (7) if the court orders one, a reply to an answer.

related to defendants' failure [redacted] timely answer a complaint pursuant to [redacted] U.S.C. § 1334(c)(2) in relation to Rule 12(b). The Supreme Court should inquire into the alleged errors of law by a bankruptcy judge (Judge Mund) in interpreting Rule 12 interplay with mandatory abstention under 28 U.S.C. §1334(c)(2) and 6 years later discretionary abstention under 28 U.S.C. §1334(c)(2). See Whittlestone, Inc. v. Handi-Craft Co., 618 F.3d 970, 973 (9th Cir. 2010); Carlin v. Dairy America, Inc., 705 F.3d 856, 866 (9th Cir. 2013).

119. With these principles in mind, Mr. Perry can sees no compelling reason why the motions to abstain in his case are not the same as to a Rule 12(b) motions in lieu of answer. As Wright and Miller observe, the purpose of Rule 12 is to "**minimize dilatory motion practice.**" 5 Wright & Miller, supra, at 632. The purpose of the rule was not served in the instant case, as substantial delay has resulted from the fact that the motion to abstain was brought as a pre-answer motion. There is no reason that the answers in both cases could not have been filed in due course.

120. For that matter, there is also no reason that discovery could not have been ongoing during the pendency of the abstention motion, since discovery was just as inevitable as the answer. Compare Boggess v. Columbian Rope Co., 167 F. Supp. 854, 856 (S.D.N.Y. 1958) (granting of a stay of trial in a federal court action made conditional upon the defendant's agreeing that discovery would go forward in the federal proceeding, and that that discovery would be used in the earlier filed state proceeding, the purpose being to permit plaintiff to take advantage of more liberal federal discovery rules), noted in 5 Wright & Miller, supra, § 1360, at 639. Accordingly, since the motion to abstain was not a pre-answer motion within Rule 12(b), the 21 day time period for filing the answer waives any defenses, and Judge Mund cannot resurrect them.

121. It may that a motion to stay most closely analogizes to a motion to abstain, but as such it is not a pre-answer motion, but a pre-trial motion. There was no reason that answers could not have been filed in due course during the pendency of an abstention motion, and there is also no reason that discovery could not have been ongoing during an abstention motion's pendency, since discovery was just as inevitable as the answer. A motion for abstention has little common ground with the concept of a defense because abstention by no means precludes a plaintiff from obtaining the requested relief but rather goes to the question of the appropriate forum in which to pursue that relief.

122. **So, if abstention is not a defense to a lawsuit in the sense used in Fed. R. Civ. P. 12. Rule 12(b), then in practical sense, the court denial of motion to abstain without prejudice will trigger Rule Fed. R. Civ. P. 12(a)(4), to served an answer within 14 days**. Rule 12(a)(4) provides that: "**Effect of a Motion**. Unless the court sets a different time, serving a motion under this rule alters these periods as follows: (A) if the court denies the motion or postpones its disposition until trial, the responsive pleading must be served within 14 days after notice of the court's action...."

123. Under "**abstention doctrine**" in Black's Law Dictionary is: "**Doctrine of `abstention' permits a federal court, in the exercise of its discretion, to relinquish jurisdiction where necessary to avoid needless conflict with the administration by a state of its own affairs.**" Id. at 9. At a basic definitions level there is little common ground between the concept of a "defense" and that of "abstention." "Abstention" by no means precludes a plaintiff from obtaining the requested relief but rather goes to the question of the appropriate forum in which to pursue that relief.

124. This means that every defense to a claim for relief in any pleading must be asserted in the responsive pleading if one is required. But a party may assert the following defenses by motion: (1) lack of subject-matter jurisdiction; (2) lack of personal jurisdiction; (3) improper venue; (4) insufficient process; (5) insufficient service of process; (6) failure to state a claim upon which relief can be granted; and (7) failure to join a party under Rule 19. Each of the seven enumerated defenses set out in Rule 12(b) has the potential to bring a permanent halt to the lawsuit. At least one of the defects justifying dismissal under Rule 12(b) may be subject to ready correction) a Rule 12(b)(4) situation where defendant is served

only with the summons or the complaint as opposed to both as provided by Rule 4(d) ("[t]he summons and complaint shall be served together") springs to mind.

125. Although Wright and Miller do not specifically include abstention motions in their discussion, they do observe that "motions to stay and motions to dismiss because another action is pending," fall within **"[y]et another group of pretrial motions closely related to the management of the lawsuit and might generally be characterized as involving matters of judicial administration; the authority to hear these motions lies in the inherent power of a court to regulate actions pending before it.**" Id. at 633-34 (emphasis added). Of the motions discussed by Wright and Miller, the motion to stay most closely analogizes to the motion to abstain at issue here, and Wright and Miller describe such a motion not as a pre-answer motion, but as a pre-trial motion.

126. See also Chandler v. State Bar of California, 2008 WL 901865, at *3 (N.D.Cal. March 31, 2008) quoting Canatella v. California, 304 F.3d 843, 850–52 (9th Cir. 2002) (analysis of when state bar disciplinary action commences leads court to find abstention unwarranted, as no state proceeding was ongoing)...."We conclude that the Rooker-Feldman doctrine no longer prevents the exercise of jurisdiction over his claim"; Zaharia v. Cross, 216 F.3d 1089 (10th Cir. 2000) (state criminal proceeding was ongoing and abstention was appropriate where plaintiff could apply to state court to modify or dismiss contested restraining order or could otherwise appeal it to state district court and raise federal claims)."....."However, we recently held that the Middlesex inquiry is triggered "only when the threshold condition for Younger abstention is present — that is, when the relief sought in federal court would in some manner directly `interfere' with ongoing state proceedings." Green v. City of Tucson, 255 F.3d at 1097." (Citation).

