Case No.

In The
Supreme Court of the United States

SCOTT ERIK STAFNE

Petitioner,

v.

THOMAS ZILLY ET AL.,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

PETITION APPENDIX

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February 1, 2021

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APPENDIX 1
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NOT FOR PUBLICATION

FILED

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MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

SCOTT ERIK STAFNE, Plaintiff-Appellant, v. THOMAS S. ZILLY, U.S. District Court Judge; et al., Defendants-Appellees.	No. 19-35454 D.C. No. 2:17-cv-01692-MHS MEMORANDUM*

Appeal from the United States District Court
for the Western District of Washington
Michael H. Simon, District Judge, Presiding

Submitted September 3, 2020**
Seattle, Washington

Before: McKEOWN and VANDYKE, Circuit Judges, and CALDWELL,*** District Judge.

Scott Stafne appeals the district court's grant of the defendant-appellees'

* 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).

*** The Honorable Karen K. Caldwell, United States District Judge for the Eastern District of Kentucky, sitting by designation.

motion to dismiss his action seeking monetary, declaratory, and injunctive relief against federal judges Thomas Zilly, Barry Silverman, and John Coughenour (collectively "federal judicial defendants"), and Snohomish County Sheriff Ty Trenary. The parties are familiar with the facts, so we do not repeat them here. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

Stafne first appeals the district court's dismissal of his claims for injunctive and declaratory relief against the federal judicial defendants. "[C]ollateral attacks on the judgments, orders, decrees or decisions of federal courts are improper," and collateral attacks of the kind Stafne seeks here cannot be allowed "without seriously undercutting the orderly process of law." *Mullis v. U.S. Bankr. Court for Dist. of Nevada*, 828 F.2d 1385, 1393 (9th Cir. 1987); *Celotex Corp. v. Edwards*, 514 U.S. 300, 313 (1995). Absolute judicial immunity bars injunctive and declaratory relief sought as a result of judicial acts performed in a judicial capacity. *See Mullis*, 828 F.2d at 1394 ("The judicial or quasi-judicial immunity available to federal officers is not limited to immunity from damages, but extends to actions for declaratory, injunctive and other equitable relief.").

Stafne also appeals the district court's dismissal of his claim for monetary damages under 42 U.S.C. § 1983 against Judges Zilly and Silverman. Stafne's claim for damages under § 1983 has no legal basis, as the federal judicial defendants acted pursuant to federal law, not state law. *See Ibrahim v. Dept. of*

Homeland Security, 538 F.3d 1250, 1257 (9th Cir. 2008) (holding that § 1983 "only provides a remedy against persons acting under color of state law"). Even if Stafne's § 1983 claim is construed as a claim against federal officers under *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971), it is barred by absolute judicial immunity. *See Mullis*, 828 F.2d at 1394 (dismissing *Bivens* claim as barred by absolute judicial immunity). Stafne failed to raise his § 1985 claim on appeal and it is therefore waived. The district court did not err in granting the federal judicial defendants' motion to dismiss with prejudice.

Stafne also appeals the district court's dismissal of his claim against Trenary for injunctive relief to block Trenary from executing a court-issued foreclosure order and damages that might follow from the execution of that order. Trenary, acting in his official capacity as a sheriff responsible for executing a court-issued foreclosure order, enjoys absolute quasi-judicial immunity from Stafne's claims. *See Coverdell v. Dep't of Soc. and Health Serv., State of Wash.*, 834 F.2d 758, 765 (9th Cir. 1987) ("The fearless and unhesitating execution of court orders is essential if the court's authority and ability to function are to remain uncompromised."); *see generally Mullis*, 828 F.2d at 1394 (judicial or quasi-judicial immunity extends to injunctive relief). The district court did not err in

granting Trenary's motion to dismiss with prejudice.

AFFIRMED.

APPENDIX 2

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IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WASHINGTON

AT SEATTLE

SCOTT E. STAFNE, Plaintiff, v. **THOMAS S. ZILLY, JOHN C. COUGHENOUR, BARRY G. SILVERMAN, and TY TRENARY,** Defendants.	Case No. 2:17-cv-01692-MHS **OPINION AND ORDER**

Scott E. Stafne, STAFNE TRUMBULL LLC, 239 North Olympic Avenue, Arlington, WA 98223. *Pro se.*

Jared D. Hager, Special Assistant United States Attorney, UNITED STATES ATTORNEY'S OFFICE FOR THE DISTRICT OF OREGON, 1000 SW Third Avenue, Suite 600, Portland, OR 97202. Of Attorneys for Defendants Thomas S. Zilly, John C. Coughenour, and Barry G. Silverman.

Geoffrey A. Enns, SNOHOMISH COUNTY PROSECUTING ATTORNEY, CIVIL DIVISION, 3000 Rockefeller Avenue, M/S 504, Everett, WA 98201. Of Attorneys for Defendant Ty Trenary.

Michael H. Simon, District Judge.

Plaintiff Scott E. Stafne ("Stafne") is an attorney in the State of Washington. He brings this action on his own behalf. Stafne asserts claims against three senior federal judges and a

county sheriff.[1] Before Stafne filed this lawsuit, each Federal Judge Defendant had elected what is known as "senior status" under 28 U.S.C. § 371(b)(1).[2] In this lawsuit, Stafne challenges the constitutionality of that statute under the Appointments Clause of the U.S. Constitution.[3]

Stafne argues that after the Federal Judge Defendants elected senior status, they became mere "judicial volunteers," who cannot lawfully exercise federal jurisdiction over Stafne, or any litigant whom Stafne represents, without the express consent of all parties in any particular lawsuit. Stafne also alleges that the Federal Judge Defendants have erroneously concluded in other cases that the court in those cases had subject matter jurisdiction over the dispute and made other errors. In the lawsuit now before this Court, Stafne seeks various forms of relief against the Federal Judge Defendants, including: (1) a declaration that any orders issued by the Federal Judge Defendants in other cases are void; (2) an injunction requiring the Federal Judge Defendants to withdraw from continuing to preside over or hear any case in which Stafne is a

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[1] The Defendants are (1) the Honorable Barry G. Silverman, Senior Circuit Judge for the U.S. Court of Appeals for the Ninth Circuit; (2) the Honorable Thomas S. Zilly, Senior U.S. District Judge for the Western District of Washington; (3) the Honorable John C. Coughenour, Senior U.S. District Judge for the Western District of Washington; and (4) Ty Trenary, Sheriff of Snohomish County, Washington. Collectively, the three senior federal judge defendants are referred to as the "Federal Judge Defendants." Stafne sues the Federal Judge Defendants in their individual capacities. Stafne sues Sheriff Trenary in both his individual and official capacities.

