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19-7701
No.

FILED
FEB 03 2020
OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

LARRY DOUGLAS KERNS — PETITIONER
(Your Name)

vs.

MATHEW J. WENNER — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT - NO. 18-56048
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR A WRIT OF CERTIORARI

Larry Douglas Kerns
(Your Name)

3643 Spa Street
(Address)

San Diego California 92105
(City, State, Zip Code)

(619) 915 - 6808
(Phone Number)

QUESTION(S) PRESENTED

(1) Will this court overturn, 9th circuit's: case No. 18-56048 -11/12/2019 dkt No. 49 final Order's: Denial of PROVEN Fraud on District Court and Denial of Mr. Kerns' REQUEST for court to Grant Mr. Kerns Judgement by Default of his demand amount? **Because:** No **LEGAL** Certificate of Service; **EXIST**, regarding: Answer to U. S. District court's case no. 3:16-cv-02438 09/28/16 Dkt No 1; Complaint: **So:** Will this Court **Honor** U. S. District court's case no. 3:16-cv-02438 09/28/16 Dkt No. 2; Summons: by Granting Judgement by Default to Kerns; Fed. Rule 55(b)(2). See [Case: 18-56048, 09/24/19, ID: 11442153, DktEntry: 46, Pages 43 thru 60]

(2) Will this court Rule: all defence in this case; is a Trespasser on the Court, and Void; due to Fraud on court?

(3) Will this court Overturn: U. S. Court of Appeals for the Ninth Circuit, Case Number 18-56048: dkt. No.: 35 Memorandum; Affirming; U. S. District Court; Southern District of CA (San Diego's): case # 3:16-cv-02438; 07/24/2018 Dkt No. 208 ORDER; Granting Summery Judgment to Mr. Wenner?

(a) District Court; 208 Order; **is the result of:** Fraud on the U. S. District Court, Obstruction of Justice, Aiding and Abetting, Bias, Abuse of Power, and Violations of Mr. Kerns' Constitutional Civil Rights: **that Mr. Kerns Reported by Mail**, to the United States Court of Appeals for the Ninth Circuit's, Chief Judge Sidney Thomas; and was Officially entered on the 9th Circuit's Docket; (dkt. no. 46); by the court; 2 - 3 days after Kerns mailed it.

(b) The United States Court of Appeals for the Ninth Circuit: 07/24/2019 - Docket Number 35; Memorandum's conclusions: Demonstrate, Fraud on the United States Court of Appeals for the Ninth Circuit. **Plus:** knowingly Counterfeiting; a new cause of action to Replace the Causes of Action on Mr. Kerns' Actual Complaint.

(c) **Fraud on the United States Court of Appeals** for the Ninth Circuit; By: Judge William Q. Hayes, Judge William V. Gallo, Wilson, Elser, Moskowitz, Edelman & Dicker LLP , and their Attorney Robert Anderson; for (Fraudulently) portraying Mr. Kerns; as an ERISA Participant; after Truthfully stating, in The same documents; that Mr. Kerns was paid Pension benefits; retroactive to October 2003; which Proves Mr. Kerns Officially Retired In 2003, and has not been a Participant since.

(d) Mr. Kerns **Did Provide; adequate** Americans with Disabilities Act information and Violations Evidence

(e) No (Mandatory by Law) Certificate of Service **exist**; for the (above) Dkt No. 208 ORDER.

(f) **Even if:** Kerns WAS an ERISA Participant: ERISA's so-called Authority: **only Preempts State RELATED Actions. Unless King - ERISA**; preempts the entire Federal Government, Planet Earth, and the Universe.

(4) See: [Case 3:16-cv-02438 - Document 1 - Filed 09/28/16 - PageID.10 - Pages 1 thru 10]; What are Causes of this Action? Did I demand Jury Trial? Do; 18 U.S.C. § 1346 Mail Fraud and Section 1964(c); RICO Act: Apply?

(5) Will this Court Uphold Title 18 U.S.C. § 4. and Title 28 U.S.C. § 1361 (With Sanctions); and Report Fraud on both courts to U. S. Attorney General Barr; Urging prosecution?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

RELATED CASES

See [Case: 18-56048, 08/09/2019, ID: 11393210, DktEntry: 42-1, Page 5 of 16]

Please Review: Gobeille v. Liberty Mut. Ins. Co.; 136 S. Ct. 936, 577 US __, 194 L. Ed. 2d 20 - Supreme Court, 2016

Some Attorney (Salesman) sold this court; on behalf of "We the People": a race horse; named "Man of War"; but delivered a Jack Ass named "Gotsha-again"

TABLE OF CONTENTS

OPINIONS BELOW	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4
REASONS FOR GRANTING THE WRIT	10
CONCLUSION.....	18

INDEX TO APPENDICES

APPENDIX A

1. Mandate of the United States Court of Appeals for the Ninth Circuit
(November 20 2019) ... 1a
2. Final Order of the United States Court of Appeals for the Ninth Circuit
(November 12, 2019) ... 3a
3. DOCKET ENTRY: THE UNITED STATES COURT OF APPEALS FOR THE
NINTH CIRCUIT, DOCKET NUMBER 46; FRAUD ON DISTRICT COURT.
(September 24, 2019) ... 10a
4. Memorandum of the United States Court of Appeals for the Ninth Circuit
(July 24, 2019) ... 13a
5. Order: of the United States Court of Appeals for the Ninth Circuit: Regarding
Injunction (April 24 2019) ... 19a
6. Order: denying Kerns' Constitutional Challenges (December 19, 2018) ... 22a

APPENDIX B

1. Order: of U.S. District Court Southern District of California (San Diego)
CASE #: 3:16-cv-02438-WQH-WVG; dkt. no. 208; Granting Mr. Wenner's;
Motion for Summery Judgment (07/24/2018) ... 1b

