IN THE SUPREME COURT OF THE UNITED STATES

No. 20-1011

CYRUS MARK SANAI,
*Petitioner,*
v.
D. JOSHUA STAUB, an individual; FREDERICK BENNETT, an individual; PHU CAM NGUYEN, an individual; CHRISTOPHER MCINTIRE,
*Respondents,*

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT
NO. 19-55427

CYRUS MARK SANAI,
*Petitioner,*
v.
MARK BORENSTEIN, an individual;
*Respondent,*



IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT
NO. 19-55429

PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CYRUS SANAI
SANAIS
9440 SANTA MONICA BOULEVARD #301
BEVERLY HILLS, CA 90210
Telephone (310) 717-9840
cyrus@sanaislaw.com

## QUESTIONS PRESENTED

1. Did the Ninth Circuit Court of Appeals err when it refused to follow the unanimous holdings of the Sixth Circuit, Seventh Circuit, Eleventh Circuit and Federal Circuit that federal judges have an obligation to disclose on the record information which the parties or their lawyers might consider relevant to the question of disqualification?

2. Do federal judges have an obligation to disclose on the record information about personal or professional relationships with a defendant or witness in a case where such information is explicitly requested by a party?

3. Do federal judges have an obligation to disclose on the record information about their past and current relationship to a disgraced former federal judge who is a defendant in a lawsuit along with his colleagues who retaliated against a litigant for disclosing the former federal judge's misconduct and whose whistleblowing played a critical role in his downfall?

4. Does the Ninth Circuit's decision that a District Court Judge was not required to recuse himself in a case where a defendant previously was the District Court's lawyer and defended him in state and federal court in a personal capacity, in direct conflict with published precedent from the same District and other Circuits and state courts, constitute reversible error?

5. Did the the Ninth Circuit erred in finding that *Younger* abstention applied to a case premised on

state court bias and conflict of interest of specific state court judges because the bias did not arise from a direct financial interest in the litigation?

6. May an interlocutory order relating to judicial recusal and disclosure be appealed in an appeal from the final judgment of dismissal for intentional refusal to serve the complaint, or must it be re-challenged by a post-judgment motion to vacate under F.R.C.P. 60?

## PARTIES TO THE CASE

This petition is in respect of two related cases with different defendants.

The plaintiff appellant and petitioner is CYRUS SANAI, an individual in both cases

The Defendants in the first filed case, *Sanai v. Staub,* Central District of California no. 18-cv-02136 and Ninth Circuit no. 19-55427 are D. JOSHUA STAUB, FREDERICK BENNETT, PHU CAM NGUYEN, and CHRISTOPHER MCINTIRE, all individuals. None of them were served a summons and complaint or appeared.

The Defendants and Respondents in the second-filed case, originally filed as *Sanai v. McDonnell,* Central District of California no. 18-cv-05663 and Ninth Circuit no. 19-55429 are Los Angeles County Sheriff JAMES MCDONNELL and Los Angeles County Superior Court Judge MARK BORENSTEIN in their individual and official capacities. During the litigation McDonnell lost an election and was at the request of Sanai dismissed without prejudice. See App. B.

## TABLE OF CONTENTS

## TABLE OF CONTENTS OF APPENDIX

## TABLE OF AUTHORITIES

### Cases

**Statutes**



**Other Authorities**

**Rules**



**Constitutional Provisions**

IN THE
# Supreme Court of the United States

---

CYRUS MARK SANAI,
*Petitioner,*
v.
D. JOSHUA STAUB, an individual; FREDERICK BENNETT, an individual; PHU CAM NGUYEN, an individual; CHRISTOPHER MCINTIRE,
*Respondents,*

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT
NO. 19-55427

---

CYRUS MARK SANAI,
*Petitioner,*
v.
MARK BORENSTEIN, an individual;
*Respondent,*

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT
NO. 19-55429

---

## PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

---

On Petition for a Writ of Certiorari to the Ninth Circuit Court of Appeals

---

## PETITION FOR A WRIT OF CERTIORARI

This petition involves, among other issues, a conflict between the Ninth Circuit Court of Appeals and the Sixth, Seventh, Eleventh and Federal Circuit Courts of Appeals regarding a critical issue of judicial integrity: whether disclosure by a judge of facts that might give grounds for recusal motion is required. This issue can arise where a judge knows facts which, on their own or together with other facts, would be relevant to the question for disqualification. It can also arise where a party provides admissible evidence of a past or existing professional or personal relationship between a federal judge and a party to or witness in the the litigation, and requests the federal judge disclose the relationship, including whether it is still ongoing. A third scenario, which is particularly associated with the Ninth Circuit, is where the a party blows the whistle on judicial misconduct and seeks to forestall, as former Circuit Judge Reinhardt clerk Olivia Warren testified, the consequences of "alienating his powerful network of clerks....[and] that the judge would exact revenge on me."

The Sixth and Eleventh Circuit have answered this question in the affirmative. *Am. Textile Mfrs. Inst., Inc. v. Limited, Inc.,* 190 F.3d 729, 741 (6th Cir. 1999); *Porter v. Singletary,* 49 F.3d 1483, 1489 (11th Cir. 1995). The Seventh Circuit has agreed that the obligation to uncover conflicts and disclose them is on the jurist. *Ceats, Inc. v. Continental Airlines, Inc.,* 755 F. 3d 1356 (Fed. Cir. 2014) (magistrate judge has duty to disclose relationship with law firm under obligations analogous to 28 U.S.C. §455). All circuits agree this includes an obligation to disclose matters partially or wholly in the public record. *Am. Textile Mfrs. Inst.,*

*Inc., supra* at 742 (6th Cir.1999) (*quoting Porter v. Singletary,* 49 F.3d 1483, 1489 (11th Cir. 1995)); *Listecki v. Official Comm. of Unsecured Creditors,* 780 F.3d 731, 750-1 (7th Cir. 2015).

There is quite simply no principled argument that disclosure is not required, for the reasons articulated in *Listecki* and *Am. Textile Mfrs. Inst., Inc., supra.* While this Court is not bound by lower court interpretations, it nonetheless has historically followed the same practice.

The Ninth Circuit Court of Appeals and the district courts it supervises reject this authority. This is particularly concerning because of the historical record of sexual harassment by two of its most prominent members, disgraced former Chief Judge Alex Kozinski, and his best friend the late Circuit Judge Stephen Reinhardt, and the enablement and protection of this misconduct by their colleagues. Both Kozinski and Reinhardt, were serial sexual harassers for decades, with the full knowledge of the Circuit Judges in Pasadena and on the Judicial Council. *See, e.g.* J. Donohue, "I Was a Federal Judge. My Former Colleagues Must Stop Attending Federalist Society Events," Slate.com, November 12, 2019.