127. 28 U.S.C. § 1334(c)(2) abstention motions cannot be maintain for years while there is no state proceeding "pending" and for a bankruptcy court to stay it "pending" for 4 ½ to never litigate it, but to dismiss it was most unfair. Furthermore, see bankruptcy Rule 5011(c) provides that a motion to abstain does not stay a case that is prone to abuse. The defendants on March 10, 2010, (Id. Chase-Appx. # 670), asserted Littenstein v. Dorcich (In re Littenstein)[29], 35 B. R. 123, 124 (9th Cir. BAP 1983). In re Turner 70, B.R. 486 (D.C.) Montana 1987); In re Epi-Scan, Inc, 71 B.R. 975 (D.C. New Jersey 1987); In re Jackson Consol. Industries, Inc. 17 B.C.D. 46 (N.D. Illinois 1988); In re Tidwell Industries, Inc. 87 B.R. 345 (E.D. Pennsylvania 1988)), (suggesting that a motions to abstain are not be a proper response under former Rule 712 (b)).

128. In Container Transport, Inc. v. Scott Paper Co. (In re Container Transport, Inc.), 86 B.R. 804, 808 n.4 (E.D. Pa. 1988) (**"The Defendant therefore should have filed its Answer and the case should have proceeded as if the Motion for Abstention had never been filed, unless a stay had been entered, by the terms of Rule 5011(c).**")

129. In Plum Run Serv. Corp., 167 B.R. at 465; see also Hutchins v. Fordyce Bank & Trust Co. (In re Hutchins), 211 B.R. 319 (Bankr. E.D. Ark. 1997); Fid. Nat'l Title Ins. Co. v. Franklin (In re Franklin), 179 B.R. 913, 928 (Bankr. E.D. Cal. 1995) (12 factors to consider in deciding whether to abstain). See also Apex Oil Co. v. United States Customs Serv. (In re Apex Oil Co.), 122 B.R. 559 (Bankr. E.D. Mo. 1990), rev'd, 131 B.R. 712 (E.D. Mo. 1991) (**bankruptcy court's abstaining in favor of CIT was not in the interest of justice**); Abstention decision is made by the bankruptcy court. Fed. R. Bankr. P. 5011(b). Review of Abstention Decisions-Orders refusing to abstain in state law legal proceedings may be appealed. 28 U.S.C. § 1334(d); In re United States Brass Corp., 110 F.3d 1261 (7th Cir. 1997) (**abstention order taking form of dismissal or remand rather than mere stay of district court proceedings is an appealable final decision**).

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[29] CHASE asserted in Littenstein v. Dorcich (In re Littenstein), in their motions to abstain, which were filed pursuant to former 28 U.S.C. § 1471, not 28 U.S.C. 1334(c).

130. In We Are A[redacted]ica v. Maricopa County Bd. Sup'rs [redacted] F.Supp.2d 1104 (2009), cited "From the Ninth Circuit's standpoint, Doran "clarified that when the federal plaintiff is not a party to the state court action, a mere commonality of interest with a party to the state litigation is not sufficient to justify abstention." Green v. City of Tucson, 255 F.3d 1086, 1100 (9th Cir.2001) (en banc), overruled, in part, on other grounds by Gilbertson v. Albright, 381 F.3d 965 (9th Cir.2004) (en banc). Further, when Hicks and Doran are read together, they demonstrate "the quite limited circumstances under which Younger may oust a district court of jurisdiction over a case where the plaintiff is not a party to an ongoing state proceeding[.]" Id."Congruence of interests is not enough, nor is identity of counsel, but a party whose interest is so intertwined with those of the state court party that direct interference2 with the state court proceeding is inevitable may, under Younger, not proceed." Id. (footnote added). Hicks v. Miranda, 422 U.S. 332, 348-50, 95 S.Ct. 2281, 45 L.Ed.2d 223 (1975); Doran v. Salem Inn, Inc., 422 U.S. 922, 928-29, 95 S.Ct. 2561, 2566, 45 L.Ed.2d 648 (1975). "Gilbertson did overrule Green's holding that direct interference is a threshold requirement...of Younger abstention, but it left intact the more general requirement that some interference with state court proceedings is a necessary....element of the Younger doctrine." San Jose Silicon Valley, 546 F.3d at 1096 n. 4 (internal quotation marks and citation omitted) (first ellipsis in original."

131. In Wilton v. Seven Falls Co., 515 U.S. 277 (1995), and Brillhart v. Excess Ins. Co. of America, 316 U.S. 491 (1942), Colo. River Water Conservation Dist. v. United States, 424 U.S. 800, 813 (1976): Abstention: whether the district court properly stayed the Federal Action pending resolution of the State Action based on Colorado River. Abstention only when a parallel state court proceeding is pending a decision; and remanded to the district court for further proceedings. Stay of claims for damages pending resolution of proceedings in the state action.