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBERS
Cold Mountain v. Garber , 375 F.3d 884, 891 (9th Cir. 2004) (equitable estoppel)	6
Elliot v. Piersol	10, 15, and 17
Gobeille v. Liberty Mut. Ins. Co. ; 136 S. Ct. 936, 577 U.S. 194 L. Ed. 2d 20 -- (See: Related Cases)	
Kenner v. C.I.R	10
Mireles v. Waco	10
People v. Zajic	10
Ross v. Orange Cty. Bar Ass 'n , 369 F. App'x 868, 869 (9th Cir. 2010),	6
Torres v. City of Madera , 648 F.3d 1119, 1123 (9th Cir. 2011),	17
United States v. Cofield , 11 F.3d 413, 418, n.6 (4th Cir. 1993)	10 and 12
United States v. Dinome	12
United States v. Isaacs , 493 F.2d 1124, 1131 (7th Cir. 1974),	15
United States v. Tolkow 532 F.2d 853 (2nd Cir. 1976)	8
STATUTES AND RULES	
PAGE NUMBERS	
ERISA § 502, 29 U.S.C. § 1132(a).2 Id., § 502(a), ERISA § 514, 29 U.S.C. § 1144	3
Title 18 U.S.C. § 4. Misprision of felony, Title 28 U.S.C. § 1361. Action to compel an officer of the United States to perform his duty, Section 1964(c) of the RICO Act	4
940.18 U.S.C. Section 1341, 18 U.S.C. § 1346, Section 1964(c) of the RICO Act;	5
18 U.S.C. § 1341	6
18 U.S.C. § 1961 (1)(B), U.S.S.G. § 2E1.1, civil (18 U.S.C. § 1964,	
18 U.S.C. § 1961 (1)(B), U.S.C. § 1963(a)(1)-(3)) (forfeiture of assets),	7
18 U.S.C. § 1964	8
Section 1964(c) of the RICO Act	9
18 U.S.C. § 4, Title 28 U.S.C. § 1361, 8 U.S.C. § 1514(c)	10
TITLE VI. TRIALS Rule 38, 28 U.S. Code § 1654, 1737. Civil Action To Enjoin The Obstruction Of Justice - 18 U.S.C. 1514 - 18 U.S.C. §§ 1512	11
18 U.S.C. § 1514, 18 U.S.C. § 1514(c), 18 U.S.C. § 241, 18 U.S.C. §§ 1503, 1510, 1512, and 1513). Under 18 U.S.C. § 241, Rule 55. Default; Judgment (b) (2)	12
Title 18 U.S.C. § 4, Title 28 U.S.C. § 1361, 28 U.S.C., 18 U.S. Code § 495	13
ERISA § 502, 29 U.S.C. § 1132(a).2 Id., § 502(a), ERISA § 514, 29 U.S.C. § 1144	14
Section 1964(c) of the RICO Act	15
OTHER	
PAGE NUMBERS	
Seventh Amendment Right	3
Constitution - Amendment 5	11
Seventh Amendment Right	17

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

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[X] For cases from federal courts:

The opinion of the United States court of appeals appears at Appendix A(13a) to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the United States district court appears at Appendix B(1b) to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

[] For cases from state courts:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

JURISDICTION

For cases from federal courts:

The date on which the United States Court of Appeals decided my case was Memorandum: July 24, 2019

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: November 12, 2019, and a copy of the order denying rehearing appears at Appendix A.(3a)

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

For cases from state courts:

The date on which the highest state court decided my case was _____. A copy of that decision appears at Appendix _____.

A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

- 1.** Two Issues, referenced; in The U.S. District Court - Southern District of California (San Diego); Case Number 3:16-cv-02438-WQH-WVG - Civil Docket Number 208; Order's rhetoric and The United States Court of Appeals for the Ninth Circuit - Case Number 18-56048 - Civil Docket Number 35; Memorandum's rhetoric Are: ERISA's: so called: "integrated enforcement mechanism (provisions)" ERISA § 502, 29 U.S.C. § 1132(a).2 Id. Are Unconstitutional because: **(a)** § 502(a)'s: Comprehensive **civil enforcement scheme: Denies** a Participant; his VII Amendment Right to a Common Law Jury Trial; due to intangible Losses; regarding his Right to Honest Service. Congress does not have the Authority to take Away a Participant or (any Citizen's) Seventh Amendment Rights. and,

(b) ERISA § 514, 29 U.S.C. § 1144, "**A state law claim is preempted by ERISA if it has a Connection with' or a 'reference to' an ERISA-govemed benefit plan.**" Denies a State's CONSTITUTIONAL Right to Criminally Prosecute Actions, in the State Where the Crime occurred. Plus: denies a Participant his VII Amendment Right to a Common Law Jury Trial; in any State; due to intangible losses; regarding his Right to Honest Service; in the State Court; where the Crime occurred.

2. Another Issue, referenced; in The U.S. District Court: Docket Number 208's rhetoric, is: The Mail Fraud Statute; does not have any language, regarding Punitive Damages. That would deny: a Participant or (any Citizen's) Seventh Amendment Right to a Common Law Jury Trial; due to intangible losses; regarding his Right to Honest Service. The 7th Amendment; **is for;** Laws with or without Civil Language; to provide a **DETERRENT** to Crime; **ACCOUNTABILITY:** For one's personal Actions.

3. Immunity; from the 7th Amendment: **for any citizen, for any reason;** is Unconstitutional and encourages crime. The 7th Amendment's deterrent; reduces crime: **promoting more civility; in society.**

4. Defence; Summery Judgements; are Unconstitutional, because: Only the Plaintiff; pays his dime for; Causes of Action and a Jury Demand; **to give up:** Only if he Feels like no sufficient argument; by the defendant; was offered. Only One Plaintiff, Per Action: is mentioned in the Seventh Amendment or anywhere else; in the Constitution. (Defendants can pay their own dime; to be a Plaintiff in a separate Action; if they choose to!!)