The efforts to expose and restrain Judge Kozinski spanned over two decades, and Petitioner Sanai was one of the key players who sought to expose him, along with the late head of the Administrative Office of the Courts, L. Ralph Mecham. Indeed, as discussed below, this petition is one of many legal and administrative proceedings and legislative hearings that emerged from Judge Kozinski's misconduct and eventual exposure. Though Sanai also informed the world that Reinhardt engaged in similar conduct (and protected Kozinski), it was not until a Congressional hearing last year in which one of Reinhardt's clerks, Olivia Warren,

recounted Reinhardt's sexual harassment and rage at the treatment of his friend that these accusations were given public credence.

Sanai filed motions for disclosure and recusal in both cases prior to the case being assigned to a panel. App. M-O. One of the judges assigned to the Ninth Circuit panel, Paul Watford, is a former clerk of former judge Kozinski. Id. Judge Watford and the other panel members refused to recuse or disclose his current relationship with Kozinski. App. A-B.

But the failure to disclose was not only that the Ninth Circuit level. The District Court judge to which the cases were assigned, R. Gary Klausner, had previously been defended in litigation against him by an attorney, Frederick Bennett, who was a defendant in the first filed case and a necessary witness in the second case. Published authority provides that in this situation, the judge must recuse himself under 28 U.S.C. §455. *Smith v. Sikorsky Aircraft,* 420 F.Supp. 661 (C.D.CA 1976). *Smith* has been followed by state and federal courts. *See Atkinson Dredging Co. v. Henning,* 631 So.2d 1129 (Fla C. A. 1994); *Potashnick v. Port City Const. Co.*, 609 F. 2d 1101 (5th Cir. 1980).

## ORDERS BELOW

The orders of the Ninth Circuit Court of Appeals affirming the District Court and denying the petitions for rehearing and rehearing en banc are set forth in Appendices ("App.") A-D. Certain relevant orders of the District Court are set out in App. E-J, with orders for *Sanai v. Staub* first in reverse chronological order, then orders of *Sanai v. Borenstein* in reverse chronological order. Motions for disclosure

and disqualification filed in the Ninth Circuit Court of Appeals are set out in App. M-N.

## BASIS FOR JURISDICTION

The Ninth Circuit Court of Appeals issued its decisions affirming the orders of dismissal of the District Court and denying post judgment motions on April 13, 2020. App. A-B. Timely Petitions for Rehearing and Rehearing en Banc were denied on August 24, 2020. App. C-D. Petitioner invokes this Court's jurisdiction under 28 U.S.C. §1254(1).

## RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS AND RULES

The relevant statutory and constitutional provisions and judicial rules are set forth in App. P, and include the Fifth Amendment to the United States Constitution, 28 U.S.C. §455, 42 U.S.C. §1983, and 28 U.S.C. §2201.

## STATEMENT OF THE CASE

### A. *Sanai v. Staub*

#### 1. The Lawsuit and Defendant Frederick Bennett

The complaint in the first case, *Sanai v. Staub,* case no. 18-2136 has two related causes of action, for violation of civil rights under 42 U.S.C. §1983 and a declaratory judgment arising from bad faith prosecution of a claim of civil contempt for failure to comply with a jurisdictionally void order. [Docket #1.] It included the following allegations regarding defendant Frederick Bennett:

4. Defendant, FREDERICK BENNETT ("BENNETT"), is an attorney who is the lead "Court Counsel" for the Los Angeles County Superior Court.....He represents and has represented current judges of the Superior Court and a judge who was elevated to the Court of Appeals, Elizabeth Grimes ("Grimes.").....

.....

## COMMON ALLEGATIONS

....

7. The first "Court Counsel" hired was defendant BENNETT. Once the authority to set up a separate legal function within the Superior Court was approved, the same cabal of judges created two other functions for his office that County Counsel had never performed. The first function was to completely centralize the disposition of all motions for disqualification with BENNETT. He became the internal arbiter of whether or not a trial court judge was required to disqualify himself or herself under the peremptory and for-cause procedures set forth in Cal. Code Civ. Proc. §170.1-6. If a disqualification statement for cause were presented, BENNETT was originally directed to appear as counsel for the judge and fight the motion. After Plaintiff challenged that practice, BENNETT would ghost write standard responses. The second function of the office was to designate and track individuals and entities which challenged the conduct of the judges of the Court or who embarrassed the judges of the Court by reversing trial court judges repeatedly in the same or related cases or successfully disqualified the judges for cause. The responsibility of Court Counsel to handle "vexatious or difficult" litigants is part of the official description of the job.

8. Court counsel are technically self-employed lawyers who bill for time as inside-outside counsel. Where necessary Court Counsel will hire law firms to represent the interests of the Superior Court. Much of this work is typical legal work for any governmental entity. However, the Superior Court will, when its interests in a case are threatened, engage counsel to tell the Superior Court judge what to rule.....

9. When a litigant or a lawyer is identified as a "vexatious or difficult" litigant or lawyer, Court Counsel will open up a file and monitor the activities of such litigant or lawyer, with the aim of ensuring that the litigant or lawyer does not succeed in any cause brought before the Superior Court, and to look for opportunities to

> designate the litigant as a "vexatious litigant" formally or informally, or to concoct fake charges of litigation misconduct to impose punitive measures on them. This practice includes contacting and coordinating with lawyers in private practice and who represent government entities to jointly attack targeted lawyers and litigants.
>
> ....
>
> 11. In order to impose punitive measures on a Special Case or ordinary "difficult" litigant or lawyer, the Court Counsel must act through judges and commissioners who are assigned cases involving such targets....

[18-2136 Docket #1]

The lawsuit alleged that Bennett was instructed to retaliate against Sanai by then Los Angeles County Superior Court trial judge Elizabeth Grimes, after Sanai had her thrown off of a case for bias by the Court of Appeal. This rebuke caused her pending appointment to the Court of Appeal to be put on hold for five years.

> 19. Sanai research Grimes' background and discovered that she was co-owner of small empire of apartment buidlings in Los Angeles developed by her husband, Ron Toews. She and her husband had a direct financial interest in seeing Sanai's lawsuit be dismissed, and indeed her husband's buildings used UDR's services. Sanai filed a disqualification for cause statement in in 2003 against Grimes based on her financial interest, and the fact that her law firm had represented a defendant that UDR has forced into the litigation, The Irvine Company. BENNETT formally appeared in the litigation as attorney for Grimes and filed an opposition. The case was transferred for determination in the Orange County Superior Court by Judge McEachen. The disqualification statement that McEachen reviewed was not the disqualification statement filed by Sanai, but a document fraudulent altered by the Superior Court clerk's office under the supervision of BENNETT. Judge McEachen denied the disqualification, making assertions about the contents of the altered disqualification document that did not reflect the facts asserted and demonstrated by Plaintiff.