132. In Younger v. Harris, 401 U.S. 37 (1971): Abstention: three categories of cases: "(1) parallel, pending state criminal proceedings, (2) state civil proceedings that are akin to criminal prosecutions, and (3) state civil proceedings that implicate a State's interest in enforcing the orders and judgments of its courts." ReadyLink Healthcare, Inc. v. State Comp. Ins. Fund, 754 F.3d 754, 759 (9th Cir. 2014) (internal quotation marks and citations omitted). First identified in New Orleans Public Service, Inc. v. Council of New Orleans ("NOPSI"), 491 U.S. 350 (1989), these three categories are known as the NOPSI categories. See Sprint Commc'ns, Inc. v. Jacobs, 571 U.S. 69, 72–73 (2013). "Younger principles apply to actions at law....because a determination that the federal plaintiff's....rights have been violated would have the same practical effect as a declaration or injunction on pending state proceedings." Id. at 968. "[T]o determine whether the federal plaintiff is entitled to damages," the district court often first decides

133. In Gilbertson v. Albright, 381 F.3d 965, 975, 981 (9th Cir. 2004) (en banc), at 971 (quoting Samuels v. Mackell, 401 U.S. 66, 72 (1971)) at 975, under 28 U.S.C. § 1291, the Court of Appeals has jurisdiction over appeals from "final decisions of the district courts of the United States." However, our court has also recognized that, when a district court abstains from considering a damages claim under Younger, it must stay—rather than dismiss—the damages action until state proceedings conclude. See id. at 984 ("[W]hen damages are at issue rather than discretionary relief, deference—rather than dismissal—is the proper restraint. To stay instead of to dismiss the federal action preserves the state's interests in its own procedures, the federal plaintiff's opportunity to seek compensation in the forum of his choice, and an appropriate balance of federal-state jurisdiction.").

134. See also omitted defense was waived in the NOTES OF ADVISORY COMMITTEE ON RULES—1966 AMENDMENT to Rule 12(g): "**The question has arisen whether an omitted defense which cannot be made the basis of a second motion may nevertheless be pleaded in the answer.**" Amended subdivision (h)(1)(A) eliminates the ambiguity and states that certain specified defenses which were available to a party when he made a pre-answer motion, but which he omitted from the motion, are waived. The specified defenses are lack of jurisdiction over the person, improper venue, insufficiency of

process, and insufficiency of service of process (see Rule 12(b)(2)–(5)). **A party who by motion invites the court to pass upon a threshold defense should bring forward all the specified defenses he then has and thus allow the court to do a reasonably complete job.** The waiver reinforces the policy of subdivision (g) forbidding successive motions as motions to abstain under 28 U.S.C. §1334(c)(1) and §1334(c)(2). If a Rule 12(b) motion is denied the responsive pleading must be made within 10 days after notice of the court's action.

135. Under the general principles of equality, federalism, and comity underlying the abstention doctrine, the Ninth Circuit in Courthouse News Service v. Planet, 750 F.3d 776 (9th Cir. 2014) conflicts, Courthouse News Services v. Brown, No. 18-1230 (7th Cir. 2018), the Second Circuit in Armstrong v. Sears, 33 F.3d 182, 188 (2d Cir.1994), with other circuit courts. On the issue of a presentation of a forum motion to abstain, the Third Circuit Court of Appeal explained in McCurdy v. American Board of Plastic Surgery, 157 F. 3d 191:

> **"The Rule "contemplates the presentation of an omnibus pre-answer motion in which defendant advances every available Rule 12 defense and objection he may have that is assertable by motion." 5A Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure: Civil 2d § 1384 at 726 (1990). Thus, if a defendant seeks dismissal of the plaintiff's complaint pursuant to Rule 12(b)(5) on the ground that service of process was insufficient or ineffective, it must include that defense either in its answer or together with any other Rule 12 defenses raised in a pre-answer motion.** See generally 2 James Wm. Moore et al., Moore's Federal Practice, § 12.21 (3d ed.1997). In turn, Rule 12(h) provides: "**A defense of lack of jurisdiction over the person, improper venue, insufficiency of process, or insufficiency of service of process is waived (A) if omitted from a motion in the circumstances described in subdivision (g), or (B) if it is neither made by motion under this rule nor included in a responsive pleading or an amendment thereof permitted by Rule 15(a) to be made as a matter of course." Fed.R.Civ.P. 12(h)(1) (emphasis added).**

136. Thus, if a Rule 12 motion is made and the defendant omits its objection to the timeliness or effectiveness of service under Rule 12(b)(5), that objection is waived. This court has long recognized that objections to service of process are waived if not timely raised. See, e.g., Government of the Virgin Islands v. Sun Island Car Rentals, Inc., 819 F.2d 430, 433 (3d Cir.1987) (defective service waived if not challenged in first defensive pleading); Konigsberg v. Shute, 435 F.2d 551, 551-52 (3d Cir.1970) (per curiam) (finding defendant waived right to assert defenses of lack of personal jurisdiction and insufficiency of process where these objections were not raised in first responsive pleading); Zelson v. Thomforde, 412 F.2d 56, 58-59 & n. 8 (3d Cir.1969) (per curiam) (deeming defendants' objection to service of process waived where defendants initially moved to dismiss only on statute of limitations grounds).

