

19-7511

No. \_\_\_\_\_

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

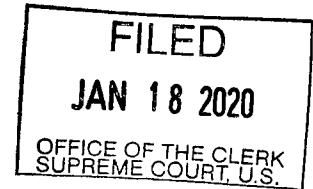
Frank Deville et al.-Petitioner(s)

vs.

Wells Fargo Home Mortgage- Respondent(s)

On a Petition for Writ of Certiorari to  
The California Supreme Court of California

**PETITION FOR A WRIT OF CERTIORARI**



FRANK DEVILLE  
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Petitioner, Pro Se

## QUESTION(S) PRESENTED

With one attempt to amend a complaint is that sufficient liberal ability to amend? What is fraud particularity? May hearsay be admitted as evidence in the court of law? Concealing or suppressing material facts is that legal?

According to law there should be liberal ability to amend (Roland v. Christian, 69 Cal. 2d 108, 112)

Truth is not what we believe it to be. Truth is what the law says is truth. Its not about our truth or the defendants truth or the judges truth but the truth of the law. Any unlawful activity in any business activity *that is forbidden by law.* (saunders v. Superior court 27 CAL. App 4<sup>th</sup> 832, 838-839).

The case set here now is indeed unique, a the highest state court has rendered a decision of an important federal question of federal law has not been but should be, settled by this court 28 U.S.C. 451. There is indeed a conflict of law that do exist. The petitioners constitutional due process rights have been violated, he has been denied the right to be heard and to have a fair hearing.

## LIST OF PARTIES

<u>Respondent:</u>	<u>Petitioner(s)</u>
Wells Fargo Bank, N.A	Frank Deville
	Dee Anetionette Deville
	Petitioners', Pro Se

### Individual Respondents:

Terrie Nolte  
Monica Cameron

### ATTORNEYS FOR PARTIES:

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## PARTIES TO THE PROCEEDING

Petitioners' Frank Deville & Dee Deville were the plaintiff in the trial courts. The petitioners' were the appellant in the second district appeals court. The Devilles' were in the California Supreme Court. Rule 29.6

### Statement:

The petitioner is a non-governmental corporation, nor has a parent corporation or shares *held* by a publicly traded company.

### Cases:

Deville v. Wells Fargo et al, BC678763, Los Angeles County Superior Court. Judgement entered August 27, 2018.

Deville v. Wells Fargo et al., B293129, Court of Appeal of the State of California, Second District Division Eight. Judgement entered October 4, 2019.

Deville v. Superior Court of Los Angeles County B301429, Court of Appeal of the State of California, Second District Division Eight.(filed by mistake on 10/15/2019 withdrawn on 10/31/2019)

Deville v. Wells Fargo et al., S258725, California Supreme Court.  
Judgement entered October 30, 2019.

Docket No. 1, Deville et al v. Wells Fargo et al, 6:17-ap-01152-SY, United States Bankruptcy Court Central District of California-Riverside Division, dismissed on 5/3/2018.

Docket No. 1, In Re: Frank Deville and Dee Anetionette Deville, Chapter 13 No. 16-20478, United States Bankruptcy Court Central District of California-Riverside Division, still pending.

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IN THE  
SUPREME COURT OF THE UNITED STATES  
PETITION FOR A WRIT OF CERTIORARI

Petitioner respectfully *prays* that a Writ of certiorari issues to review the judgement Below.

**OPINIONS BELOW**

For cases from state courts:

The opinion of the highest state court to review  
Appears Appendix B to the petition and is unpublished.

The opinion of the State trial court appears at Appendix D to  
The petition and is unpublished.

The opinion of state appeal Rehearing request to review at  
Appendix C and is unpublished.

The opinion of the state appeal at Appendix A to the  
Petition and is unpublished.

The opinion of the state for name correction at Appendix F to  
The Petition and is unpublished.

The opinion of the state for name correction at Appendix G to  
The Petition and is unpublished.