21. Grimes imposed six figure attorney fees against Sanai after allowing Saltz's firm relief from missing the deadline for filing. This ruling was based on Grimes' hatred of Sanai. As the Court of Appeal pointed out : "The trial court commented: "Plaintiff has proliferated needless, baseless pleadings that now occupy about 15 volumes of Superior Court files, not to mention the numerous briefs submitted in the course of the forays into the Court of Appeal and attempts to get before the Supreme Court, and not one pleading appears to have had substantial merit. The genesis of this lawsuit, and the unwarranted grief and expense it has spawned, are an outrage."". *Sanai v. The U.D. Registry, Inc.,* B170618 February 16, 2005 Cal. App. 2 Dist. unpublish.) at 31 fn. 36. In this appeal .....the Second Appellate District took apart Judge Grimes legal analysis step by step. In doing so, it mocked Grimes reflexive citation of cases that contradict her analysis: "The suggestion the holding in *Sanabria v. Embrey, supra,* 92 Cal.App.4th 422, is limited to voluntary dismissals from which there is no right of appeal, and therefore does not apply in this case because Mr. Sanai could appeal from the final orders of dismissal entered in favor of the Irvine Entities, even if otherwise intelligible, is belied by the analysis in Sanabria itself....." *Sanai v. The U.D. Registry, Inc.,* B170618 (February 16, 2005 Cal. App. 2 Dist. unpublish.) at 18-19 fn 22.

22. In the appeal addressing the final judgment, Sanai reversed every single ruling of the trial court adverse to him. *Sanai v. Saltz* 2005 WL 151401 (Cal.App. 2 Dist). After again quoting the language of Grimes, castigating Sanai, it disqualified Grimes in the interests of justice under Code Civ. Proc.§170.1(c).

23. After Sanai prevailed, he wrote a letter to Grimes dated June 29, 2005 demanding that she retract and apologize for her statement castigating him, as Sanai knew it would be used against him in other contexts. Grimes was infuriated, not only because of her humiliation, but also because she was in 2005 being evaluated by the Judicial Nomination Evaluation Commission (the "JNE Commissio") for elevation to the Court of Appeal. In California the JNE Commission issues letters to randomly selected attorneys asking for feedback on judicial nominees and prepares a report. Grimes' application received significant negative responses from defense counsel who had appeared before her when she was assigned to criminal courts, and her nomination was in serious trouble. The disqualification for cause made further progress on her nomination

impossible. Grimes demanded that Sanai be identified as a Special Case by Court Counsel and that full efforts be made to (1) prevent Sanai from succeeding in *Sanai v. Saltz* on remand, and (2) to disbar or otherwise cripple Sanai as an attorney.

24. BENNETT filed a bar complaint dated July 7, 2005, claiming, among other things, that Judge Grimes was a "represented party" and that SANAI had violated professional responsibility rules by contacting her ex parte without notice to him, as her counsel, or the other side.

.....

26. The California Bar Association investigated BENNETT's first bar complaint and found it frivolous and unsupported by the actual facts. At the instruction of Grimes and the presiding judge at the time, BENNETT began looking for other grounds to file bar complaints against Sanai. He contacted the junior Saltz, who put him in contact with an attorney, William Gibbs, who was then litigating a family dispute against Sanai in Washington State. In an email dated August 9, 2005, BENNETT acknowledged filing a bar complaint against Sanai on behalf of Grimes and the Superior Court, and agreed to file go directly to the Chief Trial Counsel of the California Bar Association to get Sanai disbarred. BENNETT directly contact the Chief Trial Counsel, complained about the inaction on the first complaint, and attached his emails correspondence with Gibbs. Contrary to California Court Rules, no notice of this action by the Superior Court was given to Sanai and he would not learn about it until 2015. The Bar Association ignored this illegal, secret report.

.....

39. While proceedings were ongoing in the Superior Court, Judge Grimes had utilized her contacts in the federal judiciary to cause Judge Alex Kozinski to attack Sanai in print in 2005. Sanai filed misconduct complaint against Kozinski, pointing to his use of his private server to distribute derogatory information about Sanai. Circuit Judge Schroeder, then the Chief Judge, issued an order in 2006 finding that Kozinski did not have any private server. Sanai filed judicial misconduct complaints against Kozinski and Schroeder, then discovered the pornography directory of Judge Kozinski's server while the Ninth Circuit Judicial Council was ignoring the second judicial misconduct complaint. Sanai revealed this information to the Los Angeles Times which printed an article. Kozinski filed a misconduct

complaint against himself, which resulted in a travesty of an investigation. Sanai filed additional misconduct complaints against Kozinski, Schroeder, and other judges who were participating in related misconduct, including covering up his distribution of pornography. The Ninth Circuit Judicial Council issued an order reprimanding Sanai, then Circuit Executive Cathy Catterson put maximum pressure on the California Bar Association to prosecute Sanai for misconduct.

40. Jane Kim, the newly appointed Chief Trial Counsel, overruled prior Chief Trial Counsel's and instigated proceeding against Sanai as requested by the Ninth Circuit Judicial Council and regarding *Sanai v. Saltz.* The Judicial Council refused to provide any records concerning Sanai's complaints and refused to allow anyone from the Court to testify. After presentation of the Chief Trial Counsel's case in 2014, in 2015 the California Bar Court dismissed the charge, finding that to the extent that it could determine the contents of the misconduct complaints filed by Sanai, they were clearly justified. As the world knows, Sanai's additional accusations against Kozinski which the Judicial Council refused to investigate were last year confirmed by clerks and one other federal court judge, and Kozinski resigned in disgrace.

[18-2136 Docket No. 1]

### 2. The Trial Court Judge was a Client of the Defendant

The action was assigned to Judge R. Gary Klausner, who was prior to appointment to the federal bench a presiding judge of the Los Angeles County Superior Court. *See* www.fjc.gov/history/judges/klausner-robertgJudge. Bennett worked for Judge Klausner; one of Bennett's duties is to prepare pleadings in all disqualification motions for judges in the Los Angeles County Superior Court. In *Infant & Nutritional Products, Inc. v. Sup. Ct.* (B154321 Div. 7 2nd App. Dist. Unpub.) Bennett defended a decision of Judge Klausner regarding a peremptory disqualification. *See* www.metnews.com/articles/late030802.htm. *See* Register of

Action for B154321 at courts.ca.gov. Bennett also represented Judge Klausner as counsel of record in at least two federal lawsuits, *Rudder v. Klausner,* CACD Case No. 93-cv-03790, *and Thymes v. Klausner,* No. 2:94-cv-05715-IH-AJW. [18-2136 Docket #13, Sanai Decl.¶5; Exhibits A-C thereoto.]

### 3. The Motions to Recuse in the District Court

After Judge Klausner was assigned, motions to recuse him were filed. [18-2136 Docket #8, 11] The motions were denied on the grounds that there were not specific facts of the past and future relationship set out. [18-2136 Docket #12, App. H.] Sanai then moved for Judge Klausner to disclose the facts of his relationship with Bennett. [Docket #16, 17.] Klausner denied the motion. [18-2136 Docket #19, App. G.]

