

Original for: The Supreme Court's, Clerk's Offices
No. 19-7701

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 2019

LARRY DOUGLAS KERNS, Petitioner,

V.

MATHEW J. WENNER, Respondent

**PETITION FOR REHEARING: IN REGARD TO
PETITION FOR A WRIT OF CERTIORARI: DENIAL**

PETITION FOR REHEARING

Larry Douglas Kerns
Representing Himself - Pro Se
3643 Spa Street
San Diego California 92105
(619) 915 - 6808
j.ldk@att.net

May 27, 2020

Robert M. Anderson
Counsel of Record
Wilson Elser Moskowitz Edelman and
Dicker
555 South Flower Street
Suite 2900
Los Angeles, CA 90071
213-443-5100
Fax: 213-443-5101
Email: Robert.Anderson@wilsonelser.com

John R Danos
Wilson, Elser, Moskowitz, Edelman &
Dicker LLP
555 S. Flower St.
Suite 2900
Los Angeles, CA 90071
213-443-5100
Fax: 213-443-5101
Email: john.danos@wilsonelser.com
Second; LEAD ATTORNEY

Counsel for Mathew J. Wenner

CIVIL CASE

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PETITION FOR REHEARING

See: [Case: 18-56048, 08/06/2019, ID: 11388366, DktEntry: 41-3, Page 2 of 15] From my: Petition for Rehearing En Banc: 940.18 U.S.C. Section 1341 (Mail fraud): is one of Kerns' two Causes; for this Action. See: [Case: 18-56048, 08/06/2019, ID: 11388366, DktEntry: 41-2, Page 6 of 7] From my: Petition for Rehearing En Banc: regarding Impression Testimony. **949. Proof of Fraudulent Intent:**

"The requisite intent under the federal mail and wire fraud statutes may be inferred from the Totality of the circumstances and need not be proven by direct evidence" *United States v. Alston*. Thus, intent can be inferred from statements and conduct. *United States v. Cusino*. **Impression Testimony**, that is, testimony of victims as to how they had been misled by defendants, is Admissible to show an intent to defraud. *Phillips v. United States*."

Kerns': Petition for A Writ of certiorari and this Petition for rehearing and (Evidence referred to, in those Documents): contain some of the following types of Testimony (Evidence): Normally: Objected to, by a Respondent; that do not apply to this Action:

"Argumentative (611a), Asked and Answered (611a), Assumes Facts Not in Evidence (611a), Best Evidence (1002), Beyond Scope (of direct, cross) (1002), Compound (611a), Cumulative (403; 611a), Hearsay (802), Improper Characterization (404-405), Improper Expert Opinion (702), Improper Impeachment (607-610, 613), Improper Lay Opinion (701), Lack of Authentication (901a), Lack of Foundation (602; 901a), Leading (611c), More Prejudicial Than Probative (401-403), Relevance (401), and Speculation (602; 701)"

Due to Fraud on both, the District Court and Ninth Circuit Court of Appeals: Kerns can not possibly believe, he could Expect: Honest Services from ANY of the United States Government's Federal District or Federal Circuit, Courts. Therefore; the Justices of this United States Supreme Court: ARE Kerns' Jury in this Action. Thus: Kerns' written Evidence; is his Impression Testimony, Offered to; the most Qualified Jury, on Earth. This Supreme court; has the Privilege of, and Responsibility for; being the FINAL Keeper (Final Administrator) of America's Constitution. Therefore: it is this United States Supreme Court's Solemn Duty, to deliver: Constitutional Justice and (Equal Justice Under ALL Laws): to Kerns. Kerns has been denied: his Constitutional Rights to Equality Under ALL Laws and Fair and Unbiased Adjudication. Kerns is: the victim of, (starched): white collar criminal's; Fraud, Bias, Obstruction, and his Civil Rights were Violated by the Federal Inferior courts. This case includes both: serious Constitutional Questions: and serious Legal Precedent questions; in Kerns' PETITION FOR A WRIT OF CERTIORARI. If this Petition for Rehearing is denied; tenacious Attorneys; will begin attempting to INCLUDE: any U. S. Citizen; who is not an ERISA Participant: in any future Actions of any kind; as; relating to: ERISA RELATED ACTIONS.

The REALITY is, however: the ERISA'S (Unconstitutional; in Kerns's Opinion) Preemption over State's Laws, **Only relates to** State's matters; Laws etc.; That **RELATE** to the ERISA's Application Process or any other ERISA matter: not Federal. Federal Mail Fraud and Federal Americans with Disabilities Act, Civil Rights Violations: HAVE NOTHING WHAT SO-EVER, TO DO WITH the ERISA'S so-called Preemption over (Only) **State Statutes etc..** Congress does not even come close, to having the Authority to: Transfer The Department of Justice's (Judicial Branch's) **JOB DUTIES**: in any way, shape, or form; to the Department of Labor's ERISA (Unconstitutional). Kerns is Guaranteed: Equal Justice Under ALL Laws, and a Ethical, Fair, and Unbiased (Action): by our Constitution: that can only be delivered, **now**: by this Supreme court. Since the Federal District court and Federal Ninth Circuit Court of Appeals (With the exception of Ninth Circuit's Chief Judge Thomas): will not do their own housecleaning; this Supreme court is Obligated to clean their houses for them; by Enforcing Our Constitution and applying: ALL Federal Laws. Kerns is perfectly aware: That Reporting a Judge; for Fraud on a court, is like playing Russian Roulette; but I had to Either; Report the Judges and others; or simply be thrown under the bus; of **Corruption**. The Perpetrator's Scheme of Corruption to Illegally throw Kerns Under the bus, in this Action: by Forcing Kerns to Aggravate this Court; reporting their Fraud: Is Unconscionable, Criminal, and displays their vile Contempt for Our Constitution and the Judicial Branch, Itself. A few, Bad Apples: During Kerns' 38 years in the Printing Industry, eventually: Hanged themselves: and were kicked out of the Union. No: Trade, Pension Fund, or Profession (Group): Is without: **A few - Bad Apples**.