STATEMENT OF THE CASE

On September 28, 2016 I filed the complaint; regarding this Case; my causes of Action were Mail Fraud and Americans with Disabilities violations. I filed proof (with Defendant Wenner's Signature) of those crimes; that same day. No presumption of innocence existed; due to that absolute proof. Shortly after that; the defence used the strategy; that, if you repeat a lie, enough times, it becomes more powerful; then the Truth. District court Judges Hays and Gallo assisted the defence; every step of the way; by not only ignoring their duty to report Fraud on court; regarding Precedent Cited by the defence that did not relate to this Action [*Title 18 U.S.C. § 4. Misprision of felony - Title 28 U.S.C. § 1361. Action to compel an officer of the United States to perform his duty. The district courts shall have original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff.*]: but repeating it in their Orders; simply because I explained in my filed documents that those Precedents were too ridiculous to respond to. Example: If the defence Cited a Precedent that the Sun rises from the South each morning, then makes a loop during the day and sets in the South at night; and I say that Precedent is too ridiculous to respond to; the Court then agrees in a Court Order; that the above is True; simply because I would not Respond to such a foolish notion: Does that mean the Sun really does; rise and set; in the South? **So; let me make one thing clear;** I have fought for Truth and Justice for over 3 years and the defence and some Judges have intentionally made a mockery of Truth and Justice; during that time. (a) The ERISA does not preempt Causes; in Federal Actions; such as Murder, Arson, Mail Fraud, Kidnapping, ADA Violations, or Treason: even if I was an ERISA Participant. I have not been an ERISA Participant (Legally) since October 1, 2003. (b) ERISA enforcement mechanisms of any kind; only apply to States and State related Actions. (c) All ERISA enforcement mechanisms and preemptions are Unconstitutional; because each citizens 7th Amendment Civil Rights; are personal Civil Rights; Congress does not have the Authority to take away any Citizen's Vehicle, House, or Civil Rights or give them to the DOL or any other entity or person. This Court must overturn the 9th circuits Affirmation of District court's Dkt.No. 208 Order Granting Wenner Summery Judgment; due to all of the above and Grant Kerns Judgment by Default due to Fraud on Court and the fact that Kerns' Complaint (after over 3 years) has never been Legally Answered. The Summons 21 days allowed to Answer; expired over 3 years ago. I am respectfully requesting this court to strongly consider; Including Section 1964(c) of the RICO Act; in this Action.

My September 28, 2016 Complaint; is always Admissible Evidence. See: [Case 3:16-cv-02438-WQH-WVG Document 1 Filed 09/28/16 PageID.1 (Pages 1 thru 10) of 10] - **(a)** Page 1; proves this Action's Causes of Action: 940.18 U.S.C. Section 1341 (Mail fraud) and; Violating my Civil Rights Americans With Disabilities Act. - **(b)** Page 4; demands my 7th Amendment Jury Trial **(c)** Page 10; proves one of this Action's Causes of Action, 940.18 U.S.C. Section 1341 Mail fraud; could include; intangible rights to honest services 18 U.S.C. § 1346 (the federal mail and wire fraud statute), added by the United States Congress in 1988, which states; the term scheme or artifice to defraud includes a scheme or artifice to deprive another of the intangible right of honest services. 18 U.S.C. § 1346 is Applicable to this case; if necessary; because it is defined on page 10 of my Complaint. Section 1964(c) of the RICO Act; Applies to this case, as well.

“Rico-Civil Liability

- Section 1964(c) of the RICO Act also allows civil claims against anyone accused of a RICO violation. When a civil RICO claim is successfully established, the injured person automatically receives a judgment of three times the amount of their actual damages, plus legal fees. Racketeering activity under federal law includes a number of criminal offenses, including: **Bribery**; sports bribery; **counterfeiting**; felony theft from interstate shipment; Embezzlement from Pension and Welfare funds; extortionate credit transactions; Fraud relating to identification documents; fraud relating to access devices; transmission of gambling information; **Mail Fraud; wire fraud**; financial institution fraud; citizenship or naturalization fraud; obscene matter; **Obstruction of Justice**; obstruction of criminal investigation; obstruction of state or local law enforcement; witness tampering; retaliation against witness; interference with commerce, bribery, or extortion; interstate transportation in aid of racketeering; interstate transportation of wagering paraphernalia; unlawful welfare fund payments; prohibition of illegal gambling business; Money Laundering; monetary transactions in property derived from unlawful activities; murder for hire; sexual exploitation of children; interstate transportation of stolen motor vehicles; interstate transportation of stolen property; sale of stolen goods; trafficking in motor vehicles and parts; trafficking in contraband cigarettes; white slave traffic; restrictions of payments and loans to labor organizations; embezzlement from union funds.

RICO outlaws every manner in which an enterprise can be used for long-term racketeering activity. Under the law, no person may invest racketeering proceeds to acquire any interest in an enterprise; no person may acquire or maintain an interest in an enterprise through a pattern of racketeering activity; and no person associated with or employed by an enterprise may conduct that enterprise's affairs through a pattern of racketeering activity.”

See: [Case 3:16-cv-02438-WQH-WVG Document 208 Filed 07/24/18 PageID.2934 Page 8 of 8
(lines 9 thru 12)]

"However, the criminal mail fraud statute does not provide authority for a private cause of action. See **Ross v. Orange Cty. Bar Ass'n** 369 F. App'x 868, 869 (9th Cir. 2010) (citing *Wilcox v. First Int'l Bank of Oregon*, 815 F.2d 522, 533 n.1 (9th Cir. 1987)) ("Ross had no separate private right of action for mail fraud under 18 U.S.C. § 1341.")."

I thought the above: MIGHT actually be the FIRST, Legal Precedent in this Action; used against me: until; I checked it out. This Precedent is Fraud and does not apply to this Action, because; (a) statutes of limitations are not an issue in this Action and (b) the above underlined decision was due to the fact: Ross: did not raise that issue in the district court.

"Robert M. Ross appeals pro se from the district court's order dismissing his action brought under the Racketeer Influenced and Corrupt Organizations Act ("RICO"). We have jurisdiction under 28 U.S.C. § 1291. We review de novo, *Cholla Ready Mix, Inc. v. Civish*, 382 F.3d 969, 973 (9th Cir. 2004), and we affirm. The district court properly concluded that Ross's claims against defendants Orange County Bar Association, Phillip Kohn, and Kenneth Frank are time-barred because Ross's claims accrued in 1992 and he filed this action in 2008. See *Pincay v. Andrews*, 238 F.3d 1106, 1108 (9th Cir. 2001) (stating that the statute of limitations for civil RICO claims is four years). Further, Ross had no separate private right of action for mail fraud under 18 U.S.C. § 1341. See *Wilcox v. First Interstate Bank*, 815 F.2d 522, 533 n. 1 (9th Cir. 1987). We do not consider Ross's contentions regarding equitable estoppel because he did not raise that issue in the district court. See *Cold Mountain v. Garber*, 375 F.3d 884, 891 (9th Cir. 2004) ("In general, we do not consider an issue raised for the first time on appeal.")."