Judge Klausner issued an order for dismissal for failure to prosecute the lawsuit by non-service. [18-2136 Docket #20, App. F.] Sanai responded that the grounds for non-service was the refusal of Judge Klausner to recuse. [Docket #21.] An order of dismissal was entered. [18-2136 Docket #22.]

A motion to vacate the order of dismissal on the grounds that Judge Klausner was required to recuse and disclose, and having failed to disclose, must in any event recuse or, in the alternative, enter judgment, was filed. [Docket #23.] The Court entered judgment. [Docket #27.] On February 25, 2019--28 days after ENTRY of the judgment--a motion seeking to vacate the judgment of dismissal was filed under Fed. R. Civ. P. 60(b)(6), citing *Liljeberg v. Health Services Acquisition Corp.,* 486 U.S. 847, 863, (1988). [18-2136 Docket #29.] This was denied on March 26, 2019. [18-2136 Docket #29, App. E.]

A timely appeal was perfected.

### 4. The Proceedings in the Court of Appeals

Sanai filed an unopposed brief in his appeal of *Staub,* docket no. 19-55427, arguing that Judge Klausner had a duty to disclose his relationship with defendant Bennett.

Though the Ninth Circuit has held that on appeal from a dismissal for failure to prosecute, earlier-entered interlocutory orders are not subject to review "whether the failure to prosecute is purposeful or is a result of negligence or mistake, " Sanai argued that this should not apply to orders for disqualification as a matter of due process. *Al-Torki v. Kaempen,* 78 F.3d 1381, 1386 (9th Cir. 1996). But this argument was not necessary for Sanai to prevail, as he also filed a post-judgment motion to vacate the judgment under FRCP 60(b)(6) based on Judge Klausner's refusal to disclose and recuse, which is explicitly permitted under *Liljeberg, supra,* at 863-4. On October 9, 2019 Sanai filed a motion to recuse a majority of the judges of the Ninth Circuit, and the twelve circuit judges as to whom Sanai has not determined a reason for disqualification or any judge who refused to recuse, for specific disclosures to be made. App. M.

## B. *Sanai v. McDonnell* (now *Sanai v. Borenstein*)

### 1. The District Court Proceedings

The complaint in the second filed action, *Sanai v. McDonnell* (now *Sanai v. Borenstein*), case no. 18-5663, has three causes of action, only the second and third of which are relevant here. The second cause of action was under 42 U.S.C. §1983,

and the third cause of action was for a declaratory judgment under that statute and under 28 U.S.C. §2201.

After the original complaint was filed, a motion for temporary restraining order and a temporary injunction was filed. [Docket #1 (complaint), Docket #4 (motion for preliminary injunction and temporary restraining order)]. The motion was denied by Judge Wilson, who summarized the case on August 1, 2018 as follows:

> On June 27, 2018, Plaintiff Cyrus Sanai filed a complaint and an ex parte application for a Temporary Restraining Order ("TRO") and Preliminary Injunction against Defendants Sheriff James McDonnell and Judge Mark Borenstein. Dkt. 4. The Court denied Plaintiff's request for a TRO on the ground that he did not show irreparable harm, as required. Dkt. 11. For the reasons stated below, the Court now DENIES Plaintiff's request for a preliminary injunction.
>
> II. FACTUAL BACKGROUND
>
> Plaintiff alleges that several federal and state judges, including former Ninth Circuit Judge Alex Kozinski, Justice Elizabeth Grimes of the California Court of Appeal, and Judge Borenstein of the Superior Court, have engaged in a nearly twenty-year vendetta to "destroy [him] professionally." Dkt. 4 at 11:17-18.
>
> Plaintiff is presently attorney of record for the plaintiff in a Superior Court matter captioned as United Grand Corporation v. Malibu Hillbillies, LLC, et al., Los Angeles Superior Court Case No. BC554172. Certain matters in the state court proceedings have been assigned to Judge Borenstein.
>
> During the course of the state court proceeding, Judge Borenstein imposed monetary sanctions, which Plaintiff contends were the result of the "vendetta" against him. Dkt. 4 at 24-26. After Plaintiff failed to pay the sanctions, Judge Borenstein ordered a contempt trial, found Plaintiff liable for contempt....

[18-5663 Docket #33 at 1-2.]

Judge Wilson then made his first mistake of many. He found that "after Plaintiff exhausted his appeals to the California Court of Appeal and the California Supreme Court – issued a bench warrant for Plaintiff's arrest." *Id.* This finding of fact was not supported by substantial evidence, and was repudiated by Judge Klausner.

Judge Wilson rejected the argument that the *Rooker-Feldman* doctrine applied. [18-5663 Docket #33 at 3 (bold emphasis added).]

Here Judge Wilson demonstrated his confusion—the pending writ petitions were the appellate challenge to the contempt judgment.

Judge Wilson denied the motion on grounds of *Younger* abstention and judicial immunity. Sanai filed a motion to amend the preliminary injunction findings of facts and conclusions of law, pointing out that the Court had failed to acknowledge the extraordinary circumstances and biased tribunal exceptions, and that judicial immunity is immunity from damages, not immunity from a declaratory judgment or subsequent injunctive relief. [Docket #38.] This was denied summarily. [18-5663 Docket #40.]

Motions to dismiss were filed. [18-5663 Docket #30, #39.] These motions were thwarted by the filing of a First Amendment Complaint. [Docket #41.] A related case notice was filed by Defendants, and the case was transferred to Judge Klausner. [Docket #43, #47.] New motions to dismiss were filed. [Docket #44-5.] Oppositions were filed. [Docket #53-4.]

Sanai then filed a motion for disclosure by Judge Klausner of his relationship with, and knowledge of the facts regarding Bennett. Bennett appeared throughout the First Amended Complaint and had an entire section of the complaint devoted to

him with allegations that paralleled those in the first complaint, quoted above. [18-5663 Docket #41 at 3-7.] In this case, Bennett was a necessary witness. [18-5663 Docket #64 at 2-5.]

The motion was denied. [18-5663 Docket #65.] Sanai then filed a motion for disqualification arguing that the combination of the prior representation by Bennett of Klausner with Judge Klausner's refusal to disclose anything about it was grounds for disqualification. [18-5663 Docket #66.] The motion was denied by Judge Snyder. [18-5663 Docket #68.]