REASONS FOR GRANTING THE PETITION

I. REASONS FOR GRANTING THE PETITION:

(1.) "U.S. District Court - Southern District of California (San Diego) -CIVIL DOCKET FOR CASE #: 3:16-cv-02438-WQH-WVG - Kerns v. Wenner - Assigned to: Judge William Q. Hayes - Referred to: Magistrate Judge William V. Gallo - (**Cause**): 42:12101 The Americans with Disabilities Act of 1990 - Date Filed: 09/28/2016 - Jury Demand: Plaintiff - (**Nature of Suit**): 446 Civil Rights: Americans with Disabilities - Other - Jurisdiction: Federal Question."

(2.) "General Docket- United States Court of Appeals for the Ninth Circuit- Court of Appeals Docket #: 18-56048 Docketed: 08/03/2018- Termed: 07/24/2019- (**Nature of Suit**): 3446 Americans w/Disabilities Act-Othr- Larry Kerns v. Mathew Wenner - Appeal From: U.S. District Court for Southern California, San Diego - Fee Status: Paid - Case Type Information: 1) civil - 2) private - 3) null"

There can be no Jurisdiction question: both (Sarbanes Oxley) Mail Fraud and The Americans with Disabilities Act of 1990: Are Federal Acts (Laws); and (a) Kerns; never filed any State Action. See: [Case 3:16-cv-02438-WQH-WVG Document 208 Filed 07/24/18 PageID.2932

Page 6 of 8] (bottom; last sentence; of page: “Plaintiff does not bring any state law claims in his Complaint” and (b) Kerns is not an ERISA Participant. See: [Case: 18-56048, 09/24/2019, ID: 11442153, DktEntry: 46, (Pages 3 and 4) of 60] (most of page 3 and top of page 4). Therefore, since: Mr. Wenner’s Motion for Summery Judgment: ECF No. 152 and District Court’s subsequent; Granting of Summery Judgment: (Below) are both based entirely on ERISA Jurisdiction: they are both Fraud on the District court and “Simply Void” *Elliot v. Piersol.* [See court Docket’s above: (1.) (Cause) and (Nature’s of Suit) and (2.) (Nature’s of Suit)]

“07/24/2018 208

ORDER: The motion for summary judgment is Granted. (ECF No. 152).”

(3.) See: [*Case: 18-56048, 11/12/2019, ID: 11496172, DktEntry: 49, Page 1 of 1*]: (Circuit Judges; SCHROEDER, SILVERMAN, and CLIFTON)’s: Final Order: Re-Affirming: their own Memorandum. “Kerns’s petition for panel rehearing and petition for rehearing en banc (Docket Entry Nos. 41 and 42) are denied.”

(4.) See: [*Case: 18-56048, 07/24/2019, ID: 11374767, DktEntry: 35-1, (Pages 1 and 2) of 2*]:

DktEntry: 35-1 Memorandum’s; Quote, Section - (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.

(Pause to address the above section of quote) - [The Courts Docket’s above: (1.) (Cause) and (Nature’s of Suit) and (2.) (Nature’s of Suit)]: Prove quote: “his Employee Retirement Income Security Act (“ERISA” action” is **fraud**; which Amounts to Fraud on the 9th Circuit court; the above quote: might not be counterfeiting and might not be forgery; but it is most certainly Fraud and Fraud on the 9th Circuit court. If the Judges above: are not punished for fraudulently changing my Causes of Action; Violating a United States of America contract (between Kerns and the USA); how daring will Judges become in the Future? Using my contract with the Judicial Branch as an example: 1. Will they change my demand for a Jury Trial to: No Jury Trial Demand (Violating my Constitutional Seventh Amendment Civil Right to a Jury Trial)? 2. Will they change my demand amount from: \$3,000,000.00 to \$25,000.00? 3. Will they change my explanation; for my Demand amount, to: The Wind has not arrived from the North, for three weeks? 4. Will they change my name to: John Doe? Or: 5. Change my reason for not Retaining an Attorney to: All Law School Graduates are Prudish Narcissistic Brats; (to INTENTIONALLY anger this court) causing this court, to feel animosity toward me; (Attempting to): cause this court, to feel Biased; in their Judgement? Next, I will prove: That Mail Fraud became part of The Sarbanes Oxley Act, of

2002: TITLE IX-WHITE-COLLAR CRIME PENALTY ENHANCEMENTS - **SEC. 903.** CRIMINAL PENALTIES FOR MAIL AND WIRE FRAUD. (a) MAIL FRAUD.-Section 1341 of title 18, United States Code ((a) MAIL FRAUD.-Section 1341 of title 18, United States Code, is amended) - and that (Separately) the ERISA became part of The Sarbanes Oxley Act, of 2002 (: **SEC. 904.** CRIMINAL PENALTIES FOR VIOLATIONS OF THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974. 'Section 501 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1131) (is amended). - See: [*Case 3:16-cv-02438-WQH-WVG Document 149 Filed 12/29/17 PageID.1936 Page 67 of 146*] (Center of Page): Or, See: [*Case: 18-56048, 10/25/2018, ID: 11060822, DktEntry: 16-4, Page 13 of 74*] (Same Page)

"**AGENCY:** Pension and Welfare Benefits Administration, Department of Labor. **ACTION:** Final rules. **SUMMARY:** This document contains final rules that implement the civil penalty provision in section 502(c)(7) of the Employee Retirement Income Security Act of 1974 (the Act or ERISA) adopted as part of the Sarbanes-Oxley Act of 2002 (SOA)."