[2] That statute provides, in relevant part: "Any justice or judge of the United States appointed to hold office during good behavior *may retain the office but retire from regular active service* after attaining the age and meeting the service requirements, whether continuous or otherwise, of subsection (c) of this section and shall, during the remainder of his or her lifetime, continue to receive the salary of the office if he or she meets the requirements of subsection (e)." 28 U.S.C. § 371(b)(1) (emphasis added).

[3] Under the Appointments Clause, the President "shall nominate, and by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law: but the Congress may by law vest the appointment of such inferior officers, as they think proper, in the President alone, in the courts of law, or in the heads of departments." U.S. CONST., art. II, § 2, cl. 2.

lawyer or litigant; and (3) money damages. Against Sheriff Trenary, Stafne seeks declaratory relief, asking the Court to declare the legal consequences if Sheriff Trenary were to comply with a specific order that Judge Zilly previously issued in one of Stafne's cases. The Federal Judge Defendants have moved to dismiss the pending action for lack of subject matter jurisdiction and, alternatively, for failure to state a claim. Sheriff Trenary has moved to dismiss this lawsuit for failure to state a claim.

A person allegedly aggrieved by an order, decision, or judgment in a federal case has several avenues for relief. "Congress has provided carefully structured procedures for taking appeals, including interlocutory appeals, and for petitioning for extraordinary writs in Title 28 of the United States Code." *Mullis v. U.S. Bankr. Ct. for Dis. of Nev.*, 828 F.2d 1385, 1394 (9th Cir. 1987). The collateral attack doctrine directs that challenges to the orders, decisions, or judgments of a court other than through these well-recognized procedures are generally improper, and to allow such collateral attacks would "seriously undercut[] the orderly process of law." *Celotex Corp. v. Edwards*, 514 U.S. 300, 313 (1995). The complementary doctrine of absolute judicial immunity also serves to "discourage[] collateral attacks" and to "help[] to establish appellate procedures as the standard system for correcting judicial error." *Forrester v. White*, 484 U.S. 219, 225 (1988). Stafne currently has two cases before the Federal Judge Defendants. Rather than seek relief for any alleged errors through proper channels in those cases, Stafne filed this lawsuit. Through this action, Stafne attempts an end-run around the carefully-crafted and well-recognized processes designed to protect the rights of all litigants and the orderly administration of law.

Longstanding principles providing for appellate review, finality, and the orderly process of law dictate dismissal of this lawsuit. Much of Stafne's Complaint is merely a collateral attack

on the orders and decisions made by other judges in other cases, which a different judge in a different case is without jurisdiction to hear. This district judge also lacks the authority to grant Stafne the declaratory or injunctive relief that he seeks because doing so would require this Court to issue what is, in effect, a writ of mandamus on a parallel or even superior court. Further, equitable relief is improper when a litigant has an adequate remedy at law. Under the facts alleged, even when viewed in the light most favorable to Stafne, he has an adequate remedy at law through direct appeal or mandamus in the cases in which he or his clients claim to have been injured. That is the proper route for addressing the arguments that Stafne raises in this lawsuit.

In addition, the doctrine of absolute judicial immunity—itself a bulwark against collateral attack—bars Stafne's monetary claims against the Federal Judge Defendants. Judicial immunity is not overcome by Stafne's allegation that the position of "senior federal judge" violates the Appointments Clause of the U.S. Constitution. Finally, Stafne's claims against Defendant Trenary must be dismissed because they constitute a collateral attack on an order of another district court and, to the extent Stafne seeks money damages, that claim is not ripe for review because Sheriff Trenary has not yet executed the court order at issue. Thus, the Court grants with prejudice the motions to dismiss filed by the Federal Judge Defendants and Sheriff Trenary.

STANDARDS

A. Motion to Dismiss for Lack of Subject Matter Jurisdiction

Federal courts are courts of limited jurisdiction. *Gunn v. Minton*, 568 U.S. 251, 256 (2013) (quotation marks omitted). A federal court is to presume "that a cause lies outside this limited jurisdiction, and the burden of establishing the contrary rests upon the party asserting jurisdiction." *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994) (citations omitted); *see also Robinson v. United States*, 586 F.3d 683, 685 (9th Cir. 2009); *Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004). A motion to dismiss under

Rule 12(b)(1) of the Federal Rules of Civil Procedure for lack of "subject matter jurisdiction, because it involves a court's power to hear a case, can never be forfeited or waived." *United States v. Cotton*, 535 U.S. 625, 630 (2002). An objection that a particular court lacks subject matter jurisdiction may be raised by any party, or by the court on its own initiative, at any time. *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 506 (2006); Fed. R. Civ. P. 12(b)(1). The Court must dismiss any case over which it lacks subject matter jurisdiction. Fed. R. Civ. P. 12(h)(3); *see also Pistor v. Garcia*, 791 F.3d 1104, 1111 (9th Cir. 2015) (noting that when a court lacks subject matter jurisdiction, meaning it lacks the statutory or constitutional power to adjudicate a case, the court must dismiss the complaint, even *sua sponte* if necessary).

B. Motion to Dismiss for Failure to State a Claim

A motion to dismiss for failure to state a claim may be granted only when there is no cognizable legal theory to support the claim or when the complaint lacks sufficient factual allegations to state a facially plausible claim for relief. *Shroyer v. New Cingular Wireless Servs., Inc.*, 622 F.3d 1035, 1041 (9th Cir. 2010). In evaluating the sufficiency of a complaint's factual allegations, the court must accept as true all well-pleaded material facts alleged in the complaint and construe them in the light most favorable to the non-moving party. *Wilson v. Hewlett-Packard Co.*, 668 F.3d 1136, 1140 (9th Cir. 2012); *Daniels-Hall v. Nat'l Educ. Ass'n*, 629 F.3d 992, 998 (9th Cir. 2010). To be entitled to a presumption of truth, allegations in a complaint "may not simply recite the elements of a cause of action, but must contain sufficient allegations of underlying facts to give fair notice and to enable the opposing party to defend itself effectively." *Starr v. Baca*, 652 F.3d 1202, 1216 (9th Cir. 2011). All reasonable inferences from the factual allegations must be drawn in favor of the plaintiff. *Newcal Indus. v. Ikon Office Solution*, 513 F.3d 1038, 1043 n.2 (9th Cir. 2008). The court need not, however, credit the

plaintiff's legal conclusions that are couched as factual allegations. *Ashcroft v. Iqbal*, 556 U.S. 662, 678-79 (2009).