I am claiming equitable estoppel; because I did raise the issue of Rico Racketeering; in the district and Circuit Courts. The shaded area; is to establish; All K Exhibits; are admissible evidence:

See: [Case: 18-56048, 12/19/2018, ID: 11126377, DktEntry: 19, Page 1 of 1].

"Before: LEAVY and HURWITZ, Circuit Judges.
Appellant's requests for relief (Docket Entry Nos. 5, 7, 9, 11 and 15) are denied.

The Clerk shall file the opening brief at Docket Entry No. 16. The answering brief is due January 22, 2019, and the optional reply brief is due within 21 days after service of the answering brief.

Because appellant is proceeding without counsel, the excerpts of record requirement is waived. See 9th Cir. R. 30-1.2.

Appellee's supplemental excerpts of record are limited to the district court Docket sheet, the notice of appeal, the judgment or order appealed from, and any Specific portions of the record cited in the answering brief. See 9th Cir. R. 30-1.7."

Notice Above Circuit Judges LEAVY and HURWITZ made no mention whatever of any violations regarding my evidence in: (Docket Entry Nos. 5, 7, 9, 11 and 15)

See: regarding above Order: [Case: 18-56048, 09/19/2018, ID: 11018120, DktEntry: 11, Page 8 of 14]
"Please Read all K documents: For impossible to doubt; proof: of Mail Fraud/Rico."
"2/29/2017 dkt.
149 MOTION to Reconsider Partial Summary Judgment (ECF No. 108) by Larry D. Kerns. Nunc Pro Tunc 12/27/2017, per Order (ECF No. 148). (ajs) (Entered: 01/02/2018). (All; K Exhibits are in dkt. No. 149; but not mentioned; above (Hidden))"

I am respectfully requesting this Supreme Court to: "Please Read all K documents: For impossible to doubt; proof: of Mail Fraud/Rico and ADA violations. (Exhibit K - 4 proves I did provide ADA Title Information; See: [Case 3:16-cv-02438-WQH-WVG Document 149 Filed 12/29/17 PageID.2001 (Pages 132 thru 136) of 146]) - District Court: Rico References:

See: [Case 3:16-cv-02438- Document 149 Filed 12/29/17 PageID.1900 Page 31 of 146]
"The mail fraud and wire fraud statutes are becoming important tools in prosecutions of (a) RI CO Violations"

See: [Case 3:16-cv-02438- Document 149 Filed 12/29/17 PageID.1901 Page 32 of 146]
" Violations of either Section 1341 or 1343 or both ay be used by prosecutors as the predicate acts Necessary to establish a RICO violation. See 18 U.S.C. § 1961 (1)(B) ("racketeering activity" defined to include "any act which is indictable under section 1341 (relating to mail fraud), section 1343 (relating to wire fraud) ").
If the other requisite elements of a RICO violation can be established, a defendant ho has committed the predicate acts of mail or wire fraud may be subjected to more severe sanctions than those imposed for a mail or wire fraud conviction. For example, the United States Sentencing Guidelines provide that the minimum base offense level for unlawful conduct relating to a RICO conviction is 19. U.S.S.G. § 2E1.1. In addition, the government may seek civil (18 U.S.C. § 1964) or criminal U.S.C. § 1963(a) (1)-(3)) forfeiture of assets. "Courts have generally held hat RICO criminal forfeiture is mandatory upon the defendant's conviction." O. Obermaier and R. Morville, § 11.05, at 11-22 (citing cases from the Third, Fourth, ifth, Ninth, and Eleventh Circuits). The property subject to forfeiture includes "real property" and "tangible and intangible personal property."

See: [Case 3:16-cv-02438 Document 149 Filed 12/29/17 PageID.1910 Page 41 of 146] Item #8; clearly separates Rico; from the other Items; on that page.

Now; pages from district court docket; used in the ninth circuit; Informal Opening Brief.

See: [Case: 18-56048, 10/25/2018, ID: 11060822, DktEntry: 16-1, Page 29 of 43]

See: [Case: 18-56048, 10/25/2018, ID: 11060822, DktEntry: 16-1, (Pages 34 and 35) of 43]

See: [Case: 18-56048, 10/25/2018, ID: 11060822, DktEntry: 16-1, Page 38 of 43]

"D. Civil RICO, 18 U.S.C. § 1964, is Patterned After Antitrust Laws, and Hence Vests the Attorney General of the United States with the Exclusive Authority to Obtain Equitable Relief, and Vests Private Litigants, But Not the United States, With the Authority to Sue For Treble Damages RICO's civil remedies provision, 18 U.S.C. § 1964, authorizes two causes of action: a Public enforcement action for equitable relief by the Attorney General and a treble damages action by private parties."

Wilson Elser Moskowitz Edelman and Dicker law firm's, client: (on Mr. Wenner's behalf), is Management Applied Programming, Inc. (MAP Inc.); See: [Case 3:16-cv-02438-WQH-WVG Document 149 Filed 12/29/17 PageID.2015 Page 146 of 146]. Which has an alternate business name of: Jefferson Pilot Financial: and has a President named, F. N. Dastur, See: [Case 3:16-cv-02438-WQH-WVG Document 149 Filed 12/29/17 PageID.2012 Page 143 of 146]. - Mr. Wenner's (was/is?) one of four Vice Presidents; for Benefit Programs Administration (BPA); who's President is also F. N. Dastur. (BPA) is a Division of it's Parent company; MAP Inc. See: [Case 3:16-cv-02438-WQH-WVG Document 149 Filed 12/29/17 PageID.2008 Page 139 of 146]. Consequently; MAP Inc. has knowledge of Mr. Wenner's alleged (but proven with evidence); crimes; regarding this Action and must not disapprove of Mr. Wenner's behavior; since MAP Inc. Hired the Wilson Elser Moskowitz Edelman and Dicker law firm; to defend Mr. Wenner. MAP Inc. also: must be aware of Wilson Elser Moskowitz Edelman and Dicker law firm's; behavior in this Action (Fraud on Court (among other things). If MAP Inc. did not know; all of the above: MAP Inc. should have known; "MAP Inc.'s ignorance - is not relevant": **United States v. Tolkow** 532 F.2d 853 (2nd Cir. 1976). - Therefore since MAP Inc. did not dismiss; that law firm; (that has still been defending Mr. Wenner); MAP Inc. Obviously approves of the above kind of behavior or MAP Inc. knows the fix is in; and has been guaranteed; MAP Inc. Will win and save 3 million dollars.