Then See: [*Case 3:16-cv-02438-WQH- Document 149 Filed 12/29/17 PageID.1941 (Pages 71 and 72 of 146*] Or, See: [*Case: 18-56048, 10/25/2018, ID: 11060822, DktEntry: 16-4, (Pages 14 and 15) of 74*] (Same Page). Proving: Mail Fraud and The ERISA , In Reality: have No [Zero]: connection! Furthermore: If this Court somehow STILL thinks: Mail Fraud and ADA Civil Rights Violations; are Job Related, since Mailing Letters, is part of Mr. Wenner's and the District Court's Job: What if Mr. Wenner or District Court Employees (All Guilty of Mail Fraud/Rico Racketeering), Artfully: placed a Bomb or Anthrax Powder, in the Documents; they Mailed to Kerns? Will they Avoid Accountability; (Punishment) for those Crimes, as well ? What if the Perpetrators; burned our house, ERISA related? **DktEntry: 35-1 Memorandum's; Quote, Section - (b): (Resume Quote) From:** {Case: 18-56048, 07/24/2019, ID: 11374767, DktEntry: 35-1, (Pages 1 and 2) of 2}; Memorandum:

" * This disposition is not appropriate for publication and is not precedent except as Provided by Ninth Circuit Rule 36-3.

"** The panel unanimously concludes this case is suitable for decision without oral Argument. See Fed. R. App. P. 34(a)(2). - § 1291.

We review de novo. *Torres v. City of Madera*, 648 F.3d 1119, 1123 (9th Cir. 2011). We affirm."

(*Pause to address the above section of quote*): Judges: MARY M. SCHROEDER, BARRY G. SILVERMAN and RICHARD R. CLIFTON, Cited: A Case for Precedent that could not possibly Legally: apply to this case. *Torres v. City of Madera* is in regard to a police person's discretion; regarding excess use of force; (force being; part of his job). If this court; Affirms; that Mail Fraud and ADA violations; are indeed; part of Mr. Wenner's job: How much Mail Fraud is excessive and how many ADA violations; must occur; to be an excessive amount. (*Torres v. City of Madera*).

DktEntry: 35-1 Memorandum's; Quote, Section - (c):

(Resume Quote) From: {Case: 18-56048, 07/24/2019, ID: 11374767, DktEntry: 35-1, (Pages 1 and 2 of 2]; Memorandum:

“The district court properly granted summary judgment because Kerns seeks only punitive Damages, and ERISA does not allow recovery of punitive damages. See *Bast v. Prudential Ins. Co. of Am.*, 150 F.3d 1003, 1009 (9th Cir. 1998) (“Extracontractual, compensatory and punitive damages are not Available under ERISA.”); see also *Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41, 52 (1987) (the civil enforcement provisions of ERISA are “the exclusive vehicle for actions by ERISA-plan participants and beneficiaries asserting improper processing of a claim for benefits . . .”).”

“We do not consider arguments and allegations raised for the first time on appeal. See *Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009). AFFIRMED.”

(Pause to address the above section of quote): The final section; *From:* [Case: 18-56048, 07/24/2019, ID: 11374767, DktEntry: 35-1, (Pages 1 and 2) of 2]; Memorandum: quote; above is N/A (it only regards ERISA Participants and beneficiaries); Kerns is neither. Furthermore: *Padgett v. Wright*, is N/A to this case, the main reason being: Judges: MARY M. SCHROEDER, BARRY G. SILVERMAN and RICHARD R. CLIFTON; committed Fraud; proven more then once; above; (Fraud on the 9th Circuit court): making: *Padgett v. Wright*; Simply Void; like the remainder of All of their Orders or Judgments; *Elliot v. Piersol*.

(5.) Respectfully; Please See and review, carefully: [Case: 18-56048, 09/24/2019, ID:

11442153, DktEntry: 46, All 60 Pages of 60] “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]”

The Chief Judge; docketed No. 46 above; prior to the Last court Order. That last court Order; See: [Case: 18-56048, 11/12/2019, ID: 11496172, DktEntry: 49, Page 1 of 1]; disrespectfully only referred to it as: “All other pending motions and requests are denied”. They were simply not willing to: refer to Docket No. 46, or refer to Fraud. If Equal Justice Under ALL Federal Laws: Occurs; in this Supreme court; regarding this Action: *Elliot v. Piersol*: is Applicable to this case: due to Fraud on the District court and Fraud on the 9th Circuit court of Appeals: well: proven above. Therefore All Ninth Circuit Court Judgments and Orders, District court Judgments and Orders, and Mr. Wenner’s Defence in it’s Entirety; are: “Simply Void” *Elliot v. Piersol*: which also includes: “Form no bar to a recovery sought, even prior to a Reversal in opposition to them.” This Supreme should exorcise it’s option and Authority to: Award Kerns his three million dollar Demand; in this Action: by honoring the Language contained in Kerns Federal District court’s Summons. District Court Dock. No. 2 (09/28/2016)

"A lawsuit has been filed against you. Within 21 days after service of this summons on you (not counting the day you received it) - or 60 days if you are the United States or a United States agency, or an office or employee of the United States described in Fed. R. Civ. P. 12(a) (2) or (3) - You must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:"

"Larry D. Kerns
3643 Spa Street
San Diego, CA 92105
(619) 546-9797"

"If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court."