Judge Klausner granted the motions to dismiss, but altered the repeated mischaracterization by Judge Wilson of the state court appellate proceedings:

> Plaintiff is currently subject to a contempt order in Superior Court of Los Angeles County("Superior Cout "), and a bench warrant has been issued for his arrest. Following the contempt hearing, Plaintiff filed petitions for writ of mandate, writ of habeas cmpus, and a stay of the contempt order inthe Califomia Court of Appeal. Plaintiff alleges that these proceedings are ongoing. Nevertheless, Plaintiff brings this action against Superior Comi Judge Mark Borenstein ("Borenstein") and Los Angeles County Sheriff James McDonnell ("McDonnell") (collectively, "Defendants") seeking an injunction that would stay enforcement of the contempt order. Plaintiff also seeks declaratory judgment that the state court proceedings against him violated his due process rights.
>
> Plaintiff is the attorney of record for the plaintiff in an ongoing state court matter captioned as *United Grand Corp . v. Malibu Hillbillies,* LLC, No. BC 554172 (L.A. Super. Ct. Aug. 8, 2014) ("United Grand"). Defendant McDonnell is a Los Angeles County Sheriff in charge of detentions for civil contempt cases. Defendant Borenstein is a judge in the Superior Court....
>
> Plaintiff assertss that Defendant Borenstein fabricatedthe record to impose sanctions against Plaintiff. Plaintiff further alleges that Defendant Borenstein; the Court Counsel for the Superior Court; Judge Elizabeth Grimes, who sits on the Second District of the Califomia Court of Appeal; and several other judges are a pati of a

> wide-ranging conspiracy within the Superior Comi to punish and disbar Plaintiff. *(Id.)*
>
> When Plaintiff did not pay the sanctions, Defendant Borenstein held Plaintiff in contempt and ultimately sentenced him to imprisonment lmtil he complied with the sanction orders. (FAC ¶45 .) On April 12, 2018, Plaintiff petitioned the Second District of the Califomia Court of Appeal for (1) writ of mandate, (2) writ of habeas cmpus, and (3) an immediate stay ofthe contempt order. (FAC ¶59-61.) **On April 23, 2018, the Court of Appeal denied Plaintiffs request for an immediate stay of the contempt order, and the California Supreme Court denied review of Plaintiffs petition for an immediate stay ofthe contempt order on April 25, 2018. (FAC ¶59.) The petition for writs of mandate and habeas corpus remain ongoing in the Court of Appeal. *(Id.)***

[Docket #70 at 1-2 (bold emphasis added), App. J J2-J3]

Judge Klausner held that *Younger* abstention applied. He addressed the extraordinary circumstances and biased tribunal exceptions by holding that the former only applied to challenges of statutes, and the latter only applied if the bias arose from a financial interest. [18-5663 Docket #70 at 3-4, App. J 4-5.] However, he also found that as to the stay request, the *Rooker-Feldman* doctrine applied because it was a final resolution. *Id.* at 4, J5.

Because no judgment of dismissal was entered, Sanai filed a motion to amend the order of dismissal, for a new trial, and a preliminary injunction combined with a request to enter judgment. [18-5663 Docket #71-2.]

Judge Klausner entered a judgment of dismissal on January 25, 2019. [Docket #87.] He also entered an order denying the motion to vacate or amend the dismissal order, providing a THIRD rationale for dismissing the complaint that differed materially from the prior two explanations, the *Rooker-Feldman* doctrine:

> Plaintiff contends it is entitled to relief under Rule 60(b) because the Court made several errors in the Dismissal Order.... Upon

> reconsideration, the Court finds that the Dismissal Order contained certain oversights.
>
> Nevertheless, after further review of relevant case law, the Court now finds that the *Rooker-Feldman* doctrine applies- albeit for different reasons than in the Dismissal Order-and prevents the Court from exercising jurisdiction over Plaintiff's entire case. The Court need not therefore address Plaintiff's additional arguments.

[18-5663 Docket #86 at 2-5.]

With judgment entered on January 25, 2019, Sanai filed a motion to vacate the judgment on February 21, 2019, along with renewed motions for preliminary injunction. [18-5663 Docket #88.] The motions were denied on the merits on March 26, 2019. [18-5663 Docket #104, App. G.] A notice of appeal, which was immediately amended due to an error, was filed on April 15, 2019. [18-5663 Docket #105-6.]

### 2. The Appellate Proceedings

Sanai filed a motion to recuse Ninth Circuit judges on the same grounds articulated in *Sanai v. Staub,* along with a request for judicial notice. App. N-O. In its decision, the Ninth Circuit rejected the contention that Rooker-Feldman applied, but agreed with the trial court that the judicial bias exception only applies if there is a financial interest bias in the case, and no other reason.

## WHY THE PETITION SHOULD BE GRANTED

### A. The Ninth Circuit Court of Appeals' Refusal to Recognize a Duty of Disclosure Conflicts with the Published Decisions of the Sixth, Seventh, Eleventh and Federal Circuits.

The refusal of judges in the Ninth Circuitto disclose relevant information such as the current relationship with a witness or attorney of another party is in conflict with the unanimous views of every other circuit to have addressed the issue. The Sixth and Eleventh Circuit have found such a duty to exist:

> We believe instead that litigants (and, of course, their attorneys) should assume the impartiality of the presiding judge, rather than pore through the judge's private affairs and financial matters. Further, judges have an ethical duty to "disclose on the record information which the judge believes the parties or their lawyers might consider relevant to the question of disqualification." *Porter v. Singletary,* 49 F.3d 1483, 1489 (11th Cir. 1995). . . . [The judge] possibly did not consider the matter sufficiently relevant to merit disclosure, but his non-disclosure did not vest in [the parties] a duty to investigate him.

*Am. Textile Mfrs. Inst., Inc. v. Limited, Inc.,* 190 F.3d 729, 741 (6th Cir. 1999).

The Seventh Circuit has agreed that the obligation to uncover conflicts and disclose them is on the jurist. *Ceats, Inc. v. Continental Airlines, Inc.,* 755 F. 3d 1356 (Fed. Cir. 2014) (magistrate judge has duty to disclose relationship with law firm under obligations analogous to 28 U.S.C. §455). This obligation, the Seventh Circuit has ruled, includes an obligation to disclose matters in the public record:

> The onus is on the judge to ensure any potentially disqualifying information is brought to the attention of the litigants.

> 28 U.S.C. § 455(c) ("A judge should inform himself about his personal and fiduciary financial interests."); *see also Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 873 n. 9, 108 S.Ct. 2194, 100 L.Ed.2d 855 (1988) ("[N]otwithstanding the size and complexity of the litigation, judges remain under a duty to stay informed of any personal or fiduciary financial interest they may have in cases over which they preside."). It would be unreasonable, unrealistic and detrimental to our judicial system to expect litigants to investigate every potentially disqualifying piece of information about every judge before whom they appear. "[L]itigants (and, of course, their attorneys) should assume the impartiality of the presiding judge, rather than pore through the judge's private affairs and financial matters.... `Both litigants and counsel should be able to rely upon judges to comply with their own Canons of Ethics.'" *Am. Textile Mfrs. Inst., Inc. v. Limited, Inc.*, 190 F.3d 729, 742 (6th Cir.1999) (*quoting Porter v. Singletary*, 49 F.3d 1483, 1489 (11th Cir. 1995)).

*Listecki v. Official Comm. of Unsecured Creditors*, 780 F.3d 731, 750-1 (7th Cir. 2015).