A complaint must contain sufficient factual allegations to "plausibly suggest an entitlement to relief, such that it is not unfair to require the opposing party to be subjected to the expense of discovery and continued litigation." *Starr*, 652 F.3d at 1216. "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678 (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556 (2007)).

BACKGROUND[4]

A. Stafne's Earlier Lawsuits

Stafne is an attorney admitted to practice before the United States District Court for the Western District of Washington, the U.S. Court of Appeals for the Ninth Circuit, and the United States Supreme Court. Stafne has represented clients before the Western District of Washington and the Ninth Circuit and states that he intends to continue to do so. Stafne also has represented himself as a party before the Western District of Washington and the Ninth Circuit and states that he likely will do so again. In addition to his legal practice, Stafne is engaged in educational and political activities, often concerning the American justice system. He also is involved with private legal publishing companies and in the home foreclosure industry.

Stafne currently is a party in two cases pending before the Federal Judge Defendants. The first is *Stafne v. Burnside, et al.*, Case No. 2:16-cv-0753-JCC (W.D. Wash.) ("*Burnside*"). Judge Coughenour presides over the *Burnside* case, in which Stafne alleges claims of unfair debt

[4] This section is based on Plaintiff's Complaint and the record in the two other federal cases in which Stafne is a litigant that are discussed below. The Court takes judicial notice of the record in those two cases, as requested by the parties and without objection by any party.

collection and unlawful trade practices. After the stipulated dismissal of one defendant, Judge Coughenour stayed the *Burnside* lawsuit.

The second case is *Bank of New York Mellon v. Stafne*, Case No. 2:16-cv-0077-TSZ (W.D. Wash.) ("*BNYM*"). Judge Zilly presides over the *BNYM* case, which is an *in rem* action to quiet title relating to property that Stafne owns in Snohomish County, Washington. The Bank of New York Mellon sought to foreclose on Stafne's property based on a 2005 deed of trust. Stafne moved to dismiss that case for lack of subject matter jurisdiction and asked that Judge Zilly abstain from deciding the case. Judge Zilly denied Stafne's motion. Stafne appealed that denial, and the Ninth Circuit dismissed Stafne's appeal on the ground that Judge Zilly's order was not yet final or otherwise appealable. Judge Zilly granted summary judgment in favor of the Bank of New York Mellon and entered a partial judgment, judicially foreclosing on Stafne's property. Stafne appealed that order to the Ninth Circuit. Stafne also moved for an order staying the district court's order of foreclosure pending appeal.

While this second appeal in *BNYM* was pending, the Bank of New York Mellon moved to amend its partial judgment to include certain information required under Washington law to foreclose on real property. Judge Zilly issued an order stating that the district court could not amend the partial judgment without leave from the Ninth Circuit because Stafne had appealed the partial judgment and that appeal was still pending. Judge Zilly directed the Bank of New York Mellon to notify the Ninth Circuit under Rule 12.1 of the Federal Rules of Appellate Procedure that the district court would grant the motion to amend, if allowed to do so by the Ninth Circuit. A motions panel of the Ninth Circuit, which included Judge Silverman, remanded the *BNYM* case to Judge Zilly for the limited purpose of considering the motion to amend the partial judgment.

After the Ninth Circuit's remand, Plaintiff's brother and a co-defendant in *BNYM*, Todd Stafne, passed away. The district court allowed substitution by Todd Stafne's personal representative. Afterward, Stafne asked Judge Zilly to recuse himself. Stafne argued both that Judge Zilly was not properly appointed as an Article III judge under the Appointments Clause after he took senior status and that Judge Zilly was biased in favor of the law firm representing the Bank of New York Mellon (Davis Wright Tremaine LLP) and against Stafne as a *pro se* litigant. Judge Zilly denied Stafne's request for recusal and referred the motion to the Chief Judge for the Western District of Washington, who affirmed that denial. Stafne filed a motion for reconsideration, which the Chief District Judge again denied. The parties agreed to a continuance of the motion to amend the partial judgment. While the motion to amend was pending, Stafne filed a separate lawsuit, which is the case now before this Court. Based in part on Stafne's filing of this new lawsuit, Judge Zilly stayed the *BNYM* case.

B. Stafne's Claims in this Case

Stafne alleges that the American judicial system is biased in favor of parties with significant financial resources and that federal courts unfairly discriminate against *pro se* litigants and attorneys from small, rather than large, law firms. Stafne also alleges that federal courts routinely but improperly render decisions without explaining the bases of their jurisdiction and routinely act without subject matter jurisdiction, particularly in foreclosure disputes. Stafne argues that this practice has injured Stafne, his clients, and others who have litigated or will litigate foreclosure disputes in federal courts within the Ninth Circuit. In his Complaint, Stafne discusses several cases that he contends are examples of this behavior, including several in which Stafne has appeared as an attorney for others. Stafne also alleges that his exercise of free speech and his representation of some clients in foreclosure actions have led to unfair treatment and retaliation by judges in federal courts in the Ninth Circuit.

Stafne also argues that Congress' creation of the position of "senior judge" violates the Appointments Clause of the U.S. Constitution, contained in Article II, § 2. Stafne incorporates by reference a law review article written by David R. Stras and Ryan W. Scott.[5] Stafne argues that for the reasons discussed by Judge Stras and Professor Scott, the Federal Judge Defendants do not validly exercise federal judicial power under Article III. Stafne argues that, as senior judges, the Federal Judge Defendants do not properly hold the office of an Article III Judge, but instead act as mere "judicial volunteers." Stafne adds that although the Western District of Washington has a policy that litigants may consent to a case being heard by a U.S. Magistrate Judge or a U.S. Bankruptcy Judge, there is no similar policy for seeking or requiring consent to a case being heard by a "senior judge." Stafne also asserts that "active judges" in the Western District of Washington do not provide meaningful oversight of the work of senior judges. Finally, Stafne alleges that senior judges are either incompetent based on their age or are biased because they are unpaid for the judicial work that they perform.