This court's 300 million employers (citizens; including myself); must insist that; Section 1964(c) of the RICO Act; applies to this Action (Case); because if MAP Inc. has to pay 9 million for approving of; even a small part in the corruption of our Judicial Branch; MAP Inc. will not only be deterred from doing that again; but might crack down on Plan Administrators behavior. If this court creates the new Supreme Court Precedent, above; for use by all Plaintiffs; Pro se or with Attorneys; Corruption will no longer be such an ATTRACTIVE option and the few courts that are corrupt now (Mostly California courts); will find it difficult to find Customers (Do Business)! Citizens have been mad as hell for decades; because they really believe the Government could wipe out Organized Crime anytime they want to; but simply does not want to; due to self enrichment (power or wealth).

If my demand amount was/is an Issue; considered by District, Circuit, or this Supreme Court: My September 28, 2016 Complaint; is always Admissible Evidence. See: [Case 3:16-cv-02438-WQH-WVG Document 1 Filed 09/28/16 PageID.3 Page 3 of 10] My wife and I are victims of: 12 years of reduced well being (we can not go back and relive those 12 years) and a 1 year fierce battle to get the retroactive benefits I was obviously entitled to. See: [Case: 18-56048, 10/25/2018, ID: 11060822, DktEntry: 16-8, (Pages 1 thru 19) of 20] Mr. Gray was not a Victim of anyone but himself and Mr. Simpson was found not guilty by a Jury (no proven victims); my wife and I however; are victims of: 12 years of reduced well being (we can not go back and relive those 12 years), a 1 year fierce battle to get the retroactive benefits I was obviously entitled to, and 3 years of being abused (butchered) by Organized Crime; in Federal Courts. - Page 19 demonstrates I provided evidence that I have not been an ERISA Participant, since my Official - Legal retirement date; October 2003.

REASONS FOR GRANTING THE PETITION

To uphold this court's Previous conclusions: See: [Case: 18-56048, 09/24/2019, ID: 11442153,

DktEntry: 46, Page 4 of 60]

"Under Federal law which is applicable to all states, the U.S. Supreme Court stated that if a court is: "without authority, its judgments and orders are regarded as nullities. They are not voidable, **but simply void**; and form no bar to a recovery sought, even prior to a reversal in opposition to them. They constitute no justification; and all persons concerned in executing such judgments or sentences, are considered, in law, as trespassers. " **Elliot v. Piersol** / "Second, a judge is not immune for actions, though judicial in nature, taken in the complete absence of all jurisdiction.. [29] **Mireles v. Waco** / A judge is not the court. **People v. Zajic**"

Due to Fraud on District and Circuit courts (same; DktEntry: 46, Page 4 - above)

" WHAT IS "FRAUD ON THE COURT"? Whenever any officer of the court commits fraud during a proceeding in the court, he she is engaged in fraud upon the court" and,

"Fraud upon the court has been defined by the 7th Circuit Court of Appeals to embrace that species of fraud which does, or attempts to, defile the court itself, or is a fraud perpetrated by officers of the court so that the judicial machinery can not perform in the usual manner its impartial task of adjudging cases that are presented for adjudication. **Kenner v. C.I.R.**"

Three hundred million Citizens, expect this court to enforce the people's tools (below) in this

Civil Action; by Imposing Sanctions: reaffirming **Elliot v. Piersol**?

"Citizens (people's) Tools: **Title 18 U.S.C. § 4.** and **Title 28 U.S.C. § 1361.** " shall be fined under this title or imprisoned not more than three years, or both" "A federal judge, or any other government official, is required as part of the judge's mandatory administrative duties, to receive any offer of information of a federal crime. If that judge blocks (Case: 18-56048, 09/24/2019, ID: 11442153, DktEntry: 46, Page 5 of 60) such report, that block is a **felony** under related obstruction of Justice statutes, and constitutes a serious offense." "That statute was also repeatedly blocked by federal judges and Justices of the U.S. Supreme Court." Since Federal Law; IS Federal Law; maybe Your Honor or the Supreme Court; WILL Honor the above 2 Laws; since times have changed; somewhat?"

Because: See: (a) [Case: 18-56048, 09/24/2019, ID: 11442153, DktEntry: 46, Page 2 of 60]

"**3.** (See Exhibit 3) Example of ENE Conference: Plus: Obstruction: "harassment" as "a course of conduct directed at a specific person that causes substantial emotional distress, and serves no legitimate purpose." **18 U.S.C. § 1514(c).** See **United States v. Cofield** At the ENE Conference, Judge Gallo Violated my Constitutional Civil Rights: regarding discrimination (by: Shaming; the amount of money; I could earn in 3 lifetimes), the Fifth Amendment (Threatening to Totally Dismiss my case; if I utilized my 5th Amendment; right to remain silent; at deposition), the Seventh Amendment (explaining to me " Get an Attorney and you MIGHT get your Jury Trial"), and my right to Represent Myself: ? Amendment: (explaining to me " Get an Attorney and you MIGHT get your Jury Trial"), At the ENE Conference, Judge Gallo also: Violated his Oath as a Federal Judge, and the Constitution itself (All of the above, are Felonies: Fraud on the Court)

Aiding and Abetting; Obstruction. Judge Gallo; will deny the above, so; I will prove he lied (committed Perjury: Equaling Fraud on Court) during this cases Litigations; more then once. Lying about crucial matters that switched me from plaintiff to defendant demonstrated: heavy Bias, toward one party; Obstructed my Justice; Aided and Abetted the defence, and many Frauds on Court"

"3. (See **Exhibit 3**) from previous page: See:[Case: 18-56048, 09/24/2019, ID: 11442153, DktEntry: 46, Page 14 of 60]

"Report: Fraud on court - **Exhibit 3**

ENE CONFERENCE - CONSTITUTIONAL VIOLATIONS Judicial Misconduct
VIOLATIONS: FRAUD ON OATH: FRAUD ON COURT

1. TITLE VI. TRIALS Rule 38 Right to a Jury Trial; Demand [At the ENE Conference; Judge Gallo; explained to me; "get an Attorney and you might, get your Jury Trial"]

(a) Constitution's Seventh Amendment (Civil Right to a Jury Trial)

2. 28 U.S. Code § 1654. Appearance personally or by counsel [At the ENE Conference; Judge Gallo; explained to me; "get an Attorney and you might; get your Jury Trial"]

(a) **28 U.S. Code § 1654.**- Appearance personally or by counsel

3. United States Constitution - Amendment 5 - Trial and Punishment, [At the ENE Conference; Judge Gallo; explained to me; that I had to agree to be Deposed (I asked him why) he said "You are on Trial too")]

(a) "You are on Trial too"] Since he did not Explain; what I was on Trial for; and I did not know of any pending Complaints against me: I did not know what the hell to expect ! So why wouldn't I want to exorcise my 5th Amendment Right to remain silent? Wouldn't you? After that; Abuse of Power.