This Court has not directly addressed this issue. However, the practice of this Court's justices has been to address motions for recusal with disclosure, and to disclose reasons for recusal when not obvious. *Cheney v. U.S. Dist. Ct. for D.C.*, 541 U.S. 913 (Scalia, J.); S. Harris, Letter to Counsel *in Colorado Department of State v. Micheal Baca, et al.* (March 10, 2020) (explaining recusal of Justice Sotomayor based on friendship with party).

Sanai requested disclosure of the current relationship between Klausner and Frederic Bennett in this case and the other cases. Under relevant federal precedent, a prior attorney-client relationship between a judge and a party or witness is grounds for recusal. *Smith v. Sikorsky Aircraft,* 420 F.Supp. 661 (C.D.CA 1976); *Atkinson Dredging Co. v. Henning,* 631 So.2d 1129 (Fla C. A. 1994); *Potashnick v. Port City Const. Co.,* 609 F. 2d 1101 (5th Cir. 1980). Judge Klausner

refused to disclose in this case, as in the other two lawsuits, *Sanai v. Staub* and *Sanai v. McDonnell.*

Similar results have occurred in cases prior to *Smith. See, e.g. Texaco v. Chandler,* 354 F.2d 655 (10th Cir.1965) (judge disqualified opposing counsel simultaneously representing judge in his judicial capacity in unrelated lawsuit); *Rapp v. Van Dusen,* 350 F.2d 806 (3d Cir. 1965 en banc) (judge disqualified when previously represented by opposing counsel in his judicial capacity).

The disclosure requested of the appellate judges focused on their past and any ongoing relationship with former Chief Judge Kozinski; their knowledge of the sexual harassment by Judge Kozinski and the late Judge Reinhardt; and their participation in the unsuccessful effort to disbar Sanai. App. M-O. None of Judges answered these questions, even though the involvement of the Judge Tashima and Bybee in the affairs of the Ninth Circuit Judicial Council, and Judge Watford's relationship with former Judge Kozinski were matters relevant to the appearance or lack of appearance of impartiality under 28 U.S.C. §455.

### B. The Ninth Circuit Court of Appeals History of Enabling Open Sexual Harassment Requires Imposition of a Duty of Disclosure to Protect Whistleblowers and Judicial Employees.

For more than two decades, former Chief Judge of the Ninth Circuit Alex Kozinski sexually harassed and hazed his clerks, colleagues and third parties within his judicial chambers, the courthouses, and in public view. This was no secret, as one former Ninth Circuit magistrate judge explained:

> A distinct minority of judges behaving outside the norms with the silent acquiescence of the judiciary is reminiscent of the recent judicial sexual harassment scandal. Then, as here, some judges were aware of a minority of colleagues in their midst engaged in offending conduct—

> yet said and did nothing. Because of their silence, sexual harassers harmed more victims, and the judiciary's reputation was stained when the scandal finally exploded.

J. Donohue, "I Was a Federal Judge. My Former Colleagues Must Stop Attending Federalist Society Events," Slate.com, November 12, 2019, found at slate.com/news-and-politics/2019/11/federalist-society-federal-judges-unethical.html (underlined passage links to a story about Judge Kozinski's sexual harassment).

Though Sanai had publicly accused Judge Reinhardt of participating in Judge Kozinski's misconduct, former Magistrate Judge Donohue's article was the first public acknowledgement that Judge Kozinski's misconduct was not a solo affair. Sanai's two motions for disclosure filed with the Ninth Circuit set out this sorry tale; the next six paragraphs are taken from App. M, Sanai Decl. at M22-M48; App. N at N23-N51.

One of Kozinski's most potent tools for sexual harassment was pornographic videos he streamed directly from pornographic websites on the Internet, and when that proved too risky, from a server he set up in his home and which he accessed with his computers in his chambers. From no later than 1998 the members of the Ninth Circuit Judicial Council had become aware of Kozinski's improper use of the Internet and Kozinski's abuse of his clerks. However, rather than rein Kozinski in, at every step of the way the Judicial Council sought both the enable his access to pornography while concealing its knowledge of what Kozinski was using it for. By 2001 the issue had burst out in the open, thanks to Kozinski's shutting down a firewall blocking Internet access, and his picking a public fight with L. Ralph Mecham , then the head of the Administrative Office of the United States Courts. The matter even spilled into a Congressional hearing.

Kozinski won the battle over unfettered access to pornography, in that the Judicial Conference agreed to stop tracking the identity of the large video files that were downloaded over the Ninth Circuit's Internet system, but Kozinski came to understand that there was no way to conceal or block system administrators from accessing his history of the pornography sites he visited from the Ninth Circuit's internal network. Around 2002, Kozinski set up a server at his home on which he placed his carefully curated pornography that he accessed via his computer in his chambers. At this point, the primary purpose of accessing the porn was to haze and sexually harass his female clerks. In 2005 Sanai discovered a different misuse by Kozinski of this server, and filed a judicial misconduct complaint against Kozinski. A year later, Judge Kozinski's predecessor as Chief Judge, Marie Schroeder, issued an order dismissing the complaint based on the fake finding of fact that Kozinski apologized for his misconduct; she also found that there was no evidence of the existence of this server or the documents on it. Sanai eventually discovered that the reason for Schroeder's denial of its existence was, as Schroeder and the members of the Ninth Circuit Judicial Council knew, that Kozinski was using it to stream pornography into his chambers, and the Ninth Circuit Judicial Council (on which Kozinski served) intended to enable this conduct. Realizing that the Ninth Circuit Judicial Council would never take action, Sanai blew the whistle on Kozinski through the *Los Angeles Times.*

However, in a surprise move, Chief Justice Roberts ordered that the complaint, and any other complaint covering the same subject matter, be transferred to the Third Circuit Judicial Council. The Ninth Circuit Judicial Council refused to transfer the pending complaint because it stated it was

unrelated, but then stayed it because it found that it was in fact related to the transferred complaint.

Both Sanai and Mecham filed misconduct complaints against Kozinski for his pornographic misconduct. The Third Circuit stated that the complaints had to be filed with the Ninth Circuit Judicial Council , and then transferred. When the complaints were filed with the Ninth Circuit Judicial Council, it violated Justice Roberts' order and refused to transfer Sanai's complaint because it found, that as to Sanai only, "exceptional circumstances did not exist", even though it covered the same subject matter as Kozinski's complaint against himself. Sanai contacted the this Court, and the Clerk stated that Justice Roberts' order transferred jurisdiction of any complaint involving Judge Kozinski's pornography to the Third Circuit Judicial Council.