137. The courts of appeals in other sister circuits have reached the same conclusion. See Armstrong v. Sears, 33 F.3d 182, 188 (2d Cir.1994) (noting that Fed.R.Civ.P. 12(g) requires consolidation of defenses and Fed.R.Civ.P. 12(h)(1) requires that objections to service be included in first Fed.R.Civ.P. 12 motion); Golden v. Cox Furniture Mfg. Co., 683 F.2d 115, 118 (5th Cir.1982) (stating challenges to service of process must be included at time of first Rule 12 motion); O'Brien v. R.J. O'Brien & Assocs., 998 F.2d 1394, 1399-1401 (7th Cir.1993) (party must include defense of insufficiency of process in its first Rule 12 motion, or its ability to do so is waived); United States v. One 1978 Piper Cherokee Aircraft, 91 F.3d 1204, 1208 (9th Cir.1996) (objection to sufficiency of process waived if not made in motion pursuant to Rule 12); Sanderford v. Prudential Ins. Co., 902 F.2d 897, 900 (11th Cir.1990) (recognizing that insufficiency of process defense is waiveable); cf. RTC v. Starkey, 41 F.3d 1018, 1021 (5th Cir.1995)

(affirming district court's denial of motion for leave to file motion to dismiss where defendant waived insufficiency of process by failing to raise it in answer.)" See Rule 12 (g) Joining Motions with 28 U.S.C. §1334(c) motion to abstain.

138. It may that a motion to stay most closely analogizes to a motion to abstain, but as such it is not a pre-answer motion, but a pre-trial motion. There was no reason whatsoever that an answer could not be filed in due course during the pendency of an abstention motion, and there was also no reason that discovery could not have been ongoing during an abstention motion's pendency, since discovery was just as inevitable as the answer. A motion for abstention has little common ground with the concept of a defense because abstention by no means precludes a plaintiff from obtaining the requested relief but rather goes to the question of the appropriate forum in which to pursue that relief.

THIS COURT SHOULD REVERSE THE NINTH CIRCUIT'S DECISION REFUSAL TO APPLY JUDICIAL ESTOPPEL TO REVESTING OF A PROPERTY INTENTIONALLY WITHHELD BY CREDITORS WHO WRONG WRONGLY REPOSSESED AND REFUSED TURN-OVER.

A. The Supreme Court Must Look How Bankruptcy Courts Allows Creditors To Expose Debtors To "Catch 22" And "Double Jeopardy" Punishment When Using Pre-Petition Wrongful Repossession To Preempts "Debtors In Possession" And By Refusing Post-Petition Turn-Over Cause Irreparable Harm To Expose Debtors To Later Retroactive Revesting Is Unfair, Does Not Rightly Serves The Purpose of Bankruptcy Laws, And Warrants Punitive Damages.

139. In the instant case, Debtor, Mr. Perry JPMorgan Chase Bank N.A. refused turn-over, withheld possession and control. Under **Knaus,** JPMorgan Chase Bank N.A.'s failure to turn over the vehicle, once it became aware of the bankruptcy filing, constituted a willful violation of the automatic stay coupled with Chase willfully falsified on April 23, 2009 faked a "**Title Request**" as a "**Certificate of Title ("Pink-Slip")**" in their motion for relief from the automatic stay It subjected JPMorgan Chase Bank N.A., to punitive damages.[30]

140. In a motion for imposition of sanctions under § 362(h), the debtor bears the burden of proof by the preponderance of the evidence. Elder-Beerman Stores, Corp. v. Thomasville Furniture Indus., Inc. (In re Elder-Beerman Stores, Corp.), 206 B.R. 142, 155 (Bankr.S.D.Ohio 1997); In re Dunn, 202 B.R. 530 (Bankr.D.N.H. 1996); Estep v. Fifth Third Bank of N.W. Ohio (In re Estep), 173 B.R. 126, 129 (Bankr. N.D.Ohio 1994):

> "There is some difference of opinion among the courts regarding the proper standard of evidence to be used in an action to impose sanctions under § 362(h). A minority of courts have held that the proper standard is one of clear and convincing evidence. See, e.g., Diviney v. Nationsbank of Texas (In re Diviney), 211 B.R. 951, 961 (Bankr.N.D.Okla. 1997); Brockington v. Citizens and S. Nat'l Bank of S.C. (In re Brockington), 129 B.R. 68, 70 (Bankr.D.S.C. 1991). However, the majority of courts rely on

30 In re Clayton, 235 B.R. 801, 810-11 (Bankr. M.D.N.C. 1998); Davis v. IRS, 136 B.R. 414, 423 n. 20 (E.D.Va. 1992). Appropriate circumstances ordinarily are those in which the creditor has demonstrated egregious, vindictive or intentional misconduct. McHenry v. Key Bank (In re McHenry), 179 B.R. 165, 168 (9th Cir. BAP 1995); Lovett v. Honeywell, 930 F.2d 625, 628 (8th Cir. 1991)..

> the Supreme Court's language in Grogan v. Garner for the proposition that the preponderance of the evidence standard is more appropriate in this context. "**Because the preponderance-of-the-evidence standard results in a roughly equal allocation of the risk of error between litigants, we presume that this standard is applicable in civil actions between private litigants unless `particularly important individual interests or rights are at stake.**'" Grogan v. Garner, 498 U.S. 279, 286, 111 S.Ct. 654, 112 L.Ed.2d 755 (1991)."