(b) (A Portion) of: **[11/15/2017 Dkt. No. 144 ORDER** (Failure to Comply with this Order, failure to sit for deposition, or failure to cooperate during the deposition could result in sanctions up to and including the Termination of Plaintiff's case in its entirety. Signed by Magistrate Judge William V. Gallo)1

(c) Amendment 5 - Trial and Punishment.

1737. Civil Action To Enjoin The Obstruction Of Justice -- 18 U.S.C. 1514

The Victim and Witness Protection Act of 1982 created a Federal civil cause of action authorizing a United States District Court to restrain the "harassment" of crime victims and witnesses or to prevent and restrain -

See: [Case: 18-56048, 09/24/2019, ID: 11442153, DktEntry: 46, Page 15 of 60]

" - existing or imminent violations of **18 U.S.C. §§ 1512** (excluding those consisting of misleading conduct) and 1513.

"This amendment, which is codified at **18 U.S.C. § 1514**, defines "harassment" as "a course of conduct directed at a specific person that causes substantial emotional distress ... and serves no Legitimate purpose." **18 U.S.C. § 1514(c)**. See **United States v. Cofield**, 11 F.3d 413, 418, n.6 (4th Cir. 1993) 1739. Offenses Related To Obstruction Of Justice Offenses Conduct within the purview of the obstruction of justice statutes may also violate one or more of the following Statutes: C. **18 U.S.C. § 241**-conspiracy to injure or intimidate any citizen on account of his or her exercise or possibility of exercise of Federal right (overlap with **18 U.S.C. §§ 1503, 1510, 1512, and 1513**). Under **18 U.S.C. § 241**, it is a Federal offense to conspire to injure a citizen for having exercised a Federal right or to conspire to intimidate a citizen from exercising a Federal right. One such right is the right to be a witness in a Federal court, **United States v. Dinome**,"

One lie: See: [Case: 18-56048, 09/24/2019, ID: 11442153, DktEntry: 46, (Pages 43 thru 60) of 60]

Exhibits 13, 14, and 15 of my report of fraud on court. Page 45 proves district court Judges;

did not set aside Judgement by Default; but denied it; by deliberately misquoting a Federal

Statute Rule 55. Default; Judgment (b)(2); amounting to among other things Perjury, Fraud,

Obstruction, Aiding and Abetting, and Fraud on court.

Second lie: See: [Case: 18-56048, 09/24/2019, ID: 11442153, DktEntry: 46, Page 8 of 60]

"The one single difference between the two above Orders is in: Dkt. No. 208; Judge Gallo; committed Judicial Misconduct (Fraud on Court); First: inferring that the following was a Legal; certificate of service; for Mr. Wenner's Motion for Summery Judgement.: [01/22/2018 - Dkt. No. 159 - CERTIFICATE OF SERVICE re 152 - originally filed as ACKNOWLEDGEMENT OF SERVICE Executed as to 152 MOTION for Summary Judgment And Supporting Papers Acknowledgement filed by Mathew J. Wenner. (Anderson, Robert) Modified docket text on 1/23/2018 to change event text. QC mailer sent re: wrong event selected (ajs). (Entered: 01/22/2018)." - Then demonstrated Judicial Misconduct (Fraud on Court);; again; for the second time; by referring to the following Dkt. No. 161: letter; [01/24/201 161 - Letter from Larry D. Kerns.] :As a Response to: the defendant's: [01/18/2018 152 MOTION for Summary Judgment by Mathew J. Wenner].. - The above was obviously done; to add an additional tool; to his Judicial Misconduct tool box (Scheme); to use as a substitute for a legal certificate of service; if all else failed; in his scheme to Grant the defendant's Motion for Summery Judgment; NO MATTER WHAT. - (That scheme included: Ignoring Federal and Local Rules, Ignoring the Deadline date to file and Prove Service on Plaintiff; of that Motion for Summery Judgment, Judicial Misconduct, and Obstructing Plaintiff's Justice; Nonchalantly (To hell with the Law and that jerk representing himself)"

Violations of the law. by 9th Circuit Judges; SCHROEDER, SILVERMAN, and CLIFTON:

See: Appendix A; page 3a: "All other pending motions and requests are denied." Refers to the only Legal entry on the docket, to deny re Chief Judge Sidney Thomas:

"09/24/2019 46

Filed Appellant Mr. Larry Douglas Kerns Reporting: Fraud.

Deficiencies: None. Served on 09/20/2019. [11442153] (JFF)

[Entered: 09/24/2019 02:40 PM]"

9th Circuit Judges; SCHROEDER, SILVERMAN, and CLIFTON did not even Respect the Chief Judge's docket entry enough; to refer to the words: Reporting Fraud.

See, again: [Case: 18-56048, 09/24/2019, ID: 11442153, DktEntry: 46, **Page 4 of 60**]

"Citizens (people's) Tools: **Title 18 U.S.C. § 4.** and **Title 28 U.S.C. § 1361.** " shall be fined under this title or imprisoned not more than three years, or both" "A federal judge, or any other Government official, is required as part of the judge's mandatory administrative duties, to receive any offer of information of a federal crime. If that judge blocks (Case: 18-56048, 09/24/2019, ID: 11442153, DktEntry: 46, **Page 5 of 60**) such report, that block is a **felony** under related obstruction of Justice statutes, and constitutes a **serious offense.**" "That statute was also repeatedly blocked by federal judges and Justices of the U.S. Supreme Court." Since Federal Law; IS Federal Law; maybe Your Honor or the Supreme Court; WILL Honor the above 2 Laws; since times have changed; somewhat?"