Because Sanai was excluded from participating in the Third Circuit proceedings, the result was a whitewash. In particular, based on Kozinski's testimony under penalty of perjury that he had never shown the contents of his porn server to anyone else, the Third Circuit Judicial Council found "credible" that Kozinski had not shown his pornography collection to any else. *See In re Kozinski,* Docket No. 03-08-90030, Third Circuit Judicial Council, June 5, 2009. In fact, the members of the Ninth Circuit Judicial Council knew this to be false, and Sanai directly alleged otherwise and could have shown how it would be proved. Kozinski's false testimony constituted criminal perjury and judicial misconduct warranting impeachment and removal. It would also constitute grounds for him to be disbarred as California attorney. After Kozinski's wrist was slapped, Kozinski issued press released claiming vindication. Sanai's misconduct complaints were then assigned to

Judge Reinhardt, who found Judge Kozinski innocent and the allegations against Judge Kozinski's enablers barred. He recommended sanctions, and the Judicial Council censured Sanai and sought his disbarment. That turned out to be an epic fiasco, and resulted in Sanai learning the history of Elizabeth Grimes' simultaneous efforts, in concert with Kozinski, to secretly disbar Sanai after he succeeded in having her thrown off a case, as discussed above.

Two years after the Judicial Council's efforts to disbar Sanai collapsed, Kozinski's sexual harassment misconduct was laid bare by The Washington Post. M. Zapotosky, "Prominent appeals court Judge Alex Kozinski accused of sexual misconduct," *The Washington Post,* Dec. 8, 2017; M. Zapatosky, "Nine more women say judge subjected them to inappropriate behavior, including four who say he touched or kissed them," *The Washington Post*, December 15, 2017. Because Judge Kozinski had stated under oath that he had never shown the contents of his pornography server in the Third Circuit Judicial Council proceedings, the stories, which included statements by former Kozinski and O'Connor clerk Heidi Bond that Kozinski had shown her such content, made his position on the Ninth Circuit untenable, and Kozinski resigned after judicial misconduct proceedings were initiated and transferred by Justice Roberts. *In Re Kozinski,* 2d Circ. Jud. Council, Dock. No. 17-90118-jm, February 5, 2018. Sanai then filed a lawsuit against Kozinski and, among others, the members of the Judicial Council who enabled his misconduct by retaliating against those who exposed his wrongdoing. *See* App. O

The scandal resulted in the appointment of a "working group" to review federal court rules and policies regarding sexual harassment. Notably the two

persons who had blown the whistle on Kozinski a decade ago, Sanai and Mecham, were ignored.

Last year, the House Subcommittee on the Courts revisited this issue when Kansas District Court Judge Murguia was the subject of a reprimand by the Tenth Circuit Judicial Council for sexual harassment that was derided by the legal community and Congress. *See In Re Murguia,* Tenth Judicial Council Order 10-18-90022. issued a letter to the Tenth Circuit and requested representatives of the Judicial Council to appear. When they refused, the House Subcommittee used the scheduled hearing to put on testimony by a clerk of the late Judge Reinhardt to document his sexual harassment, which was in part his apoplectic reaction to the exposure of his friend Kozinski. *See, e.g.* C. Demondson, "Former Clerk Alleges Sexual Harassment by Appellate Judge", *N.Y. Times,* February 14, 2020 at A-22. ("I was scared," Ms. Warren, a graduate of Harvard Law School, testified on Thursday, "scared of offending the judge and alienating his powerful network of clerks, scared of ending my legal career before it had even begun, scared that the judge would exact revenge on me.")

The fears expressed by Ms. Warren were rational and warranted. The treatment of Petitioner Sanai; the behind the scenes comments of Judge Reinhardt disclosed by Ms. Warren; and the resignation of Judge Murguia soon after the hearing in the face of questions about protection against his retaliation all demonstrate that whistleblowers require a rule of transparency that forces judges who are friends of the subjects of whistleblowing and legitimate accusations of misconduct to disclose their past and ongoing relationship with such disgraced jurists. In this case, Judge Watford is part of the "powerful network of clerks" who

doubtless have been alienated by Sanai's actions against Kozinski, and who should provide disclosure, at a minimum, of their ongoing relationship with the disgraced jurists. Without this and other protections, sexual harassment and other abuses by federal judges will continue.

Had the COVID-19 crisis not erupted soon after the House Subcommittee hearing in February of 2020, other proceedings were planned to focus on the ongoing problem of judicial misconduct. The press is laser-focused as well. Sanai's lawsuit against Kozinski and his enablers has received extensive coverage in the legal press. Other reporters are looking into judicial misconduct generally; for example earlier this month Reuters published a series analyzing state judicial misconduct regimes, "The Teflon Robe". *See* M. Behrens & J. Shiffman, "The Teflon Robe, Reuters, June 30, 2020, found at www.reuters.com/investigates/section/usa-judges/. Public attention on judicial misconduct has never been greater, and it is clear that the once the legislative calendar returns to normal, Congress will be taking another look at judicial discipline, which could involve removing the judiciary completely from the process.

The history of the misconduct of Judge Kozinski and Judge Reinhardt demonstrates that the threat and reality of judicial retaliation, and the absence of transparency in the area of judicial ethics and conflict of interest, is perhaps the strongest protector of judicial misconduct in the federal system. This Court should thus grant review to vindicate the law mandating judicial transparency and barring conflicts of interest, real or apparent, that prevail in state and federal courts other than the Ninth Circuit.

### B. The Panel Decision Conflicts with the Published Ninth Circuit Decisions Regarding Younger Abstention.

The panel dismissed *Sanai v. Borenstein* under *Younger* abstention. App. B. However, *Younger* abstention cannot be grounds for dismissal of a lawsuit alleging state court judicial bias because of this Court's authority establishing that an unconstitutional risk of bias by a trial or reviewing court (*see Caperton, supra*) creates an exception to *Younger* abstention even if it would otherwise apply.

The panel in this case cited *Gilbertson v. Albright,* 381 F.3d 965 (9th Cir. 2004) for the standards of invoking *Younger* abstention which are:

> the proceeding must be pending when the federal action is filed, it must be in the nature of a judicial proceeding that implicates important state interests (akin to those involved in criminal prosecutions), and it must afford the federal plaintiff an adequate opportunity to present his federal constitutional challenges.

*Gilbertson, supra,* at 975.

However, published Ninth Circuit authority recognizes that to meet the state interest exception, a plaintiff must be seeking to change existing state law. A lawsuit which asserts and as-applied challenge does not meet this standard set out by this Court. This was explained in *AmerisourceBergen v. Roden,* 495 F.3d 1143 (9th Cir. 2007), where the Ninth Circuit analyzed what it means to say that important state interests are implicated in a lawsuit for purposes of *Younger* abstention:

> The Supreme Court has noted that states "have important interests in administering certain aspects of their judicial systems," and that, in particular, states have an interest in "enforcing the orders and judgments of their courts." *Pennzoil,* 481 U.S. at 12-13, 107 S.Ct. 1519. **Taken out of context, these statements suggest that California's interest in enforcing the judgment in this particular case is of**

> **sufficient importance to meet *Younger's* second threshold element.** But we have made it clear that "[t]he importance of the [state's] interest is measured by considering its significance broadly, rather than by focusing on the state's interest in the resolution of an individual case." *Baffert v. Cal. Horse Racing Bd.*, 332 F.3d 613, 618 (9th Cir.2003); *see also Champion Int'l,* 731F.2d at 1408 ("[A] challenge[][to] only one ... order, not the whole procedure" is "not a substantial enough interference with [a state's] administrative and judicial processes to justify abstention.").
>
> Accordingly, binding precedent prevents the court from finding that California's interest in enforcing this one particular judgment — as opposed to a state's wholesale interest in preserving its procedure for posting an appeal bond, *see Pennzoil,* 481 U.S. at 12-14, 107 S.Ct. 1519, or its interest in retaining a particular contempt of court scheme, see *Juidice v. Vail,* 430 U.S. 327, 330, 335, 97 S.Ct. 1211, 51 L.Ed.2d 376 (1977) — qualifies as sufficiently "important" to satisfy *Younger's* second threshold element.