With respect to the *BNYM* case specifically, Stafne alleges that the Western District of Washington and the Davis Wright Tremaine law firm "worked together" to arrange for Senior District Judge Zilly to be assigned to that case. Stafne also contends that in presiding over the *BNYM* lawsuit, Judge Zilly acted out of "bias" against Stafne and in favor of Davis Wright Tremaine and large law firms generally. Stafne further alleges that Judge Zilly agreed to hear *BNYM* out of a "desire to retaliate" against Stafne and to impress upon Stafne that homeowners

[5] David R. Stras and Ryan W. Scott, *Are Senior Judges Unconstitutional*, 92 CORNELL LAW REVIEW 453 (2007) ("Stras & Scott"). When this article was published in 2007, David Stras was an Associate Professor at the University of Minnesota Law School. From 2010 through 2018, he was an Associate Justice of the Minnesota Supreme Court, and in early 2018 he became a judge on the U.S. Court of Appeals for the Eighth Circuit. Ryan Scott currently is a Professor of Law at the Maurer School of Law Indiana University Bloomington. For a response to the article by Judge Stras and Professor Scott, *see* Hon. Betty Binns Fletcher, *A Response to Stras & Scott's "*Are Senior Judges Unconstitutional,*"* 92 CORNELL LAW REVIEW 523 (2007).

have no chance of obtaining justice in a foreclosure action. In addition, Stafne asserts that Judge Zilly improperly reached the merits in *BNYM*, failed to "comprehend his duty to not arbitrarily and without explanation invoke jurisdiction an Article III district court does not have," and improperly authorized the foreclosure of Stafne's property, even though some facts that are needed to authorize a foreclosure had not yet been established. Stafne argues that in addition to occupying a position that violates the structural provisions of the U.S. Constitution designed to protect individual liberty, Judge Zilly has denied Stafne due process. Finally, Stafne alleges that actions taken by both Senior District Judge Zilly and Senior Circuit Judge Silverman in *BNYM* caused Todd Stafne, Stafne's brother, to suffer a stress-related heart attack and, ultimately, death.

With respect to the *Burnside* case, Stafne alleges that Senior District Judge Coughenour was required to advise Stafne that Judge Coughenour had agreed to hear the case as a "judicial volunteer." Stafne adds that he had the right to withhold consent to a senior judge presiding over that case and states that he never consented to Judge Coughenour hearing that case.

Stafne requests "whatever relief may be available" to prevent senior judges from hearing cases in which he is a litigant or an attorney or to prevent senior judges from hearing cases without the consent of all parties. Stafne also seeks an order requiring all senior federal judges to explain how and why they have jurisdiction in each case in which their jurisdiction is challenged. Further, in the *BNYM* case, Stafne seeks to have Judge Zilly disqualified from that matter and requests an order be entered in this separate action that declares all of Judge Zilly's previous orders in the *BNYM* case are *ultra vires* on the grounds that they were entered in the absence of subject matter jurisdiction. Stafne also seeks an order in this case disqualifying Senior Ninth Circuit Judge Silverman from continuing to hear the appeal in the *BNYM* case. Stafne also seeks an order in this case directing the Ninth Circuit to rescind its previously-issued order of remand

in the *BNYM* case. Similarly, in the *Burnside* case, Stafne seeks an order in this case directing Judge Coughenour to withdraw from continuing to hear the *Burnside* lawsuit.

Stafne also seeks relief under 42 U.S.C. §§ 1983 and 1985 against Judge Zilly and Judge Silverman, arguing that by purporting to act as federal judges and ordering, or not vacating, a judicial sale of Stafne's real property, Judges Zilly and Silverman deprived Stafne of his constitutional rights. Stafne also alleges that Judges Zilly and Silverman purposefully exercised jurisdiction in a matter in which they lacked subject matter jurisdiction solely to retaliate against Stafne for his criticism of federal courts, in violation of Stafne's rights under the First Amendment. Stafne alleges that these actions have caused him physical, psychological, and financial injury. Finally, Stafne seeks contingent relief against Defendant Trenary, in the event that he were to cause the sale of Stafne's real property under an order issued by Judge Zilly.

DISCUSSION

A. Federal Judge Defendants' Motion to Dismiss

The Federal Judge Defendants move to dismiss Stafne's claims on several grounds. Among other things, the Federal Judge Defendants argue that Stafne's claims under 42 U.S.C. §§ 1983 and 1985 are not cognizable against them because they did not act under color of *state* law. The Federal Judge Defendants also argue that Stafne's claims are an improper *collateral attack* on other litigation and, to the extent that Stafne seeks injunctive relief relating to other cases, such equitable relief is unavailable because Stafne has an adequate remedy at law. Further, the Federal Judge Defendants argue that they have absolute judicial immunity against Stafne's claims seeking money damages.

1. Stafne's Claims Under 42 U.S.C. §§ 1983 and 1985

Section 1983 provides that "[e]very person who, under color of any statute, ordinance, regulation, custom, or usage, *of any State or Territory or the District of Columbia*, subjects, or

causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress . . . ." 42 U.S.C. § 1983 (emphasis added). Based on this text, § 1983 "only provides a remedy against persons acting under color of *state* law." *Ibrahim v. Dept. of Homeland Security*, 538 F.3d 1250, 1257 (9th Cir. 2008) (emphasis added). Even if the Federal Judge Defendants were acting as mere "judicial volunteers" when they presided over Stafne's cases in federal court, they still were not acting under color of *state* law. Thus, Stafne's claim against the Federal Judge Defendants under § 1983 fails. Further, Stafne's claim against the Federal Judge Defendants under 42 U.S.C. § 1985 fails because, among other reasons, he does allege the requisite racial animus. *See Griffin v. Breckenridge*, 403 U.S. 88, 102 (1971) (requiring as an element of a claim under § 1985 "some racial, or perhaps otherwise class-based, invidiously discriminatory animus behind the conspirators' action").