141. Mr. Perry's vehicle because he possessed the "**Certificate of Title ("Pink-Slip")"** since August 18, 2004. Mr. Perry's action for punitive damages are based on a "**pecuniary interest**" from the pre-petition repossession and the creditor's refusal to turn-over to involves a contract dispute covering the estate's assets (unlike a suit to recover a pre-petition claim) falls within the literal wording of 28 U.S.C. 157(b)(2)(A) **"matters concerning the administration of the estate" because the claim arose out of the administrative duties of the debtor-in-possession.**

142. **The Creditor in Mr. Perry's case sold[31] the property of the estate in a private sale after the trustee had abandoned the estate on May 5, 2009**. When a debtor files for bankruptcy under Chapter 7, see 11 U.S.C. §1101-1146, all of its assets are transferred to a new legal entity --the estate. See 11 U.S.C. §541(a); In re Strangis, 67 Bankr. 243, 245-246 (Bankr. D. Minn. 1986). At that time, the debtor becomes the "**debtor-in-possession**," responsible, under 11 U.S.C. §1107, for administering the estate. See In re V. Savino Oil & Heating Co., 99 Bankr. 518, 524-525 (Bankr. E.D.N.Y. 1989) (at the moment of filing the debtor "assumes the mantle of a new juridical entity, a debtor-in-possession"). The bankruptcy court may subsequently appoint a **trustee** to administer the estate, see 11 U.S.C. 1106, but in the absence of a **trustee**, as in the present case, the debtor-in-possession shall, with limited exceptions, "perform all the functions and duties of a **trustee**." 11 U.S.C. §1107(a); see Bankr. R. 9001(10); H.R. Rep. No. 595, 95th Cong., 1st Sess. 404 (1977) (**Section 11 U.S.C. §1107 "places a debtor in possession in the shoes of a trustee in every way**").

143. Courts are guided by two factors: (1) is the appellant a "**party-in-interest**" as defined in 11 U.S.C. § 1109(b), and (2) does the appellant possess a pecuniary interest. In re Salant Corp., 176 B.R. 131, 133 (S.D.N.Y. 1994); see also Travelers Ins. Co., 45 F.3d at 742 ("one is a 'person aggrieved' if the contested order 'diminishes their property, increases their burdens, or impairs their rights.'"); American Ready Mix, 14 F.3d at 1500 (same). Compare Unsecured Creditors Comm. v. Leavitt Structural Tubing Co., 55 B.R. 710 (N.D. Ill. 1985), aff'd, 796 F.2d 477 (7th Cir. 1986) (official unsecured creditors committee did not have standing to contest confirmation of debtor's reorganization plan) and Salant Corp., 176 B.R. at 135 (equity committee appellant lacks standing) with Official Comm. of Equity Sec. Holders v. Mabey, 832 F.2d 299 (4th Cir. 1987), cert. denied, 485 U.S. 962 (1988) (equity committee appellant has standing)

144. **The party seeking damages for a stay violation must establish that: "(1) a violation occurred; (2) the violation was committed willfully, (3) the violation caused actual damages.**" Rosengren v. GMAC Mortg. Corp., No. CIV. 00-971(DSD/JMM), 2001 WL 1149478, at * 2 (D. Minn. Aug. 7, 2001) (citing Lovett v. Honeywell, Inc., 930 F.2d 625, 628 (8th Cir. 1991) (further citations omitted)). The **Knaus** court reasoned that **"[a] willful violation of the automatic stay occurs when the creditor acts deliberately with knowledge of the bankruptcy petition.**" **Knaus**, 889 F.2d at 775

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31 Chase sold the vehicle on 05/01/2009 (bank withheld property, refused turnover and failed to seek instruction from the bankruptcy trustee or the court during that period it was subject to the control of the Chapter 7 trustee, until the trustee abandoned the case on 05/05/2009. Id. In Mwangi v. Wells Fargo Bank (In re Mwangi), 764 F.3d 1168, 1170-71 (9th Cir. 2014): "**Wells Fargo then requested instructions from the Chapter 7 trustee regarding the distribution of account funds a portion of which the Debtors claimed as exempt under Nevada Revised Statutes § 21.090(1)(g)..**"

(citations omitted). The Kn[redacted] court went on to hold that when th[redacted] debtor informs the creditor of a bankruptcy filing and requests turnover of estate property, but the creditor refuses to turn over the property, this constitutes a willful and deliberate violation of the automatic stay. Id.

145. 11 U.S.C. § 362(h) also provides that a willful violation of the automatic stay alone is not enough to warrant punitive damages; there must also be a finding of "appropriate circumstances." Id. at 776. "Appropriate circumstances" warranting punitive damages require "'egregious, intentional misconduct on the violator's part.'" Id. (citing United States v. Ketelsen (In re Ketelsen), 880 F.2d 990, 993 (8th Cir. 1989)). Given that the burden was on debtor Mr. Perry to demonstrate damages, the bankruptcy court Judge Mund refused to hear him on any monetary and punitive damages, even when Mr. Perry served and filed a copies of the **"Certificate of Title ("Pink-Slip")"** the bankruptcy judge ignored him, ruling Chase contract had supersede Mr. Perry ownership by possessing the certificate of title "Pink-Slip." and See In re Clayton, 235 B.R. 801, 810-11 (Bankr. M.D.N.C. 1998) (reasoning that damages could be awarded under § 362(h) for willful violation of the automatic stay once evidence as to damages was presented).

146. H.R. Rep. No. 95-595, at 340-342 (1977); S.Rep. No. 95-989, at 54-55 (1978), reprinted in 1978 U.S.C.C.A.N. 5787, 5840, 6296-97. The automatic stay goes into effect at the time the petition is filed, not when the creditor learns of the filing. Brockington v. Citizens and S. Nat'l Bank of S.C. (In re Brockington), 129 B.R. 68, 70 (Bankr.D.S.C. 1991). The consequences of violating the automatic stay are set forth in § 362(h), which provides that: **"[A]n individual injured by any willful violation of a stay provided by this section shall recover actual damages, including costs and attorneys' fees, and, in appropriate circumstances, may recover punitive damages. Imposing sanctions under § 362(h) for a violation of the automatic stay requires a showing that 1) the actions taken are in violation of the automatic stay; 2) the violation was willful; and 3) the debtor was injured as a result of the violation. Hamrick v. United States (In re Hamrick), 175 B.R. 890, 893 (W.D.N.C. 1994); Foreston Coal Int'l, Inc. v. Red Ash Coal Coke Corp. (In re Red Ash Coal Coke Corp.), 83 B.R. 399, 403 (W.D.Va. 1988)."**

B. Creditors As JP Morgan Chase Bank, N.A.'S Instituted Policies Unilaterally Crafted In Apparent Disregard of The Provisions of The Bankruptcy Code And The Automatic Stay And Ignored Other Protections That Meant To Protect Both Debtors And Creditors.