*AmerisourceBergen, supra,* at 1150 (bold emphasis added).

As stated in *AmerisourceBergen,* "binding precedent prevents the court from finding that California's interest in enforcing this one particular judgment — as opposed to....its interest in retaining a particular contempt of court scheme, *see Juidice v. Vail,* 430 U.S. 327, 330, 335, 97 S.Ct. 1211, 51 L.Ed.2d 376 (1977) — qualifies as sufficiently "important" to satisfy *Younger's* second threshold element." *Id.* *AmerisourceBergen* and the cases it cites are "binding precedent [that] prevents the court from finding that California's interest in enforcing" the sanctions order at issue in this case "qualifies as sufficiently "important" to satisfy *Younger's* second threshold element." *Id.* Exactly like the district court that was reversed in *AmerisourceBergen,* the panel in this case has "taken out of context" the Supreme Court's statements "recognizing important state interest in the contempt process". As the published *AmerisourceBergen* opinion pointed out, "**Taken out of context,**

**these statements suggest that California's interest in enforcing the judgment in this particular case is of sufficient importance to meet *Younger's* second threshold element.** But we have made it clear that "[t]he importance of the [state's] interest is measured by considering its significance broadly, rather than by focusing on the state's interest in the resolution of an individual case." *AmerisourceBergen, supra,* at 1150 (bold emphasis added).

Sanai in no way sought to alter the procedures, statutes, or recognized California Supreme Court case law on these points. Thus the citations of Judges Tashima, Watford, and Bybee to *Juidice v. Vail,* 430 U.S. 327 (1977) did not support its decision. In *Juidice,*

> Appellee Harry Vail, Jr., is a judgment debtor who was held in contempt of court by the County Court of Dutchess County, N. Y., and who thereafter sought to have the statutory provisions authorizing contempts enjoined as unconstitutional in an action brought under 42 U. S. C. § 1983 in the United States District Court for the Southern District of New York. The state-court proceedings against Vail were found by the District Court to be in most respects representative of those against the other named appellees as well.

*Juidice, , supra* at 328-9.

Because Sanaiwas not seeking "to have the statutory provisions authorizing contempt enjoined as unconstitutional", this Court's holding in *Juidice* was irrelevant under the binding interpretation of *AmerisourceBergen, supra.* In *Juidice,* the litigants sought to enjoin the application New York state contempt procedures generally. Nothing like that was sought by Sanai. *AmerisourceBergen* and *Miofsky* considered and rejected the panel's interpretation of *Juidice* and *Gilbertson.* Because the panel's decision directly conflicts with the correct analysis

of *Juidice* articulated in *AmerisourceBergen,* granting the petition for review is merited.

The panel decision cited *Juidice, supra,* as grounds for application of *Younger*. However, the panel decision actually conflicts with the decision and a decision cited therein, *Gibson v. Berryhill,* 411 U. S. 564, 577 (1973). *Juidice* explicitly held that for *Younger* to apply, the litigants must be accorded "an opportunity to fairly pursue their constitutional claims in the ongoing state proceedings, *Gibson v. Berryhill,* 411 U. S. 564, 577 (1973)". *Id.* at 337. As this Court explained in a different decision,

> *Gibson v. Berryhill,* 411 U. S. 564, supplied another example of such "extraordinary circumstances." In that case the Court found it unnecessary to decide whether the rule of *Younger v. Harris* applies with the same force when state civil, rather than criminal, proceedings are pending because "the predicate for a *Younger v. Harris* dismissal was lacking . . . . [T]he appellees alleged, and the District Court concluded, that the State Board of Optometry was incompetent by reason of bias to adjudicate the issues pending before it. If the District Court's conclusion was correct in this regard, it was also correct that it need not defer to the Board." 411 U. S., at 577.

*Kugler v. Helfant,* 421 U.S. 117, 125, fn. 4 (1975).

Here Sanai explicitly and in detail alleged actual bias and unconstitutionally high risk of an absence of impartiality. As to Defendant Borenstein, he alleged that

> Sanai was denied his right to stay the enforcement of the original sanctions order based on the intentional refusal, based on animus against Sanai by both Borenstein and Grimes, to grant him equal protection of the law, in violation of *Village of Willowbrook v. Olech,* 528 U. S. 562 (2000).

[18-5663 FAC ¶69 Docket #41 at 29-30].

Sanai is guaranteed due process at the appellate level as well. Here, one of the Court of Appeal justices who participated in the litigation, Elizabeth Grimes, as been on a decades-long vendetta against Sanai. [*See* Motion for Prelim Inj. Exh. J, 18-5663 Docket #4-6]. These allegations did not go unnoticed by the trial court, as it wrote that:

> Plaintiff asserts that Defendant Borenstein fabricated the record to impose sanctions against Plaintiff. Plaintiff further alleges that Defendant Borenstein; the Court Counsel for the Superior Court; Judge Elizabeth Grimes, who sits on the Second District of the California Court of Appeal; and several other judges are a part of a wide-ranging conspiracy within the Superior Court to punish and disbar Plaintiff. (*Id.)*

[18-5663 Docket #70 at 1-2, App. J at J2-J3.]

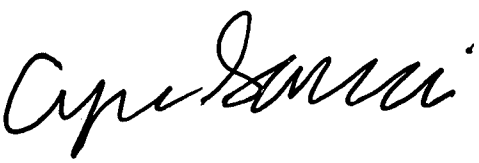
It is clear that Sanai alleged an actual and apparent absence of impartiality to an unconstitutional degree in great detail. Under *Gibson v. Berryhill,* as cited in *Juidice,* these allegations (which were required to be accepted as true) constituted an exception to the application of *Younger* abstention under United States Supreme Court authority, which the Ninth Circuit panel clearly got wrong.

## CONCLUSION

For the forgoing reasons, the petition for certiorari should be granted.

Dated this January 20, 2021

Respectfully submitted,



Cyrus Sanai
Sanais
9440 Santa Monica Blvd.
#301
Beverly Hills, CA 90212
(310) 717-9840