Even if the Court were to construe Stafne's § 1983 claim against the Federal Judge Defendants as a claim against federal officers under *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971), that claim would fail as well. In *Bivens*, the Supreme Court recognized a cause of action to sue a federal official in his or her individual capacity for damages caused by a violation of the plaintiff's Fourth Amendment right against unreasonable search and seizure. *Id.* at 396-97. The Supreme Court has extended *Bivens* only twice, first in *Davis v. Passman*, 442 U.S. 228, 248 (1979), and next in *Carlson v. Green*, 446 U.S. 14, 20-25 (1980). In *Davis v. Passman*, the Supreme Court "provided a *Bivens* remedy under the Fifth Amendment's Due Process Clause for gender discrimination." In *Carlson v. Green*, the Supreme Court "expanded *Bivens* under the Eighth Amendment's Cruel and Unusual

Punishments Clause for failure to provide adequate medical treatment to a prisoner." Outside of these two contexts, however, "the Court has made clear that expanding the *Bivens* remedy is now a 'disfavored' judicial activity." *Vega v. United States*, 881 F.3d 1146, 1152 (9th Cir. 2018) (quoting *Ziglar v. Abbasi*, --- U.S. ---, 137 S.Ct. 1843, 1857 (2017)). No court has even come close to recognizing a *Bivens* claim under any circumstances resembling those presented by Stafne.

2. Collateral Attack Doctrine

a. Stafne's Request that This Court Overturn Decisions of Other Courts

In this lawsuit, Stafne seeks, among other things, an order declaring that all of Judge Zilly's orders entered in the *BNYM* lawsuit are void. Stafne also seeks an order directing the Ninth Circuit to rescind its order of remand in the *BNYM* case. Stafne also requests an order that the *BNYM* and *Burnside* cases cannot be used for purposes of either claim preclusion (*res judicata*) or issue preclusion (collateral estoppel) in any lawsuit involving any parties, including lawsuits that have not yet been filed. Under the collateral attack doctrine, all of this relief is unavailable and beyond the jurisdiction of this Court to provide.

"[C]ollateral attacks on the judgments, orders, decrees or decisions of federal courts are improper." *Mullis v. U.S. Bankr. Court for Dist. of Nevada*, 828 F.2d 1385, 1393 (9th Cir. 1987) (citing *Brown v. Baden*, 815 F.2d 575, 576-77 (9th Cir. 1987); *In re Braughton*, 520 F.2d 765, 766 (9th Cir. 1975); *Tanner Motor Livery Ltd. v. Avis, Inc.*, 316 F.2d 804, 810 (9th Cir. 1963)); *see also Rein v. Providian Fin. Corp.*, 270 F.3d 895, 902 (9th Cir. 2001) ("The collateral attack doctrine precludes litigants from collaterally attacking the judgments of other courts."). "[I]t is for the court of first instance to determine the question of the validity of the law, and until its decision is reversed for error by orderly review, either by itself or by a higher court, its orders based on its decision are to be respected." *Celotex Corp. v. Edwards*, 514

U.S. 300, 313 (1995) (quoting *Walker v. Birmingham*, 338 U.S. 307, 314 (1967)). By statute, "[t]he courts of appeals . . . shall have jurisdiction of appeals from all final decisions of the district courts of the United States . . ." 28 U.S.C. § 1291. "Cases in the courts of appeals may be reviewed by the Supreme Court" either "[b]y writ of certiorari" or "[b]y certification at any time by a court of appeals . . ." 28 U.S.C. § 1254. Thus, this Court lacks subject matter jurisdiction (and all other authority) to overturn a decision of the Ninth Circuit or any district court entered in a separate lawsuit. *See Mullis*, 828 F.2d at 1393 n.19 (stating that it is "[n]eedless to say" that "a district court has no . . . authority to 'review' any ruling of a court of appeals."); *Brown v. Baden*, 815 F.2d 575, 576 (9th Cir. 1987) ("Unless we wish anarchy to prevail within the federal judicial system, a precedent of this court must be followed by the lower federal courts no matter how misguided the judges of those courts may think it to be." (quotation marks and alteration omitted)). To do so would "seriously undercut[] the orderly process of law." *Celotex*, 514 U.S. at 313.

b. Stafne's Request for Other Equitable Relief

Against the Federal Judge Defendants, Stafne also asks this Court to order injunctive relief in other cases. Although the collateral attack doctrine does not apply when a plaintiff's claims "were never addressed by a prior order or judgment," *Rein*, 270 F.3d at 902, Stafne seeks an order from this Court that would prevent all senior judges from presiding over any case in which Stanfe participates (as either counsel or party) without Stafne's express consent.[6] Stafne also seeks an order requiring all federal judges in all cases to explain why they have subject

[6] Stafne's argument that all senior federal judges lack "subject matter jurisdiction" to decide a case *unless all parties consent* is inconsistent with the fundamental and well-established principle that a defect in subject matter jurisdiction can never be waived. *See Arbaugh v. Y&H Corp.*, 546 U.S. 500, 514 (2006) ("subject matter jurisdiction, because it involves a court's power to hear a case, can never be forfeited or waived") (citing *United States v. Cotton*, 535 U.S. 625, 630 (2002)).

matter jurisdiction in any case in which it is challenged. Further, Stafne seeks an order removing or disqualifying the Federal Judge Defendants from continuing to hear the *BNYM* and *Burnside* lawsuits. This Court lacks subject matter jurisdiction (and all other authority) to grant this relief.

A court in a separate action, such as this one, lacks jurisdiction to issue what is "in essence . . . a writ of mandamus" to another district court judge or to the Ninth Circuit. *Mullis*, 828 F.2d at 1393 ("A district court lacks authority to issue a writ of mandamus to another district court."). To the extent that Stafne seeks such a writ, the proper vehicle is to seek appropriate relief in the underlying case itself, including on appeal. Allowing "a district court to grant injunctive relief against a . . . district court . . . would be to permit, in effect, a 'horizontal appeal' from one district court to another or even a 'reverse review' of a ruling of the court of appeals by a district court." *Mullis*, 828 F.2d at 1392-93.

Furthermore, Stafne lacks standing to seek the equitable relief that he requests. "Standing is a threshold matter central to [a court's] subject matter jurisdiction." *Ellis v. Costco Wholesale Corp.*, 657 F.3d 970, 978 (9th Cir. 2011); *see also Warren v. Fox Family Worldwide, Inc.*, 328 F.3d 1136, 1140 (9th Cir. 2003) (explaining that if a plaintiff lacks standing, a district court does not have subject matter jurisdiction to decide the case.); *Scott v. Pasadena Unified Sch. Dist.*, 306 F.3d 646, 664 (9th Cir. 2002). "[T]he elements of standing . . . must be supported at each stage of litigation," *Warren v. Fox Family Worldwide, Inc.*, 328 F.3d 1136, 1140 (9th Cir. 2003) (quotation marks omitted), and a plaintiff "must show standing with respect to each form of relief sought." *Ellis*, 657 F.3d at 978.