See: Appendix A; Page 13 a

"Before: SCHROEDER, SILVERMAN, and CLIFTON, Circuit Judges. Larry Douglas Kerns appeals pro se from the district court's summary judgment in his Employee Retirement Income Security Act ("ERISA") action relating to his application for benefits under a Retirement Benefit Plan of the GCIU-Employment Retirement Fund. We have jurisdiction under 28 U.S.C."

The above: "in his Employee Retirement Income Security Act ("ERISA") action" Amounts to Counterfeiting; My complaint's Causes of Action, to a cause of Action defence preferred. I paid about \$400 for that complaint; and it is one of my civil rights (priceless).

"18 U.S. Code §495. Contracts, deeds, and powers of attorney

Whoever falsely makes, alters, forges, or counterfeits any deed, power of attorney, order, certificate, receipt, contract, or other writing, for the purpose of obtaining or receiving, or of enabling any other person, either directly or indirectly, to obtain or receive from the United States or any officers or agents thereof, any sum of money; or Whoever utters or publishes as true any such false, forged, altered, or counterfeited writing, with intent to defraud the United States, knowing the same to be false, altered, forged, or counterfeited; or

"Whoever transmits to, or presents at any office or officer of the United States, any such writing in support of, or in relation to, any account or claim, with intent to defraud the United States, knowing the same to be false, altered, forged, or counterfeited—

Shall be fined under this title or imprisoned not more than ten years, or both. (June 25, 1948, ch. 645, 62 Stat. 711; Pub. L. 103-322, title XXXIII, §330016(1) (H), Sept. 13, 1994, 108 Stat. 2147.)"

Below; Cited From: "www.criminaldefenselawyer.com › crime-penalties › federal › counterfe..."

"Counterfeiting Items Other Than Securities and Currency

Federal counterfeiting law is not limited to currency.

Other forms of counterfeiting specifically prohibited by federal law include:

documents issued by certain lending agencies, such as insured credit unions, land banks, the Reconstruction Finance Corporation, and the FDIC

bonds, bids, contracts, proposals, public records and affidavits made or altered for the purpose of defrauding the United States

documents pertaining to imports and the collection of customs duties

federal court documents

seals of federal agencies, and

U.S. postal stamps and meters."

9th Circuit Judges; SCHROEDER, SILVERMAN, and CLIFTON: know darn good and well the

ERISA;s enforcement Preemptions; only apply to States: and that Kerns' Action (this case) was

filed as a Federal, not State; Action; See: [Case 3:16-cv-02438 Document 1 Filed 09/28/16

PageID.1 Page 1 of 10]: and the Appendix B Page12b information below:

"Congress enacted ERISA to 'protect ... the interests of participants in employee benefit plans and their beneficiaries' by setting out substantive regulatory requirements for employee benefit plans and to 'provide[e] for appropriate remedies, sanctions, and ready access to the Federal courts.'" Aetna Health Inc. v. Davila, 542 U.S. 200, 208 (2004) (quoting 29 U.S.C. § 1001(b)). ERISA "provide[s] a uniform regulatory regime over employee benefit plans" through its "integrated enforcement mechanism," ERISA § 502, 29 U.S.C. § 1132(a).2 Id.

[T]he detailed provisions of § 502(a) set forth a comprehensive **civil enforcement scheme** that represents a careful balancing of the need for prompt and fair claims settlement procedures against the public interest in encouraging the formation of employee benefit plans. **The policy choices reflected in the inclusion of certain remedies and the exclusion of others under the federal scheme would be completely undermined if ERISA-plan participants and beneficiaries were free to obtain remedies under state law that Congress rejected in ERISA.** "The six carefully integrated civil enforcement provisions found in§ 502(a) of the statute as finally enacted ... provide strong evidence that Congress did not intend to authorize other remedies that it simply forgot to incorporate expressly." Russell, *supra*, at 146, 105 S.Ct., at 3092 (emphasis in original).

2 ERISA includes "expansive pre-emption provisions, see ERISA § 514, 29 U.S.C. § 1144, which are intended to ensure that employee benefit plan regulation would be 'exclusively a federal concern.'" Aetna Health, 542 U.S. at 208 (citing Alessi v. Raybestos-Manhattan, Inc., 451 U.S. 504, 523 (1981)). **A state law claim is preempted by ERISA if it has a 'connection with' or a 'reference to' an ERISA-governed benefit plan.** Wise v. Verizon Commc 'ns, Inc., 600 F.3d 1180, 1190 (9th Cir. 2010) (citing Metro. Life 27 Ins. Co. v. Massachusetts, 471 U.S. 724, 739 (1985)).

Plaintiff does not bring any state law claims in his Complaint.

In regard to Bribery: See: Appendix A page 18a:

“This case has been rigged from the beginning! See: [Case: 18-56048, 10/25/2018, ID: 11060822, DktEntry: 16-6, (Pages 1 thru 37) of 37]: which prove among other things; the defence’s Law firm and their Lobbyist; can impact a Judge’s Career or at some point; offer him a lucrative job . See: [Case: 18-56048, 09/24/2019, ID: 11442153, DktEntry: 46, Page 46 of 60] So; Citing **United States v. Isaacs**, 493 F.2d 1124, 1131 (7th Cir. 1974).: is nearer to being appropriate; then most all other Citings in this case; so far!”

To extend my argument for Bribery, parameters; even if a Judge; simply wants to become part of (The in crowd) or remain part of (The in crowd): **United States v. Isaacs**, 493 F.2d 1124, 1131 (7th Cir. 1974); applies to this case. Folks do not do bad things; for no reason. Being in good favor of an extraordinarily Influential and well connected Law Firm; is by definition receiving CONSIDERATION.