The opinion of the state for name correction at Appendix FF to  
The Petition and is unpublished.

**JURISDICTION**

For cases from state court:

The date on which the highest state court decided my case was  
On October 30, 2019. A copy of that decision appears at Appendix .  
The case was filed as a consolidated case see case summary appears at  
Appendix BB.

The jurisdiction of this Court is invoked under 28 U.S.C. §1257(a).  
The federal questions sought to be reviewed were raised appear at  
appendix CC on page\_\_\_\_\_, in the initial complaint and appendix DD  
on page \_\_\_\_\_, First Amended Complaint.

The question raised was timely and properly raised and that this court  
has jurisdiction to review the judgement on a writ of certiorari.

## CONSTITUTIONAL STATUTORY PROVISIONS INVOLVED

Petitioners' are victims of fraud, the injunctions against Fraud Acts, 18 U.S.C. § 1345: COMMON LAW theories of negligence, gross negligence, payment mistake, unjust enrichment, money had and received, breach of fiduciary duty, breach of contract, misrepresentation, deceit, fraud, and aiding and abetting any of the foregoing; or that the Civil Division of the Department of Justice has actual and present authority to assert and compromise pursuant to 28 C.F.R. § 0.45(d). Any conduct other than the Covered Conduct is liable for relief.

Plaintiffs have been damaged by Wells Fargo's fraud on the Court. The defendants' gave false information when they knew that the arrears amount was \$0.00, in the bankruptcy court. Similar to , ( Tarmann v. State Farm Mut. Auto Ins. Co., 2 Cal. App. 4<sup>th</sup> 153, 157). A **duty of care** is a legal obligation which is imposed on an individual requiring adherence to a standard of reasonable **care** while performing any acts that could foreseeably harm others.

It is the first element that must be established to proceed with an action in negligence. Improperly withholding funds in a suspense account can harm an individual, thus violating amendment 14 the fifth & fourth amendment taking the right to due process, to exercise rules: 42 U.S.C. § 1983, title VII 1964 Civil Rights act and Cal. Consti., Art. 1§16 & proposition 65. Res judicata right has been waived.

Morgan v. United States (1938) 304 U.S. 1 18. Held: The right to a full hearing embraces not only the right to present evidence, but an opportunity to know and respond properly.

## **STATEMENT OF THE CASE**

The petitioner(s) here is a victim of lending laws violations, and indeed a wait for proper care of the case. Petitioner(s) purchased their home more than fourteen years ago appears in Appendix K. Petitioner(s) were late four times and paid on time since. Wells Fargo and their servicing company refuse to properly fund plaintiffs' mortgage account appears in appendix V. Petitioner's brought this to respondents' on several occasions appear in appendix HH. Petitioners' filed for bankruptcy appear in appendix E, I & S, due to negligence denying their due process rights.

Respondents', and all of them, deliberately failed to use proper care. Respondents and all of them fraudulently concealed information pertaining to their mortgage loan petitioners' paid \$17,378 by cashiers check appears in appendix R, but filed in court that the account was still owing appears in appendix M, when in fact the amount owing should had been \$0.00 amount due (according to their statement appearing in appendix HH page 174). Petitioners' have been harm. Petitioners' credit rating has been affected. Petitioner's repose trust and confidence in respondents'. Petitioners' relied upon each of them for superior knowledge. Respondents' disregards to petitioner protective rights. Respondents' disgorged all profit at their illegal acts of conspiring one with another in spite of the consequences that could potentially accrue.

Filed a civil complaint on October 6, 2017 appears in appendix CC, and the FAC on July 20, 2018 appears at Appendix DD. Filed Entry of Default on March 14, 2018 appears in Appendix P. The case was dismissed on August 27, 2018 appears in Appendix D. A tentative ruling was filed on October 2, 2019, appearing in Appendix H. Petitioner's timely filed for an appeal on October 5, 2018 and were dismissed on October 4, 2019; which appears in Appendix A. Petitioners' timely filed a request for rehearing, but it was denied on October 30, 2019, appears in Appendix C.