To establish Article III standing to seek injunctive relief, a plaintiff must "allege either 'continuing, present adverse effects'" of a defendant's past illegal conduct, "or 'a sufficient likelihood that [he] will again be wronged in a similar way." *Villa v. Maricopa Cty.*, 865

F.3d 1224, 1229 (9th Cir. 2017) (quoting *O'Shea v. Littleton*, 414 U.S. 488, 495-96 (1974), and *City of L.A. v. Lyons*, 461 U.S. 95, 111 (1983)). Additionally, standing to seek equitable relief requires "a showing of an inadequate remedy at law and . . . a serious risk of irreparable harm." *Pulliam v. Allen*, 466 U.S. 522, 537 (1984); *see also O'Shea*, 414 U.S. at 499.

In *O'Shea v. Littleton*, the plaintiffs sought injunctive relief against various local officials. *Id.* at 493. The plaintiffs alleged that the defendants had violated and were continuing to violate the plaintiff's constitutional rights by operating the criminal justice system in a discriminatory manner. The Supreme Court first held that the plaintiffs had failed to establish an actual case or controversy because none of them has suffered any injury relating to the defendants' alleged practice of illegal bond-setting, sentencing, and imposing jury fees. *Id.* at 493-95. The Supreme Court also held that even if the plaintiffs had established an existing case or controversy, there still would be no adequate basis for equitable relief because the plaintiffs failed to establish "the likelihood of substantial and immediate irreparable injury, and the inadequacy of remedies at law." *Id.* at 502. If the plaintiffs were, in the future, ever prosecuted and faced trial, or were improperly sentenced, there would be "available state and federal procedures which could provide relief from the wrongful conduct alleged." *Id.* at 502. "Considering the availability of other avenues of relief open to respondents . . . and the abrasive and unmanageable intercession which the injunctive relief they seek would represent," the Supreme Court concluded that, even "apart from the absence of an existing case or controversy presented by respondents for adjudication," the district court should not hear the plaintiffs' claims *Id.* at 504.

Thus, as in *Pulliam* and *O'Shea*, Stafne lacks standing to seek equitable relief because he cannot show that he has an inadequate remedy at law. To the extent that Stafne takes issue with

any judgment, order, decree, or decision in *BNYM*, *Burnside*, or any other case in which he appears, he may seek appellate review in the particular case in which the challenged ruling is entered. On such review, it is possible that Stafne may draw a panel of active Ninth Circuit Judges not joined by a senior judge, and he may choose to present his challenge to the constitutionality of 28 U.S.C. § 371 at that time. If unsuccessful, Stafne may seek *en banc* appellate review. Finally, if still unsuccessful, Stafne may petition the United States Supreme Court, which sits without any senior judges, for a writ of *certiorari*. These are all remedies at law, and they are adequate. Stafne, therefore, lacks standing to seek equitable relief.

3. Absolute Judicial Immunity

The Federal Judge Defendants also move to dismiss Stafne's claims for money damages based on absolute judicial immunity. Although Stafne does not seek money damages from Judge Coughenour, Stafne does allege that both Judge Zilly and Judge Silverman have caused him harm, and Stafne seeks nominal damages from them.

a. Standards

Under well-established principles, "a judicial officer, in exercising the authority vested in him, should be free to act upon his own convictions, without apprehension of personal consequences to himself." *Stump v. Sparkman*, 435 U.S. 349, 355 (1978) (alteration omitted). The Supreme Court has "held that judges of courts of superior or general jurisdiction are not liable to civil actions for their judicial acts, even when such acts are in excess of their jurisdiction, and are alleged to have been done maliciously or corruptly." *Stump*, 435 U.S. at 355-56 (quotation marks omitted). "[J]udicial immunity is an immunity from suit, not just from ultimate assessment of damages." *Mireles v. Waco*, 502 U.S. 9, 11 (1991). Thus, "it is not overcome by allegations of bad faith or malice, the existence of which ordinarily cannot be resolved without engaging in discovery and eventual trial." *Id.*; *see also Demoran v. Witt*, 781

F.2d 155, 158 (9th Cir. 1985) ("Allegations of malice or bad faith in the execution of the officer's duties are insufficient to sustain the complaint when the officer possesses absolute judicial immunity."). "Judicial immunity applies 'however erroneous the act may have been, and however injurious in its consequences it may have proved to the plaintiff.'" *Ashelman v. Pope*, 793 F.2d 1072, 1075 (9th Cir. 1986) (quoting *Cleavinger v. Saxner*, 474 U.S. 193 (1985)). The doctrine of judicial immunity serves to "discourage[e] collateral attacks, and thereby help[s] to establish appellate procedures as the standard system for correcting judicial error." *Forrester v. White*, 484 U.S. 219, 225 (1988).

Judicial "immunity is overcome in only two sets of circumstances. First, a judge is not immune from liability for nonjudicial actions, *i.e.*, actions not taken in the judge's judicial capacity. Second, a judge is not immune for actions, though judicial in nature, taken in the complete absence of all jurisdiction." *Mireles*, 502 U.S. at 11-12 (citations omitted).

Regarding the first exception to judicial immunity, whether an action is judicial "relates to the nature of the act itself, *i.e.*, whether it is a function normally performed by a judge, and to the expectations of the parties, *i.e.*, whether they dealt with the judge in his judicial capacity." *Id.* at 12 (alteration omitted). In *Mireles*, an attorney alleged that a judge ordered police officers to carry out a judicial order with excessive force which, the Supreme Court acknowledged, "is not a function normally performed by a judge." *Id.* (quotation marks omitted). The Supreme Court, however, stated that "if only the particular act in question were to be scrutinized, then any mistake of a judge in excess of his authority would become a 'nonjudicial' act, because an improper or erroneous act cannot be said to be normally performed by a judge." *Id.* Thus, "[i]f judicial immunity means anything, it means that a judge will not be deprived of immunity because the action he took was in error or was in excess of his authority." *Id.* at 12-13 (alteration

and quotation marks omitted). "[T]he relevant inquiry is the 'nature' and 'function' of the act, not the 'act itself.'" *Id.* at 13 (quoting *Stump*, 435 at 362). A court must "look to the particular act's relation to a general function normally performed by a judge." *Id.*

Regarding the second exception to judicial immunity, "[a] clear absence of all jurisdiction means a clear lack of all subject matter jurisdiction." *Mullis*, 828 F.2d at 1389. In *Stump*, the Supreme Court concluded that a judge who, pursuant to state law, had "original exclusive jurisdiction in all cases at law and in equity whatsoever, jurisdiction over the settlement of estates and over guardianships, appellate jurisdiction as conferred by law, and jurisdiction over all other causes, matters and proceedings where exclusive jurisdiction thereof is not conferred by law upon some other court, board or officer," did not act in the clear absence of all jurisdiction in authorizing a woman's sterilization. *Stump*, 435 U.S. at 357 (alteration omitted). The Court also offered the following illustration:

> [I]f a probate judge, with jurisdiction over only wills and estates, should try a criminal case, he would be acting in the clear absence of jurisdiction and would not be immune from liability for his action; on the other hand, if a judge of a criminal court should convict a defendant of a nonexistent crime, he would merely be acting in excess of his jurisdiction and would be immune.