See: [*Case: 18-56048, 09/24/2019, ID: 11442153, DktEntry: 46, (Pages 29 and 30) of 60*] regarding a Legal Affidavit. - See: [*Case: 18-56048, 09/24/2019, ID: 11442153, DktEntry: 46, Page 33 of 60*]: Any Paper after the Complaint; that is required to be Served: REQUIRE a Legal Certificate of Service. See: [*Case: 18-56048, 09/24/2019, ID: 11442153, DktEntry: 46, (Pages 37 thru 39) of 60*]: Regarding the fact that: Any fraudulent Affidavits; must be Legally Corrected: by their composers; within one year. The 21 days allowed; in the Above Federal Summons Language: to Answer Kerns' Complaint: EXPIRED in late; 2016. So a Judgement by Default of Kerns' Demand: is Mandatory: by Law. Because no Legal Certificate of Service; regarding any Answer to my complaint; or the entry of any attorney; to represent Mr. Wenner: in this Action: exist to this day; 05/25/2020. **Plus:** All of the alleged (proven but un-indicted: Mail Fraud: Schemes), Fraud on Courts, Bias, and Obstruction of Justice: Provided in this document: were either Mailed to Kerns by the District court (Mail Fraud/Rico Racketeering) or E-mailed to Kerns by the 9th Circuit Court of Appeals (Wire fraud/Rico Racketeering): both amount to proven but un-indicted Felonies. Kerns knows: since he cannot depend on one Federal district court and one Circuit court of Appeals: for anything resembling: a Fair, Honest, and Ethical, Federal court Action (Trial): he can not depend on getting Equality Under Law: in ANY Federal District court or Circuit court of Appeals. Since This Supreme court is the Keeper of (Administrator of) the United States Constitution: it has the Extraordinary Responsibility (DUTY) to ALWAYS deliver Equality Under; EVERY SINGLE; Law: to EVERY SINGLE CITIZEN: (Including Kerns).

(6.) Respectfully, Please reconsider: Kerns' PETITION FOR A WRIT OF CERTIORARI, PAGE 6: REGARDING:

"*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.").")

(7.) Respectfully, Please reconsider: Kerns' Petition for A Writ of certiorari, Page 7:

Regarding: "18 U.S.C. § 1961 (1)(B) ("racketeering activity" defined to include "any act which is Indictable under section 1341 (relating to mail fraud).")

First: Kerns' Main Concern was and is; the following: Kerns does NOT think he should be responsible for Mr. Wenner's (MAP Inc.'s) Costs: for Legal Representation to Defend this Action.

Secondly: Kerns would Argue that: Mr. Wenner's, the District Court Judge's, and the Circuit Court Judge's: Bias Against Kerns and their Fraud were Egregious, and Merit, Civil Rico/Rackateering Punishment. (Seventh Amendment Civil Punitive ACCOUNTABILITY)

* ¹ *"The following is in regard to: Kern's (Small) 3 million dollar demand amount and not about: 18 U.S.C. § 1961 (1)(B) ("racketeering activity); Unless this Court thinks: 18 U.S.C. § 1961 (1)(B) ("racketeering activity: is Merited and should be included." No-one expects to become Disabled at age 55 and their livelihood (earnings) reduced to (Far less - Counting Overtime) then fifty Per Cent. I had to Pinch Every Single Dollar during the 12 years. Mr. Wenner Deprived us of MY Union Pension and simply live with that fact. My wife and I: can not go back in time 12 years and relive those 12 years; somewhat better and happier: Like I Pointed Out on the Demand Page of My Complaint: See: [Case: 18-56048, 08/06/2019, ID: 11388366, DktEntry: 41-3, Page 14 of 15]: "no amount of Money will fix what was done. But I Am asking a Jury (This Supreme Court) to Award me 3 million dollars in Punitive damages. That will not Make things right; my wife was 74 and I was 71 (at that Time) we were/are both in bad health and Our Golden Years had/have already come and already gone."*

My wife and I think: regarding, what happened to us: the Only Dollar Amount description for Mr. Wenner's Actions; would be PRICELESS. That does not mean billions of Dollars or more: it simply means: it is Impossible to Go Back In Time and Relive those 12 Years. My 3 Million dollar Demand; is TINY; compared to the Gray, Brown, and Goldman; Civil Awards. Having said that; I personally thought those Awards were Ridiculously Excessive; that's why my Demand amount; is so Tiny! **Point:** if this Court should decide to include: "18 U.S.C. § 1961 (1)(B) ("racketeering activity": defined to include "any act which is indictable under section 1341 (relating to mail fraud).": Forget the extra 6 Million Dollars or take a Vote and Select another Amount; this Court Considers Appropriate. I would respectfully request an amount, equivalent to: in this Court's Opinion: the Respondent's Legal Cost (already retained, by the defence's Law firm).

Seriously: at nearly 75 years of age; with a recent heart attack and a Chronic Case of COPD;

6 Million Extra Dollars; will not Impact my Wife and I's Life; One Single Iota. We would however; like to think this Court will Consider, the following examples: (Freddie Gray was not a victim and his family were not Personally (First Person) Victims of any Injury or financial Losses, due to Freddie's death. Gray's family's 6.4 Million dollars Civil Award (Without Ever Setting One Foot; in Court); can not bring Freddie back from the dead. The Goldman and Brown family's (Over 15 Million Dollar Civil Award, Each) will not bring their Loved Ones back from the grave; the cost of raising Mr. Simpson's Children; was part of their Argument, for such a large Award. A Jury found Mr. Simpson; Not Guilty; so no proven Victims; exist. I would Argue; that Mr. Simpson; had every right to raise his own children; as he saw fit and with his Own Money (fortune). Mr. Simpson was wealthy and some folks retained a hot shot attorney; whom took Away about one third of (More then ALL) of Mr. Simpson's Money for Himself or Herself; and gave the two above families, the remaining amount. Mr. Gray (due to his own self inflicted injuries), Personally: only suffered, less then two weeks. Mr. Simpson's wife's and her friend's throats were cut; they could not suffered, Personally: for more then five minutes. Kerns' wife and Kerns': suffered, (were victims of): financially reduced Well Being, for twelve years, because of Mr. Wenner, had to fight a hard, aggravating, depressing, and Psychological damaging one year battle to finally receive Kerns' Retroactive Pension Benefits, two MORE: aggravating, depressing, and Psychological damaging years in District Court: hoping to receive Common Courtesy and an Ethical Court Action, and finally another: aggravating, depressing, and Psychological damaging, one year in Circuit Court: hoping to receive Common Courtesy and an Ethical Court Action. **Mr. Wenner** Perpetrated: those Mail Fraud Schemes (Violations) and American with Disabilities Act, Civil Rights, (Violations): on my wife and I. To us; those lost 12 years of a little better life; we deserved to have; would be totally priceless. Kerns, would Argue: That Law firm, their Attorney, district Court Judges, and Circuit Court Judges, ALL: Violated both: **965. Conspiracy to Violate the Mail Fraud or Wire Fraud Statutes** (See: page 14 of this document) and the above: **"18 U.S.C. § 1961 (1)(B)"** ("racketeering activity" defined to include "any act which is Indictable under section 1341: To Assist Mr. Wenner's Attorney's, Mockery: of Our Constitution, Federal Law, and The Judicial Branch of The United States of America's Government: by ignoring Kerns' Seventh Amendment; Civil Rights, submitting about nine; Fraudulent Certificates of Service, and attempting to set a new Legal Precedent (That Exposes Non-ERISA Participants; to the Tentacles of the Unconstitutional ERISA's Civil Enforcement Scheme. Somewhat Proven, by the Fact that: (As far as Kerns Knows) Mr. Kerns's Supreme Court Case No. 19-7701: is Undefended by the Respondent: Mathew J. Wenner: at this time.