147. The 9th Circuit court of appeals In In Mwangi v. Wells Fargo Bank (In re Mwangi), 764 F.3d 1168, 1170-71 (9th Cir. 2014), condones unilateral crafted bad behavior in apparent disregard of the provisions of the stay and other protections for the debtors and the estate under the bankruptcy code. The Ninth Circuit has entered a decision that conflicts with the decision of another United States court of appeals on the same important matter in Viegelahn v. Lopez (In re Lopez) 897 F.3d 663 (5th Cir. 2018). The Fifth Circuit had compared 11 U.S.C § 1306(a)(1) ("Property of the estate includes....all property of the kind specified in [§ 541] that the debtor acquires after the commencement of the case....") with.§ 1327(b) ("Except as otherwise provided....,the confirmation of a plan vests all of the property of the estate in the debtor."). "As noted above, the order confirming the Debtors' plan provides that property of the estate that "may revest in the Debtor shall so revest only upon further Order of the Court or upon dismissal, conversion, or discharge."

148. The Eighth Circuit in Knaus v. Concordia Lumber Co. (In re Knaus), 889 F.2d 773, 775 (8th Cir. 1989), also reasoned that **"[t]he duty to turn over the property is not contingent upon any predicate violation of the stay, any order of the bankruptcy court, or any demand by the creditor [sic trustee]**." Id. (citation omitted). In arriving at these conclusions, the Eighth Circuit relied on the language of §§ 362(a)(3), 542(a), and the U.S. Supreme Court case of United States v. Whiting Pools, Inc.

:: 462 U.S. 198 (1983). Sect[redacted]522(b) of the Code allows a debtor to [redacted]signate certain of their property as exempt from administration by the bankruptcy **trustee**. See Law v. Siegel, 134 S. Ct. 1188 (2014):

> "We have long held that "whatever equitable powers remain in the bankruptcy courts must and can only be exercised within the confines of" the Bankruptcy Code. Norwest Bank Worthington v. Ahlers, 485 U.S. 197, 206, 1195*1195 108 S.Ct. 963, 99 L.Ed.2d 169 (1988); see, e.g., Raleigh v. Illinois Dept. of Revenue, 530 U.S. 15, 24-25, 120 S.Ct. 1951, 147 L.Ed.2d 13 (2000); United States v. Noland, 517 U.S. 535, 543, 116 S.Ct. 1524, 134 L.Ed.2d 748 (1996); SEC v. United States Realty & Improvement Co., 310 U.S. 434, 455, 60 S.Ct. 1044, 84 L.Ed. 1293 (1940). **Bankruptcy court may not use equitable doctrines (injunctive relief arises in equity)[32] to overcome or circumvent statutory requirements or proscriptions."**

149. The Eighth Circuit interpreted Whiting Pools to stand for the proposition that "**property seized but not yet sold before the filing of the bankruptcy petition is property of the estate subject to turnover requirements of section 542.**" Knaus, 889 F.2d at 775. Certainly, the Knaus decision is not misplaced, as other courts outside the Eighth Circuit have declined to follow it for various reasons. See, e.g., In re Young, 193 B.R. 620, 624 (Bankr. D.D.C. 1996) ("**This court rejects the Knaus court's (and its progeny's) interpretation of the amendment to § 362(a)(3) which requires immediate turnover by the secured creditor possessing property rightfully seized prepetition.**"); In re Massey, 210 B.R. 693, 696 (Bankr. D. Md. 1997) (rejecting Knaus and adopting the reasoning in In re Young); In re Barringer, 244 B.R. 402, 409-10 (Bankr. E.D. Mich. 1999) (rejecting idea in Knaus that § 542(a) is self-effectuating as to property seized prepetition). Despite criticism of Knaus by other courts, it is still the law in the Eighth Circuit, and therefore this Court the United States Supreme Court must consider if it should be followed.

CONCLUSION

150. There are a few issues in the petition for certiorari that must be addressed by the United Stated Supreme Court to resolve conflicts and allow litigants a fair procedural due process and a level playing field during pleading and litigation process when they reach for relief federal courts. In In re Mwangi act as a catch-22, is unfair to debtors and inapplicable to Mr. Perry case, and ignores the directive of In re Del Mission Ltd: "In California Employment Development Department v. Taxel (In re Del Mission Ltd.), 98 F.3d 1147 (9th Cir. 1996). **There, we held that a creditor violated 11 U.S.C. §362(a)(3) by refusing to turn over estate property to the** trustee. In so holding, we reasoned that "[t]o effectuate the purpose of the automatic stay [i.e., to alleviate financial strains on the debtor], the onus to return estate property is placed upon the possessor; it does not fall on the debtor to pursue the possessor." Id. at 1151.