Id. at 357 n.7 (citing *Bradley v. Fisher*, 80 U.S. 335, 352 (1871)). As stated by the Supreme Court in *Stump*, "the scope of the judge's jurisdiction must be construed broadly where the issue is the immunity of the judge." *Stump*, 435 U.S. at 356.

b. Application

i. Whether the challenged actions are of a kind that are normally performed by a judge

All of the actions of the Federal Judge Defendants about which Stafne complains are actions and functions that are normally performed by a judge. Although Stafne argues that the Federal Judge Defendants did not constitutionally continue to hold federal judicial office after

they elected senior status, Stafne cannot—and does not—dispute that all of the actions taken by Judge Zilly and Judge Silverman in the *BNYM* case and all of the actions taken by Judge Coughenour in the *Burnside* case were actions and functions normally performed by a judge in a lawsuit. These actions included receiving and reviewing legal memoranda and briefs, hearing oral argument in a courtroom, granting or denying motions, and entering orders or judgments.

Stafne also argues, at least implicitly, that judicial immunity applies only to "judges" and after electing senior status the Federal Judge Defendants are no longer judges under Article III, based on Stafne's Appointments Clause argument. Stafne, however, does not explicitly argue that the Federal Judge Defendants are not "judges." Indeed, he appears to concede that they can lawfully decide federal cases provided that all parties consent. Stafne, thus, is not arguing that the Federal Judge Defendants are not judges for purposes of judicial immunity, only that they no longer hold authority under Article III. Accordingly, the actions about which Stanfe complains were all judicial acts, and the first exception to judicial immunity does not apply.

ii. Whether there was a clear lack of all subject matter jurisdiction

The second exception is when there was a "clear lack" of all subject matter jurisdiction. Stafne's argument on this point takes two forms. First, Stafne argues that Judge Zilly and Judge Silverman lacked subject matter jurisdiction specifically in the *BNYM* lawsuit because the requirements for diversity jurisdiction, upon which the Bank of New York Mellon asserted subject matter jurisdiction, were not met. Second, Stafne argues that all of the Federal Judge Defendants acted without subject matter jurisdiction because, as senior judges, they did not

constitutionally continue to hold federal judicial office after electing senior status, at least without the consent of all parties.[7]

According to Stafne, Judge Zilly acted in the absence of subject matter jurisdiction in *BNYM* because the plaintiff, the Bank of New York Mellon, failed to plead sufficient facts to invoke the district court's diversity jurisdiction under 28 U.S.C. § 1332. Stafne argued before Judge Zilly that the Bank of New York Mellon did not allege the specific State in which it had its principal office. In its complaint, the Bank of New York Mellon alleged that it was a corporation. Thus, for purposes of diversity jurisdiction, it is a citizen of both its State of incorporation and the State in which it has its principal place of business. *See* 28 U.S.C. § 1332(c)(1). The Bank of New York Mellon also alleged in its complaint that it was a Delaware corporation with its principal place of business and headquarters in New York. Thus, for purposes of Stafne's lawsuit before the undersigned, Stafne's argument appears to be without merit, although that issue is more properly resolved in the *BNYM* lawsuit, including any appeal of that case.

Stafne also argued that the complaint filed by the Bank of New York Mellon failed to establish that it was the real party in interest, thus raising the issue of whether a different party's citizenship should be considered for purposes of diversity jurisdiction. Stafne also argued in *BNYM* that the court lacked subject matter jurisdiction under the "prior exclusive jurisdiction" doctrine. Stafne also raised other challenges to the court's jurisdiction, including that the Bank of New York Mellon lacked standing and authority to bring the lawsuit. Judge Zilly heard and rejected all of these arguments, and Stafne may raise them in his appeal of that case. Stafne, however, has not shown a "clear lack" of subject matter jurisdiction.

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[7] Again, Stafne's argument that full consent by the parties would have conferred subject matter jurisdiction is at odds with long-established precedent holding that a lack of subject matter jurisdiction can never be waived. *See* n.6, *supra*.

For judicial immunity to be pierced, the challenged conduct must be "manifestly or palpably beyond the judge's authority." *Bud Antle, Inc. v. Barbosa*, 106 F.3d 406 (9th Cir. 1996) (quoting *Spalding v. Vilas*, 161 U.S. 483, 498 (1896) (alteration omitted)). In *Bud Antle, Inc.*, the Ninth Circuit held that although it had determined that an adjudicative body lacked jurisdiction to hear a dispute, there was no reason to conclude that "the Board members should not be immune from damages suits." *Id.* The Board's "erroneous assertion of jurisdiction was not so grave as to warrant piercing the Board members' immunity" and "allegations of bad faith do not compel" a different result. *Id.* In the *BNYM* case, a review of the record similarly shows no basis to conclude that Judge Zilly acted in the complete absence of all subject matter jurisdiction that was manifestly or palpably beyond the judge's authority.

With regard to Judge Silverman, Stafne merely argues that Judge Silverman remanded Judge Zilly's order without having first determined that the Ninth Circuit had jurisdiction over that appeal, which Stafne challenged by motion. Thus, Stafne does not argue that the Ninth Circuit had a "clear lack" of jurisdiction over the appeal, only that the appellate court did not determine (or expressly explain) the basis of its jurisdiction. In any event, "[t]he courts of appeals . . . shall have jurisdiction of appeals from all final decisions of the district courts of the United States . . . ." 28 U.S.C. § 1291. Thus, Judge Silverman, sitting on a panel of the Ninth Circuit hearing an appeal from a final decision of a district court, did not act in the absence of all jurisdiction in entering an order of limited remand to Judge Zilly in *BNYM*.