(8.) Respectfully, Kerns: Challenges anyone; to produce a Legal Certificate of Service, generated by anyone: for District Court's - (ECF No. 152): Motion for Summery Judgment, by Mr. Wenner. Therefore: Mr. Wenner's Motion for Summery Judgment: is: Simply Void

9.) Respectfully, Please reconsider: Kerns': 9th Cir. Case No. 18-56048 Opening Brief; Att. f - Page 11, See: [*Case: 18-56048, 10/25/2018, ID: 11060822, DktEntry: 16-7, Page 14 of 31*]: Bottom of Page. **Item 3's. Retention:** was rendered illegible: by a felt tip Pen: so, Wilson, Elser, Moskowitz, Edelman & Dicker LLP , have already reduced my 3 Million Dollar Demand; by (???, ??? Dollars) For their Attorney Robert Anderson's Toil. Their, Attorney Danos': only signature during this entire Action: was on Mr. Wenner's: Motion for Summery Judgment Documents: Mr. Danos' Documents; regarding that matter; still; have no Legal; Certificate of Service: making that Motion; Void; for yet another reason. Even though Attorney Danos' signature has never appeared on any other document (to my knowledge); it would be fool hearty; to think he has not been charging hours; to this Action; since, that time.

That why: Kerns was curious about, including: "**18 U.S.C. § 1961 (1)(B)** ("racketeering activity" To this Action. That Retention Dollar Amount; has been Redacted to a higher and higher Amount; during this 3.5 year Action. Kerns; would Strongly Argue: that since Kerns proved beyond any doubt; that Mr. Wenner is Guilty of Mail Fraud and A D A Civil Rights Violations, that Mr. Wenner's Defence committed Fraud on 2 Courts (Among other things), and Mr. Wenner's Defence Launched a Strategy of substituting: Dittle E. Squat; for Legal Certificates of Service; making them ALL: (Unless - and Void): Wilson, Elser, Moskowitz, Edelman & Dicker LLP; or their Attorney/Attorneys; So - Called Labors: DO NOT MERIT OR DESERVE, ONE SINGLE DIME! **Kerns' problems is;** Wilson, Elser, Moskowitz, Edelman & Dicker LLP; already have that Money and will NEVER return it to Kerns: without a years long Court Battle. Kerns could Easily Pass Away, during that prolonged Court Battle and Kerns: does not want to give those folks, that: Satisfaction. Will this Court Order: The Respondents: to pay an appropriate amount of Legal expenses, to Kerns: with or without Rico Due to their three year, Crime Spree?

(10.) Respectfully, Please reconsider: Kerns' Petition for A Writ of certiorari, Pages 10 thru 12, Regarding: This Supreme court's: Associate Justices and Chief Justice: took an Oath to Uphold, Protect, and Enforce our American Constitution. Our Constitution does not have any Language giving this court any Authority whatever: to pick and choose, Which: Federal, State, and Local Statutes, Laws, or Acts; it will Uphold.

Logic, Dictates: that if this Supreme court's Justices; simply made a request to Congress; to repeal a certain Federal Statute, Law, or Act, for good reason; Congress would most likely respect this Supreme court's Justices' request; and do so. But until then: Respectfully: if this court does not Uphold ALL Laws: This Supreme court's Justices are themselves: Violating Our United States Constitution. The corruption proven in this document and the corruption proven in the 9th Circuit court of Appeals; Docket No. 46: Docketed by chief Judge Sidney Thomas: prior to the Nine circuit court of Appeals: Docket No. 49: final Order; are specifically addressed; by Federal Statutes, on those pages 10, 11, and 12 (referred to above) See: [Case: 18-56048, 09/24/2019, ID: 11442153, DktEntry: 46, Page 16 of 60]: **Sec. 1361**, Below: is about the only Statute: Specifically for Assisting "We the (regular) People": It is Your Duty to Uphold ALL Statutes. So, Respectfully: Please Do So.

"2002 US Code - Title 28 - PART IV - CHAPTER 85 - Sec. 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."

REASONS FOR GRANTING THE PETITION

II. REASONS FOR GRANTING THE PETITION

Kerns; Will prove beyond any possible doubt; that Mr. Wenner is guilty of Mail Fraud, while intentionally violating Mr. Kerns' Civil Rights: contained within: The Americans With Disabilities Act: Title I: Part III *** "applies to all aspects of employment".