Petitioner's timely filed for this review, after making several corrections the documents were returned several times; the last return was in January 2020. Petitioners' is refiling the corrected documents on January 28, 2020 to the United States Supreme Court. Respondents' is referred to as the individual defendants and Wells Fargo, the defendants'. Petitioners' had a sufficiently tender on the loan proceeds appear in Appendix V. Petitioner is double paying mortgage payments due to the omission of the arrearage amount. Defendants' were aware of the Declaration for post-petition payments (filed in the bankruptcy court, appear in Appendix S). Respondents misapplied payments and have not applied the plan payments as the payment reached a full payment.

Respondents report four-payments late when they were not late, appear in Appendix R. Respondents left out important material in the Proof of Claim, appears in Appendix M, in the bankruptcy court; which lead to this filings. Respondents' refuse to correct errors. See *Farmers inc. Exch. v. Superior Court (1992) 2 Cal. 4th 377,383*. The respondents' put incorrect income, resulting in the denial similar to

*Jolley v. Chase Home Finance, LLC (2013) 213 Cal. App. 4th 872, 153.* The lenders breach of the covenant of good faith and fair dealing also constitute tortious conduct. The breach of the covenant was a proximate or legal cause if petitioners' injuries (See *Merrill v. Navegar, Inc. (2001) 26 Cal. 4th 465, 477, 110, Cal. Rptr. 2d 370, 28 P. 3d 116*). Due to the elements of fraud existing, the petitioner suffered resulting damage (see *Lazar v. Superior Court (1996) 12 Cal. 4th 631,638 [49 Cal Rptr. 2d 377,909 P 2d 981]*).

Elements of Fraud are (1) the defendants' made a false representation as to a past or existing material fact, which they did; (2) the defendants' knew the representation was false at the time it was made, it was; (3) in making the representation, the defendants' intended to deceive; (4) petitioners' relied on their representation;(5) resulting damage.

On the petitioners' face of the complaint, it is clear that the complaint alleged the stated violations. A demurrer lies from defects on the face of the complaint or from facts that the court may judicially notice. See [(*Stevens v. Superior Court (1999) 75 cal. App 4th 594,601*), (*Addiego v. Hill, 238 Cal. App. 2d 842, 845*), and (*Hauter v. Zogarts, 14 Cal. 3d 104, 112*)].

A lender who do not inform plaintiff about anything or misinform them an account is liable for charges. In *Lueras v. BAC Home Loans Servicing, LP (2013) 221, Cal. App. 4th 49*, the court of appeal held that while a lender owes no duty to offer, considered or approved, a loan modification, it has a duty to provide protection for abuse of process according to *11 U.S.C. section §105(a)*.

The injunctions against Fraud Acts, *18 U.S.C. SECTION §1345*; Common LAW theories of negligence, gross negligence, payment mistakes, unjust enrichment, money had and received, breach of fiduciary duty, breach of contract, misrepresentation, deceit, fraud and aiding and abetting any of the foregoing; or that the civil division of the department of justice has actual and presented authority to assert and compromise pursuant to *28 C.F.R. Section §0.45(d)*. Any conduct is liable for relief.

Relevant material facts exceed the scope of its conventional role as a mere lender of money. Petitioners' have damaged by Wells Fargo and the individual defendants' fraud on the court. The defendant' gave false information when they knew it was paid. Similar to see *Tarmann v. State Farm Mut. Auto Ins. Co.*, 2 Cal. App. 4th 153, 157.

Individual defendants Terrie Nolte appear in appendix M in the proof of claim, declared under perjury and penalty that was Executed on 1/6/2017 (in which she failed to properly fund account for approximately \$18,000 dollars), she lied under oath. Wells Fargo acting by and through the individual defendants, in which Terrie Nolte approved and ratified this illegal and improper practice.