151. Mr. Perry could not and did not have control over the property, because the creditor had

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32 SEC v. United States Realty & Improvement Co., 310 U.S. 434, 455, 60 S.Ct. 1044, 84 L.Ed. 1293 (1940) : "A bankruptcy court is a court of equity, § 2, 11 U.S.C. § 11, and is guided by equitable doctrines and principles except in so far as they are inconsistent with the Act. Bardes v. Hawarden Bank, 178 U.S. 524, 534, 535; Continental Illinois Nat. Bank & T. Co. v. Chicago, R.I. & P. Ry. Co., 294 U.S. 648, 675; Wayne United Gas Co. v. Owens-Illinois Glass Co., 300 U.S. 131; Pepper v. Litton, 308 U.S. 295. A court of equity may in its discretion in the exercise of the jurisdiction committed to it grant or deny relief upon performance of a condition which will safeguard the public interest. It may in the public interest, even withhold relief altogether, and it would seem that it is bound to stay its hand in the public interest when it reasonably appears that private right will not suffer. Pennsylvania v. Williams, supra, 185 and cases cited; Virginian Ry. Co. v. Federation, 300 U.S. 515, 549, et seq."

wrongly repossessed pre-petition Mr. Perry's property and refused to turn over either to Mr. Perry or to the **trustee**. Thus, if the **trustee** failed to do their job, and passively agreed to the creditor to maintain possession and control, left the debtor no choice but to pursue remedial action to recover the property and/or punitive damages.

152. The interplay between the relief from stay and turnover and creditors administrative holding provisions of the Code creates the impression of conflict between them. This perceived conflict arises because while a debtor may be entitled to turnover of estate property, the creditor intentionally refuse it and the bankruptcy then court grant the creditor relief by the mere claim that debtor cannot provide adequate protection. These two entitlements creates the perception that creditors can refuse turnover of estate property, knowing that under § 362(d)(1) retention of collateral give them tactical advantage, since they reason it would be illogical to return a vehicle to a debtor and risk losing it, because either way protect them.

153. **However, the fundamental problem debtor here (Mr. Perry) had faced here was not the creditors' prerogative to determine whether the collateral was adequately protected, but rather, that determination was the sole prerogative of the bankruptcy court, who failed to verify creditor false claims to title ownership.** In fact, the plain language of § 363 states that "**the court**" is the authority that prohibits the use or sale of encumbered estate property when faced with a question of adequate protection, not the party with the interest in that property. Nowhere in §§ 362, 363, or 542 is there any language providing that a creditor may assert a lack of adequate protection as a defense to turnover of estate property.

154. As In Re Sharon, 234 B.R. 676 (6th Cir. BAP 1999) court stated at 685.: **"[s]ections 362, 363 and 542 assign to the bankruptcy court, not to creditors, the prerogative to make judgments whether a particular car should continue to be used by a Chapter 13 debtor, will remain protected by the automatic stay and whether an offer of adequate protection is sufficient to continue possession and use by the debtor."**

155. While in In re Mwangi "The panel held that the debtors could not state a claim for willful violation of the automatic stay provision of 11 U.S.C. § 362(a)(3), which proscribes **"any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate."** In Re Sharon, 234 B.R. 676 (6th Cir. BAP 1999) conflict with In Mwangi v. where the 6th Cir. court correctly recognized that these statutes vest the determination of the sufficiency of adequate protection solely in the bankruptcy court, not the creditors.

156. These Code provisions, coupled with the Eighth Circuit's determination in Knaus that a creditor who had an affirmative duty to turn over estate property upon the filing of a bankruptcy petition, leave no room for a creditor to withhold turnover based on that creditor's own perception of what constitutes adequate protection. The District Court has so held in a prior opinion. See In re Brown, No. 3:02-bk-23056 E, 3:02-ap-1350, 2003 WL 21402570, at *3 n.4 (Bankr. E.D. Ark. May 1, 2003) (citing Sharon for proposition that "**[t]here is no 'exception' to 362(a)(3) that excuses [creditor's] refusal to deliver possession of the Debtor's car based on [creditor's] subjective opinion that adequate protection offered by the Debtor was not 'adequate.**'").

157. In fact, the 9th Cir. In re Mwangi court and the In re Del Mission Ltd. contradict itself by suggesting to punish twice the debtor Mr. Perry, who of no fault of his had no possession or controlling over the property he will later be punished by the bank claiming "revesting," when the bank, (JPMorgan Chase Bank N.A.) intentionally withheld Mr. Perry's property, refusing turn-over, in fact violated 11 U.S.C. § 542(a), and 11 U.S.C. § 542(b), after Chase willfully falsified a fake title ("**Title Request**") on April 23, 2009 (in order to lift the automatic stay, knowing Mr. Perry had possession of the "**Certificate of Title ("Pink-Slip")**. The defendants maintained their willfulness for 5 years, secured by a biased court, later changing their position claimed security interest under the contract. *(Id. Judicial estoppel).* Thus, by Chase depriving Mr. Perry possession and control, the bank guaranteed retroactively (5 years later) by

U.S.C. § 542(b), they simply withheld estate property from the estate and debtor until the **trustee** abandon the estate, they sold the property in a private sale:

> "Unlike § 542(a), § 542(b) does not unambiguously require the entity to turnover estate property to the **trustee. Instead, it allows the entity to seek direction from the trustee, which is precisely what Wells Fargo did here. Second, In re Del Mission Ltd. involved the failure of a creditor to deliver assets to the trustee. Here, in contrast, Wells Fargo did not withhold estate property from the estate.** On the contrary, Wells Fargo confirmed that the account funds were estate property and asked the **trustee** for his instructions regarding their disbursement. In other words, Wells Fargo offered to pay its debt "to, or on the order of, the **trustee**," in compliance with § 542(b)."