Plus: See: [Case 3:16-cv-02438-WQH-WVG Document 208 Filed 07/24/18 PageID.2934 Page 8 of 8 (lines 6, 7, and 8)]. I challenge anyone to find a statement by me (ever), anywhere in this case; where I made the assertion: "That the communications relating to a delay in receiving my benefits under the retirement plan; support a Mail Fraud cause of Action under **U S C 1341**". The above is a BALD FACE LIE (Perjury and Fraud on the District court, Plus: Perjury and Fraud on the 9th Circuit court: because that Document, was/is; the 9th circuit court's: Main source of Evidence; to consider. While were at it, See: [Case: 18-56048, 09/24/2019, ID: 11442153, DktEntry: 46, Pages 45 thru 60]; for another very SERIOUS instance: of Perjury and Fraud on District court. And; See: [Case 3:16-cv-02438-WQH-WVG Document 208 Filed 07/24/18 PageID.2934 Page 8 of 8 (lines 12 thru 18)]: for still another case of Perjury and Fraud on both courts. See: [Case: 18-56048, 08/06/2019, ID: 11388366, DktEntry: 41-5, (Pages 11 thru 15) of 16] for proof of the above BALD FACED LIE. [ID: 11388366, DktEntry: 41-5, Page 13 of 16]; clearly indicates: **Title I of the ADA**, [ID: 11388366, DktEntry: 41-5, Page 14 of 16]; clearly indicates

III. The Reasonable Accommodation Obligation, 3.1 Overview of Legal Obligations, and the third * down (sentence) contains “ APPLIES TO ALL ASPECTS OF EMPLOYMENT”

The Union was my Actual, Employer; that subcontracted me, to various Print Shops: whom were required (as part of my Union Benefit Package) to Contribute to my Retirement, by the Union. The Union: being my Actual Employer: was responsible for those Contributions; on my behalf; until I retired. However Wenner’s Employer; wanted access to ALL OF THAT MONEY and made a deal, (signed a contract); with my Union to relieve my Union of all responsibility and LIABILITY for those Retirement Funds; in order to reap the benefits of total access to; ALL OF THAT MONEY, charging fees for making investments, and since Wenner’s Employer’s Parent company MAP Inc. Has an Unlisted Alias: (name) of Jefferson Pilot Financial; enormous profits occurred; regarding the investments made; using ALL OF THAT UNION PENSION MONEY (Other People’s Money - OPM)! See: [Case: 18-56048, 10/25/2018, ID: 11060822, DktEntry: 16-7, (Pages 7 and 8) of 31].

Wenner’s: being one Vice President of: Benefit Programs Administration; whom are a Division of its Parent Company; Management Applied Programming (Alias: Jefferson Pilot Financial) See: [Case: 18-56048, 10/25/2018, ID: 11060822, DktEntry: 16-7, Page 11 of 31]: **Legally: makes him Personally Responsible and Financially Accountable (Including Civil Liability):** As Administrator of the GCIU Employer Retirement Fund! The following: are some (Mail Fraud and Wire Fraud) Statutes and Legal Precedents; Kerns is Submitting as Evidence: from Kerns’ Informal Opening Brief Attachment (c): Originally filed: District Court’s **“12/29/2017 Dkt. No. 149** MOTION to Reconsider Partial Summary Judgment (ECF No. 108) by Larry D. Kerns.

See: [Case: 18-56048, 10/25/2018, ID: 11060822, DktEntry: 16-1, Page 23 of 43]

“1007. Fraud The statute does not define the phrase “obtained by fraud.” Fraud is defined by nontechnical standards and is not to be restricted by any common-law definition of false pretenses. One court has observed, “If the law does not define fraud; it needs no definition; it is as old as falsehood and as versatile as human ingenuity.” *Weiss v. United States*, 122 F.2d 675, 681 (5th Cir. 1941), cert. denied, 314 U.S. 687 (1941). The Fourth Circuit, reviewing a conviction under **18 U.S.C. § 2314**, also noted that “fraud is a broad term, which includes false representations, dishonesty and deceit.” See *United States v. Grainger*, 701 F.2d 308, 311 (4th Cir. 1983), cert. denied, 461 U.S. 947 (1983).”

See: [Case 3:16-cv-02438-WQH-WVG Document 149 Filed 12/29/17 PageID.1885 Page 16 of 146] and [Case: 18-56048, 10/25/2018, ID: 11060822, DktEntry: 16-4, Page 22 of 74]

“940. 18 U.S.C. Section 1341—Elements of Mail Fraud “There are two elements in mail fraud: (1) having devised or intending to devise a scheme to defraud (or to perform specified fraudulent acts), and (2) use of the mail for the purpose of executing, or attempting to execute, the scheme

(or specified fraudulent acts).” *Schmuck v. United States*, 489 U.S. 705, 721 n. 10 (1989); see also *Pereira v. United States*, 347 U.S. 1, 8 (1954) (“The elements of the offense of mail fraud under . . . § 1341 are (1) a scheme to defraud, and (2) the mailing of a letter, etc., for the purpose of executing the scheme.”); Laura A. Eilers & Harvey B. Silikovitz, *Mail and Wire Fraud*, 31 Am. Crim. L. Rev. 703, 704 (1994) (cases cited). [cited in USAM 9-43.100]”

See: [Case: 18-56048, 10/25/2018, ID: 11060822, DktEntry: 16-4, Page 45 of 74] and [Case 3:16-cv-02438-WQH-WVG Document 149 Filed 12/29/17 PageID.1882 Page 13 of 146]

“910. Knowingly and Willfully “The statement must have been made with an intent to deceive, a design to induce belief in the falsity or to mislead, but § 1001 does not require an intent to defraud – that is, the intent to deprive someone of something by means of deceit.” *United States v. Lichenstein*, 610 F.2d 1272, 1276-77 (5th Cir.), cert. denied, 447 U.S. 907 (1980).”

See: [Case 3:16-cv-02438-WQH-WVG Document 149 Filed 12/29/17 PageID.1886 Page 17 of 146] and [Case: 18-56048, 10/25/2018, ID: 11060822, DktEntry: 16-4, Page 49 of 74]

“942. The Scheme and Artifice to Defraud “wrongdoing one in his property rights by dishonest methods or schemes, and “usually signify the deprivation of something of value by trick, chicane, or overreaching.”” Carpenter, 484 U.S. at 27 (quoting *McNally v. United States*, 483 U.S. 350, 358 (1987) (quoting *Hammerschmidt v. United States*, 265 U.S. 182, 188 (1924))).”