“Section 1964(c) of the RICO Act also allows civil claims against anyone accused of a RICO violation. When a civil RICO claim is successfully established, the injured person automatically receives a judgment of **three times the amount of their actual damages, plus legal fees**. Racketeering activity under federal law includes a number of criminal offenses, including: **Bribery**; sports bribery; **counterfeiting**; felony theft from interstate shipment; Embezzlement from Pension and Welfare funds; extortionate credit transactions; Fraud relating to identification documents; fraud relating to access devices; transmission of gambling information; **Mail Fraud**; **wire fraud**; **financial institution fraud**; citizenship or naturalization fraud; obscene matter; **Obstruction of Justice**; obstruction of criminal investigation; obstruction of state or local law enforcement;”

See: [Case: 18-56048, 10/25/2018, ID: 11060822, DktEntry: 16-4, (Pages 23 thru 33) of 74]: I am not a Participant; but this evidence from District court; demonstrates Racketeer damage control.

I pray this court will include: Section 1964(c) of the RICO Act and implement:

“Under Federal law which is applicable to all states, the **U.S. Supreme Court** stated that if a court is: “without authority, its judgments and orders are regarded as nullities. They are not voidable, **but simply void**; and **form no bar to a recovery sought**, even prior to a reversal in opposition to them. They constitute no justification; and all persons concerned in executing such judgments or sentences, **are considered, in law, as trespassers**. “ **Elliot v. Piersol**”

To create new Legal Precedent to counterbalance many Legal Precedents; being unjustly Cited; that deprive citizens of their Constitutional Civil Rights; including the 7th Amendment.

If this court creates the new Supreme Court Precedent, above; for use by all Plaintiffs; Pro se or with Attorneys; Corruption will no longer be such an ATTRACTIVE option and the few courts that are corrupt now (Mostly California courts); will find it difficult to find Customers (Do Business)!

So: whether this court applies; Section 1964(c) of the RICO Act or not: **Elliot v. Piersol** applies to this Action; due to proven Fraud on the District court and the Fraud I called your attention to; on the 9th Circuit court, in these Petition documents. District court dkt. no. 208 Granting Summery Judgment to Wenner: ignores my proof of Wenner's alleged but proven by evidence; Crimes, ERISA's Preemptions only relate to State Related Actions, I have not been an ERISA Participant since October 1, 2003 - my Legal retirement date, **DISTRICT COURT'S:** 11/21/2016 dkt.no. 11 - ANSWER to (1) Complaint, by Mathew J. Wenner.(Anderson, Robert)Attorney Robert M. Anderson added to party Mathew J. Wenner(pty:dft) (Entered: 11/21/2016) **AND** 03/13/2017 dkt.no. 49 - RESPONSE in Opposition (Re Dkt # 44) - Originally e-filed as AFFIDAVIT in Opposition re 44 MOTION to Exclude All ERISA Rules and Regulations; Regarding: Complaint Against the Individual Defendant; Mathew J. Wenner Opposition to Plaintiff's Motion to Exclude all ERISA Rules and Regulations filed by Mathew J. Wenner. (Attachments: # 1 Supplement Proposed Order) (Anderson, Robert) Modified text on 3/14/2017 to read as Response in Opposition. (mdc) (Entered: 03/13/2017) **AND** 01/18/2018 dkt. no. 152 - MOTION for Summary Judgment by Mathew J. Wenner. (Attachments: # 1 Memo of Points and Authorities, # 2 Statement of Facts, # 3 Declaration, # 4 Exhibit, # 5 Declaration, # 6 Exhibit) (Danos, John)Attorney John R Danos added to party Mathew J. Wenner(pty:dft) QC mailer sent re: missing proof of service (ajs). (Entered: 01/18/2018): ALL neglected to provide any type of Legal Certificate of Service: Therefore; by Law; not a technicality; no Certificates of Service; for the previous 3 items; EXIST: so they are simply Void. **Constitutional Challenges**, Consider evidence: Appendix A, Order: of the United States Court of Appeals for the Ninth Circuit: denying Kerns' Constitutional Challenges (December 19, 2018) page 22a and Arguments 24a - 27a.

See: Appendix A, Item 4. - Memorandum; of the United States Court of Appeals for the Ninth Circuit: Affirming District Court Granting Summery Judgment to Defendant Wenner (July 24, 2019) Page 13a. - Memorandum's second page 14a contains the following legal precedent; **regarding Immunity:** (“§ 1291. We review de novo. **Torres v. City of Madera**, 648 F.3d 1119, 1123 (9th Cir. 2011). We affirm.”). I want to Constitutionally Challenge; Circuit Judges SCHROEDER, SILVERMAN, and CLIFTON's Order (Opinion).

See: Appendix A, Page 25a: (“ 3. Immunity; from the 7th Amendment: for any citizen, for any reason; is Unconstitutional and encourages crime. The 7th Amendment's deterrent; reduces crime: promoting more civility; in society.”) Incivility, right now: in our Society is becoming out of control; Politicians, Defence Attorneys, Congress, the Media, and many others: make false statements (lie) repeatedly, regularly; and face absolutely [zero] consequences. I pray this court will rule on the Constitutionality of ANY Immunity for ANY Citizen: from the Constitution's 7th Amendment.

Please consider all evidence in my: Statement of the Case - Appendix's A and B - 9th circuits docket number 46 Report of Fraud on Court, and all evidence referred to in them and address all questions and Constitutional questions; presented. - These documents I presented to you are not well done, I did the best I could: but I would argue my documents have infinitely more value then a beautifully done document; that results in INJUSTICE. - 1. The 21 days allowed; by the United States District Court - Southern District of California (San Diego) Summons, to Answer Kerns' September 28, 2016 Complaint: expired over three years ago. 2. Fraud on Court was proven to have Occurred by Mr. Kerns; and entered in the United States Court of Appeals for the Ninth Circuit's Docket; number 46, re Chief Judge Sidney Thomas. 3. I provided evidence of: Fraud on the UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, Case No. 18 - 56048; in the documents I am filing in this Court: for this court's Officers to hopefully report. Therefore: are all Orders from both Courts; simply Void? Is all evidence provided, on Mr. Wenner's behalf; simply Void? **Elliot v. Piersol** - I Pray Oral argument: is not Merited.

Federal Rules of Evidence
2020 Edition

Rule 102 – Purpose

These rules should be construed so as to administer every proceeding fairly, eliminate unjustifiable expense and delay, and promote the development of evidence law, to the end of ascertaining the truth and securing a just determination.

History

(Pub.L. 93-595, § 1, Jan. 2, 1975, 88 Stat.1929; Apr. 26, 2011, eff. Dec. 1, 2011.)

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Larry D. Kerns

Date: 01-29-2020