158. Courts throughout the United States have also held that creditors cannot unilaterally assert a lack of adequate protection as a defense to turnover. See Sharon, 234 B.R. at 685 (citing Knaus in support of proposition that **"[t]he Courts of Appeals for the Eighth and Ninth Circuits have rejected [creditor's] argument that a creditor cannot violate the automatic stay by withholding possession of estate property until the debtor obtains a court order for adequate protection and turnover."); Nissan Motor Acceptance Corp. v. Baker, 239 B.R. 484, 488-89 (N.D. Tex. 1999) (rejecting creditor argument that it had "the right to seek adequate protection by retaining the Vehicle to protect its interest" and finding "[t]here is nothing in § 363(e) that grants a creditor like Appellant the authority to engage in self-help to retain estate property as adequate protection..."**). Creditors should only repossess in situations where they truly believe the collateral is in immediate jeopardy, but not as a tactical advantage, and they are not without recourse. In those situations, "the 'congressionally established bankruptcy procedure' is expedited relief under § 362(f)...." Id. Sharon, 234 B.R. at 685[33]; see also Metromedia, 290 B.R. at 493.

159. Accordingly, the Debtors argue that Wells Fargo had an obligation to return their account funds, regardless of any inaction on their part. **In our view, In re Del Mission Ltd. is distinguishable on two bases. First, the relevant turnover provision there was § 542(a), whereas the relevant turnover provision here is 11 U.S.C. §542(b).** Section 542(a) provides that an entity in possession of estate property "that the **trustee** may use, sell, or lease.... shall deliver to the **trustee**.....such property." **11 U.S.C. § 542(a). This turnover provision unambiguously requires the entity to deliver estate property to the trustee. In contrast, §542(b) provides that "an entity that owes a debt that is property of the estate....shall pay such debt to, or on the order of, the trustee." Id. § 542(b).**

160. It is an open question for the United Supreme court whether an award of punitive damages would be warranted it may grant any relief. In the future, when a creditor decides, in spite of this Opinion, to withhold turnover of estate property under similar circumstances and blame debtor and deprive him/her punitive damages on the malicious actions of the creditors is a "**Catch-22**" and unfair. The petition for Writ of Certiorari should be granted.

Respectfully submitted,

Dated: September 7, 2019

By: Moshe A. Perry
Avram Moshe Perry

33 In Re Sharon, 234 B.R. 676 (6th Cir. BAP 1999); In re Metromedia Fiber Network, Inc., 290 B.R. 487 (Bankr. S.D.N.Y. 2003).

i. Certificate of Good Faith And Verification Filed By Pro- Se

This Affidavit is sworn to under penalties of perjury under the laws of the State of California and common law of the United States of the America. I am the Petitioner in Forma Pauperis, I hereby certify that this petition for rehearing is presented here in good faith and not for delay and is restricted to the grounds specified in Rule 44.2. All events mentioned in this Petition for Certiorari and all of the above and foregoing representations (40 pages[34]) are true and correct to the best of my knowledge, information, and belief, had in fact occurred and are true and correct and the petition is based on good faith and not for delay.

Executed at West Hills, California, this 7th day of September, 2019

By: _____
Avram Moshe Perry

ii. Certificate of Service

I hereby certify that, on 7th day of September, 2019, a true and complete copy of the foregoing: RESUBMITTED - A THIRD VERSION TIMELY FILED PETITION FOR WRIT OF CERTIORARI AT IM-POSSIBLE AMERICAN JUSTICE, ORIGINALLY MAILED ON MARCH 30, 2019 – TO THE COURT OF LAST RESORT. THE SUPREME COURT MAY ISSUE WRITS UNDER THE ALL WRITS ACT, 28 U.S.C. § 1651(A), AN ALTERNATIVE WRIT OR RULE NISI MAY BE ISSUED BY A JUSTICE OR JUDGE OF A COURT WHICH HAS JURISDICTION. (WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FROM THE NINTH CIRCUIT ON ALL MATTERS CERTIFIED BY THE BANKRUPTCY COURT AND DISTRICT COURT.) (Petitioner is a Pro Se and asks the Supreme Court for some allowance as English his second language and if the court find it difficult to surmise the important issues as stated in the petition for certiorari touch many Americans, it may provide his assistance of counsel to clarify issues), by depositing the same in the United States mail, postage prepaid, has been duly served upon all parties of record below:

Douglas M. Degrave April C. Balangue 22972 Mill Creek Drive Laguna Hills, CA, 92653 On behalf of Key Auto Recovery	Holly J. Nolan Solomon, Grindle, Silverman & Wintringer APC 12651 High Bluff Drive, Suite 250 (or 300) San Diego, CA, 92130 On Behalf of Chase Auto Finance

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Roni Asseraf

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34 Rules Enabling Act, 28 U.S.C. §§ 2071 (a) The Supreme Court and all courts established by Act of Congress may from time to time prescribe rules for the conduct of their business. Such rules shall be consistent with Acts of Congress and rules of practice and procedure prescribed under section 2072 of this title. **28 U.S.C. § 2072(b): Such rules shall not abridge, enlarge or modify any substantive right**. All laws in conflict with such rules shall be of no further force or effect after such rules have taken effect. **Federal Rules of Appellate Procedure Rule 32 (f): Items Excluded from Length. In computing any length limit, headings, footnotes, and quotations count toward the limit but the following items do not**: the cover page; a table of contents; a table of citations; the signature block; the proof of service. Herein are 47 pages of petition for certiorari – 7 = 40 pages.