See: [Case: 18-56048, 10/25/2018, ID: 11060822, DktEntry: 16-4, Page 52 of 74] and [Case 3:16-cv-02438-WQH-WVG Document 149 Filed 12/29/17 PageID.1889 Page 20 of 146]

“944. Proof of Scheme and Artifice to Defraud (To sustain a conviction the government must prove the existence of a scheme; it is not required, however, to prove all details or all instances of allegedly illicit conduct. See, e.g., *United States v. Stull*, 743 F.2d 439, 442 n. 2 (6th Cir. 1984))”

See: [Case 3:16-cv-02438-WQH-WVG Document 149 Filed 12/29/17 PageID.1890 Page 21 of 146] and [Case: 18-56048, 10/25/2018, ID: 11060822, DktEntry: 16-4, Page 53 of 74]

“945. McNally And Intangible Rights In response to McNally, Congress passed **Section 1346 \ of Title 18, United States Code**, which provides that “For the purposes of this Chapter, the term ‘scheme or artifice to defraud’ includes a scheme or artifice to deprive another of the intangible right of honest services.” (Insert - the underlined is applicable to the Constitutions; 7th Amendment)

See: [Case: 18-56048, 10/25/2018, ID: 11060822, DktEntry: 16-4, (Pages 54 and 55) of 74] and [Case 3:16-cv-02438-WQH-WVG Document 149 Filed 12/29/17 PageID.1891 (Pages 22 and 23) of 146]

“947. Fiduciary Duty Whether a fiduciary duty or relationship is a necessary ingredient to frauds relating to intangible property rights. See generally Laura A. Eilers & Harvey B. Silikovitz, *Mail and Wire Fraud*, 31 Am. Crim. L. Rev. 703, 706 n. 19 (1994) (“Unlike traditional frauds which may arise regardless of the relationship between the defendant and the victim, frauds related to intangible rights stem from a fiduciary relationship between the defendant and the defrauded party or entity.”). “At the core of the judicially defined ‘scheme to defraud’ is the notion of a trust owed to another and a subsequent breach of that trust.” *United States v. Lemire*, 720 F.2d 1327, 1335 (D.C. Cir. 1983)”

See: [Case 3:16-cv-02438-WQH-WVG Document 149 Filed 12/29/17 PageID.1893 Page 24 of 146]

and [Case: 18-56048, 10/25/2018, ID: 11060822, DktEntry: 16-4, Page 56 of 74]

“948. Intent to Defraud The government must prove that the defendant had the specific intent to defraud. See *United States v. Diggs*, 613 F2d 988, 997 (D.C. Cir. 1979) (“Because only ‘a scheme to defraud’ and not actual fraud is required, proof of fraudulent intent is critical.”), cert. denied, 446 U.S. 982 (1980); see also *United States v. Costanzo*, 4 F.3d 658, 664 (8th Cir. 1993)”

See: [Case 3:16-cv-02438-WQH-WVG Document 149 Filed 12/29/17 PageID.1902 Page 33 of 146]

and [Case: 18-56048, 10/25/2018, ID: 11060822, DktEntry: 16-4, Page 65 of 74]

“965. Conspiracy to Violate the Mail Fraud or Wire Fraud Statutes “As in any conspiracy, it is sufficient that the defendant knowingly joined the conspiracy in which wire fraud or mail fraud was a foreseeable act in furtherance of the conspiracy. *United States v. Leahy*, 82 F.3d 624 (5th Cir. 1996) (citing *United States v. Basey*, 816 F.2d 980, 997 (5th Cir. 1987) (holding that once a defendant’s knowing participation in a conspiracy has been established, “the defendant is deemed guilty of substantive acts committed in furtherance of the conspiracy by any of his criminal partners”)). [cited in USAM 9-43.100]”

See: [Case: 18-56048, 10/25/2018, ID: 11060822, DktEntry: 16-4, Page 67 of 74] and [Case 3:16-cv-02438-WQH-WVG Document 149 Filed 12/29/17 PageID.1904 Page 35 of 146]

“968. Defenses—Statute of Limitations “The statute of limitations for mail fraud and wire fraud prosecutions is five years (18 U.S.C. § 3282), except for mail and wire fraud schemes that affect a financial institution, in which case the statute is ten years (18 U.S.C. § 3293)”

See: [Case 3:16-cv-02438-WQH-WVG Document 149 Filed 12/29/17 PageID.1969 Page 100 of 146] last few sentences; bottom of page and [Case 3:16-cv-02438-WQH-WVG Document 149 Filed 12/29/17 PageID.1970 Page 101 of 146] entire page. Proof I was declared Eligible for my Pension; retroactive to October 1, 2003; 1 day prior to; Mr Wenner’s launching of his Mail Fraud (crime spree) See: [Case 3:16-cv-02438-WQH-WVG Document 149 Filed 12/29/17 PageID.1978 Page 109 of 146] and [Case 3:16-cv-02438-WQH-WVG Document 149 Filed 12/29/17 PageID.1979 Page 110 of 146]; October 2, 2003; (first letter I ever received; from Mr. Wenner’s GCIU Employer Retirement Fund). I was declared Eligible for benefits; in that October 1, 2015 letter from Wenner; **due to 30 years of service (Union verified; my thirty year pin).**

(2.) Wenner still, did not mention (Covered up) the disability waiver; contained in the Early Retirement Rule. (3.) Wenner claimed he had to Reconstruct information; that made me eligible for benefits; knowing full well: **I was eligible for benefits when I first called the Fund in late September 2003; due to the Early Retirement waiver; for disabled Participants.**

(4.) Wenner claimed he had to Reconstruct information; that made me eligible for benefits; knowing full well; **I was eligible: for full benefits at: normal retirement age of 65; 07/08/2010.**