**Monica Danielle Cameron** stated that she had access to defendant Well Fargo books and records regarding the Loan, appear in Appendix Z. She stated that she was familiar with the manner in which defendant Wells Fargo maintains its books and records, including computer records related to the servicing of the loan, declared under perjury that this is true, she was aware of the truth and lending

laws which states that when a full payment has been presented at that time the servicer must apply the funds to the consumers account. Wells Fargo acting by and through the individual defendant, in which Monica Danielle Cameron approved and ratified this illegal and improper practice.

Defendants saved cost and profit at the illegal acts conspiring one with another despite the consequences that potentially accrued.

*Civil Code §1709; Engalla v. Permanente Medical Group, Inc. (1997) 15 Cal. 4th 951, 974; Service by Medallion, Inc. v Clorox Co. (1996) 44 Cal. App. 4th 1807, 1816.* The plaintiff was unaware of the fact and would not have acted as he did if he had known of the concealed fact; and (5) as a result of the concealment of the fact, the plaintiff sustained damage. *Knox v Dean (2012) 205 Cal. App. 4th 417.*

Plaintiffs have standing to bring a 17200 claim where they are seeking an injunction against *Wells Fargo for; Bus. & Prof. Code §17203* (“any person who engages in unfair competition may be enjoined in any court of competent jurisdiction”). The Defendants’ unjustly enriched.

Defendants waived their res judicata rights appear at appendix BB. Defendants continue to mislead the true facts. Precondition suits are not always on the merits. The dismissal was due to join a part and failed to state a claim appears in appendix I., A dismissal should speak to the questions of law that otherwise govern the effect of a dismissal (Semtek Int’l. Inc V. Lockheed Martin Corp., 531 U.S 497, 508) & (Costello V. United States, 365 U.S AT 287).

Dodd-Frank Wall Street from Reform Protection Act was created to protect consumers. Induction against Fraud acts according to procedure 18 U.S.C section 1345 is serious. [compromise pursuit 28 C.F.R. section 0.45(d)]

The note on the loan did not identify the defendants as its holder. Wells Fargo should be ordered to produce a proper affidavit. (Herrera v. Deutsche Bank National Trust company, 196 cal. App. 4th 1366(2011), (Maxine & Bauskila v. M & I Bank, 67 So. 3D 1129), (Verizzo v. Bank of New York, 28 So. 3d 976 Fla, 2d DCA 2010), (Linsey v. Wells Fargo Bank, 3d 903, 2013) Civil Code Chapter 2, Article 2.

Defendant's negligence was a substantial factor in causing plaintiff harm, Civil Code section 1714, Rowland v. Christian (1968) 69 Cal. 2d 109, 112. That breach was the legal cause of injuries suffered by plaintiff. Petitioner were forced to file for bankruptcy. Failure to exercise due case, (evident code 669).

Denying leave to amend was an abuse of process (Addiego v. Hill, 238 Cal. App. 2d 842, 845). Defendants were apart of a case that dealt with similar situations for 50 states (United States v. Bank of America Corp., et al., NO. 13-cv-446-Moc (W.D.N.C.) & (Alvarez v. Bac Home Loan, servicing, Lp (2014), 228 Cal app 4th 941, 948, 951).

Defendants saved cost and profit at the illegal acts of conspiring one with another despite the consequences that could potentially accrued. Defendants, all of them, willfully disregard the consequences of one's reckless acts according to section 42 U.S.C, *§1983 or grievous failure with callous indifferent and thoughtless section*

*disregard for plaintiff protective rights. [Procunier v. Navarette, 434 U.S. 555 (1983)].*

*Declaration setting forth Post-Petitions / Pre-Petition Mortgage payment* appear in appendix S, prior to confirmation of payment plan were accrued, funds were never credited to account according to the statement dated 7/27/2017, six months after confirmation appear in appendix T. Mortgage payments are supposed to be paid directly to the mortgage according to the *Amended Chapter 13 plan*, by the order confirming the plan on January 23, 2017, Holding full payments violate the lending laws (12 C.F.R. §1026.25), *The Consumer Financial Protection Bureau. (CFPB)*

The defendant's willful misconduct and deprivation of rights (Civil Actions for deprivation of rights 2010 - 42 U.S.C 1983). The defendants, all of them, has improperly applied funds. They have ignored the grace periods (Barrett v. Bank of America, 183 Cal. App. 3d 1362), (Cueto v. World Sav. Bank, KSB, 217 U.S District Lewis 115362), (Viet v. Wachovia Mortgage FSB, 2011 U.S. Dist. Lexis 143941, 2011 WL 6181934).