See: [Case 3:16-cv-02438-WQH-WVG Document 149 Filed 12/29/17 PageID.1990 Page 121 of 146] and [Case 3:16-cv-02438-WQH-WVG Document 149 Filed 12/29/17 PageID.1991 Page

122 of 146]: for proof of the above. I was unaware; and Wenner did not tell me; that I became fully Vested at normal Retirement age of 65; at that time, October 1, 2015. Wenner did not inform Kerns; of the Early Retirement Disability Waiver; that made him Eligible for Benefits; until March 2016; about 12¹/₂ years; after: Kerns first called; asking for his Benefits. When Wenner finally: divulged to me; that Early Retirement waiver for disabled Participants; I became so Irate; I nearly had a Breakdown; thus: I filed this Civil Action. **With; Impossible to doubt proof** of: Mail Fraud and conspiracy to commit Mail Fraud, by Mr. Wenner and a Man named Carl: followed by the above cover up by Mr. Wenner: October 1, 2015 thru March 2016; in regard to 1, 2, 3 and 4 above. **For absolute proof; not a preponderance of Circumstantial Evidence**: **First**: Read: 9th Circuit; Informal Opening Brief's; Attachment (a); for conclusive Proof of violations. Proof includes: Furnishing documents like (SPD'S) requirements, Proof that Mr. Wenner: intentionally sent an Inapplicable SPD October 2015, and Proof the Applicable SPD; I finally received March 2016; had missing pages and why those pages were missing. (Regarding Admissibility). Due to Fraud on both courts: Kerns' evidence, **is**: The only Admissible Evidence in this Court. That is why: Kerns **is**, unopposed: in this Court. **See**: [Case: 18-56048, 10/25/2018, ID: 11060822, DktEntry: 16-1, Page 9 of 43]; regarding Informal Opening Brief's; Attachment (a)'s Evidence. **Then See**: [Case: 18-56048, 10/25/2018, ID: 11060822, DktEntry: 16-1, (Pages 10 thru 22) of 43] for absolute proof of Mail Fraud and A D A violations: Go to: Pages 12 and 15; which easily guide you through: Impossible to doubt; proof of Kerns' Causes of Action. (Mail Fraud and ADA Violations). That Evidence's; Origination: See: [Case 3:16-cv-02438 -Document 149 - Filed 12/29/17 - PageID.1991 - (Pages 104 -122) of 146]) October 2, 2003 (First ever: Letter from Wenner) See: [Case 3:16-cv-02438-WQH-WVG Document 149 Filed 12/29/17 PageID.1978 (Pages 109 and 110) of 146] explaining I was Ineligible for Benefits: So: October 2, 2003: is the Date: Mr. Wenner's Crime Spree (Mail Fraud Scheme): was launched.

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, 88th

See: [Case 3:16-cv-02438-WQH-WVG Document 149 Filed 12/29/17 PageID.1993 (Pages 124 and 125) of 146]; for Proof Mr. Wenner; knew I was disabled; when he Mailed that first ever: October 2, 2003 Letter to me; Fraudulently claiming I was Ineligible for my GCIU Pension. Finally: Regarding the Mail Fraud criminal Statute: not having Civil Punitive Damage Language. See: [Case: 18-56048, 08/06/2019, ID: 11388366, DktEntry: 41-1, Page 7 of 16]

"Insider Trading and Intangible Rights, The Redefinition of the Mail Fraud Statute."

"The Federal mail fraud statute has been used and will probably continue to be used in cases involving insider trading of securities and in other types of cases not originally envisioned when the law was enacted nearly a century ago."

"Article [VII] (Amendment 7 - Civil Trials)

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law."

“1007. Fraud The statute does not define the phrase "obtained by fraud." Fraud is defined by nontechnical standards and is not to be restricted by any common-law definition of false pretenses."

“945. McNally And Intangible Rights In response to McNally, Congress passed **Section 1346 of Title 18, United States Code**, which provides that "For the purposes of this Chapter, the term 'scheme or artifice to defraud' includes a scheme or artifice to deprive another of the intangible right of honest services."

“947. Fiduciary Duty Whether a fiduciary duty or relationship is a necessary ingredient to frauds relating to intangible property rights.

Some Impression Testimony, Offered by Kerns:

"In Regard to the Redefinition of The Mail Fraud Act (Statute); after nearly one hundred years. Really Powerful, Greedy Big Fish: Insider Traders and the like (White Collar Criminals): Hire Lobbyist, who in turn pay Political Contributions, Bribes, or Favors to powerful individuals, in Our Government: to in turn: do favors for them. Those criminally corrupt Insider traders: were not satisfied with simply cheating "We the (regular) People" of America. Since they occasionally got caught but could easily RIG the subsequent Criminal Court Proceedings: their only problem was: being Civilly Liable, for their crimes. Since a Constitutional Amendment to redefine or eliminate Our Seventh Amendment: was nearly impossible: their Paid Off Friends in Congress: simply redefined one single Law, Mail Fraud: to do an end run; around Our Constitution's Seventh Amendment Common Law Authority. Thus, redefining: Mail Fraud to Criminal Mail Fraud and eliminating Our Seventh Amendment's Common Law Authority; regarding Civil Action; where the Controversy is regarding more then \$20: Allows those Corrupt (Leaches of Our Society) to steal millions or billions, make a plead deal to pay a fraction of their stolen loot, and then live large; for life."

This Court's Duty is: To Correct the Above Castration of Our 7th Amendment: To Restore the Confidence of "We the (Regular) People": In this Court and Our Government. Respectfully: Kerns' Tee shot was interfered with and only traveled 175 yards, his fairway shot was interfered with and landed 175 yards from the Green, but Kerns' third shot (Kerns' Evidence): Landed Only 2 Inches from the Cup. Even though this: 2 inch Putt: is normally a "Gimme": Corruption will Prevail; If this Court Ignores it's Duty: To Tap it in: With Authority.

CONCLUSION

The Petition for Rehearing should be Granted

Respectfully Submitted,



Date: May 27, 2020