The court has ignored my request for a hearing appear in appendix DD & CC.A question law do exist quest sought to be reviewed were raised appears in appendix CC page 104. & appendix DD page 121.. The question was timely and properly raised and that this Court has jurisdiction to review the judgement.

Petitioner has sent a corrected petition submitted in accordance with Rule 29.2 allowing time to correct. Petitioner acknowledge that the State Attorney General must be served since there is a conflict between state and federal law according Rule 29.6.

## REASON FOR GRANTING THE PETITION

It is Everyone's right to a fair hearing. No individual should be penalized by decisions affecting their rights or legitimate expectations unless they have been given prior notice of the case, a fair opportunity to answer it, and the opportunity to present their own case. The mere fact that a decision affects rights or interests is sufficient to subject the decision to the procedures required by natural justice. The right to a fair hearing is guaranteed by the civil rights act, which is said to complement the common law rather than replace it. Natural justice is a term of art that denotes specific procedural rights in the English legal system and the systems of other nations based on it. It is similar to the American concepts of fair procedure and procedural due process, the latter having roots that to some degree parallel the origins of natural justice.

The case that is set before this court being indeed unique in nature. A state court of last resort has decided an important federal question of federal law that has not been, but should be, settled by this court. A conflict exist with the relevant decisions of this court.

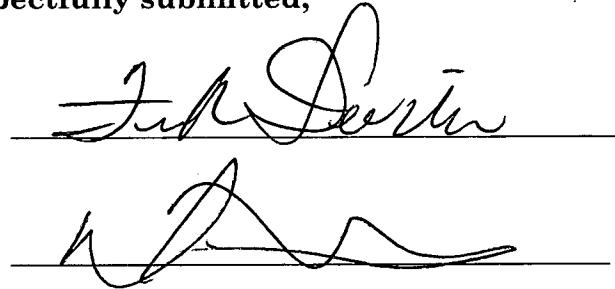
Wells Fargo and national banks have been regularly utilizing federal preemption privileges to avoid victims claims but continue to wrongfully bring mass foreclosures and violations of lending laws to the same states venues. Some state officials and courts turned a blind eye to the facts and wrong doings, and allowed Wells Fargo and other banks and FNMA to wrongfully obtain relief at the cost of many. The famous rocket docket fostered countless wrongful proceeding and Due Process failures with judges closing hundreds of cases per day while violating while violating homeowners Constitutional Rights, including this case.

Courts have allowed Wells Fargo to go unpunished for too long, many involved in blatant failures of government mandates, which effects the outcome of these types of cases. Wells Fargo demands greater attention by courts to the numerous victims' claims and to remove the blind eye and the legal schemes that deter justice, including within this case. Ethics are lost for taking advantage of Americans when financially vulnerable, creating a situation impossible to overcome. There is a conflict between the state and federal court. Questions of federal law that has not been, but should be addressed by this court, an important federal question in a way that conflicts with relevant decisions of this Court. The US Constitution has long governed and asserted the importance of Due Process and fair legal proceedings as essential to our system of justice. The court's decision is in conflict of another court. A conflict of state and federal.

## CONCLUSION

**The petition for a writ of certiorari should be granted.**

Respectfully submitted,



The image shows a handwritten signature in black ink. The top part of the signature reads "Frank Deville" and the bottom part is a stylized "D". Both are written over two horizontal lines.

**Dated: January 27, 2020**

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