The second form of Stafne's argument relates to his constitutional challenge to federal senior status based on the Appointments Clause. Stafne's argument fails for several alternative reasons. First, "[j]urisdiction refers to a *court's* adjudicatory authority. Accordingly, the term jurisdictional properly applies only to prescriptions delineating the classes of *cases* (subject

matter jurisdiction) and the persons (personal jurisdiction) implicating that authority." *Reed Elsevier, Inc. v. Muchnick*, 559 U.S. 154, 160-61 (2010) (quoting *Kontrick v. Ryan*, 540 U.S. 443, 455 (2004)) (emphasis added). "[A] court's subject matter jurisdiction defines its power to hear cases." *Lightfoot v. Cendant Mortg. Corp.*, 137 S. Ct. 553, 560 (2017); *see also Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 89 (1998) (defining subject matter jurisdiction as "the courts' statutory or constitutional power to adjudicate the case" (emphasis omitted)). "Subject matter jurisdiction . . . concerns a court's competence to adjudicate a particular category of cases," or "cases of a certain genre." *Wachovia Bank v. Schmidt*, 546 U.S. 303, 316-17 (2006); *see also United States v. Morton*, 467 U.S. 822, 828 (1984) ("Subject matter jurisdiction defines the court's authority to hear a given type of case . . . .").

Thus, even if Stafne were correct that a federal judge no longer continues to hold constitutional authority under Article III after taking senior status, that would not mean that any *court* issuing rulings or decisions rendered by a senior judge would lack subject matter jurisdiction, as a court. The Supreme Court directs us to look to the jurisdiction of the *court* on which a judge sits, not to the individual qualifications of any specific judge. *See Stump*, 435 U.S. at 357 (citing state code describing jurisdiction of the court); *Bradley v. Fisher*, 80 U.S. 335, 354 (1871) ("The Criminal Court of the District, as a court of general criminal jurisdiction, possessed the power to strike the name of the plaintiff from its rolls as a practicing attorney.").

Second, the Supreme Court has expressly characterized similar Appointments Clause challenges as nonjurisdictional.[8] In *Freytag v. C.I.R.*, 501 U.S. 868, 878 (1991), the taxpayer

[8] In *Gonzalez v. Thaler*, 565 U.S. 134, 141 (2012), the Supreme Court noted that it recently had "endeavored . . . to 'bring some discipline' to the use of the term 'jurisdictional.'" (quoting *Henderson v. Shinseki*, 562 U.S. 428, 435 (2011)). As the Court explained, the distinction is important because "[s]ubject matter jurisdiction can never be waived or forfeited." *Id.*

petitioners challenged the appointment of a Special Trial Judge on the United States Tax Court. The petitioners previously consented to the assignment of the judge. The Court stated that Appointments Clause challenges generally fall "in the category of *nonjurisdictional* structural constitutional objections that" a court may consider on appeal, even if the issue was not raised below. *Freytag*, 501 U.S. at 879 (emphasis added) (citing *Glidden Co. v. Zdanok*, 370 U.S. 530, 535-36 (1962)). As such, although the petitioners had not previously raised the argument, and although nonjurisdictional arguments generally are waived if not raised before a lower court, the Court decided to exercise its discretion to hear that particular challenge.[9]

Underlying this decision is the premise that an Appointments Clause challenge is nonjurisdictional. *See also Consumer Fin. Prot. Bureau v. Gordon*, 819 F.3d 1179, 1189-90 (9th Cir. 2016) ("Our holding tracks the cases in which the Supreme Court has described Appointments Clause questions as 'nonjurisdictional,' even though they implicate core separation of powers principles."); *Intercollegiate Broad. Sys., Inc. v. Copyright Royalty Bd.*, 574 F.3d 748, 756 (D.C. Cir. 2009) ("An Appointments Clause challenge is 'nonjurisdictional,' and thus not subject to the axiom that jurisdiction may not be waived." (quoting *Freytag*, 501 U.S. at 878)); *Nguyen v. United States*, 539 U.S. 69 (2003) (hearing a challenge to a decision rendered by a Court of Appeals panel convened that included a district judge from the Northern Mariana Islands, noting that petitioners had not previously objected to the panel's composition, but choosing to exercise the Court's "supervisory powers" to hear the challenge).

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[9] The Supreme Court decided to hear the challenge because of the serious structural nature of the challenge raised, which went to the "validity of the Tax Court proceeding that" formed the basis of the litigation. *Freytag*, 501 U.S. at 879. As the Court explained, the Appointments Clause implicates the separation of powers. "[S]eparation-of-powers jurisprudence generally focuses on the danger of one branch's aggrandizing its power at the expense of another branch." *Id.* at 878. The Appointments Clause serves to "guard[] against this encroachment" and to "prevent[] the diffusion of the appointment power." *Id.*

In summary, there are only two recognized exceptions to absolute judicial immunity, *Mireles*, 502 U.S. at 11-12, neither applies in this case. Further, the Supreme Court has directed that "the scope of the judge's jurisdiction must be construed broadly where the issue is the immunity of the judge." *Stump*, 435 U.S. at 356. Thus, the Federal Judge Defendants have absolute judicial immunity in this case against Stafne's claim for money damages.

4. Senior Status under 28 U.S.C. § 371 and the Appointments Clause

In this lawsuit, Stafne challenges the constitutional validity of § 371, which establishes the position of senior federal judge. Incorporating the arguments presented in the law review article by Judge Stras and Professor Scott, Stafne argues that the Federal Judge Defendants, having elected senior status, are no longer Article III judges. There is no dispute, however, that each of the Federal Judge Defendants was constitutionally nominated by the President and confirmed by the Senate when each first assumed his federal judicial office. Further, under the Constitution, each of the Federal Judge Defendants holds his federal judicial office until resignation, removal by impeachment, or death. *See* U.S. CONST., art. III, § 1 ("The judges, both of the supreme and inferior courts, shall hold their offices during good behavior . . . ."). None of the Federal Judge Defendants have resigned, been impeached and removed, or died. Instead, they simply elected senior status under 28 U.S.C. § 371(b)(1).

Under that statute, each federal judge electing senior status shall "retain the office" but may "retire from regular active service" and "continue to receive the salary of the office" if they meet the requirements established by Congress. Because a federal judge who elects senior status continues to "retain the office," that person, the Federal Judge Defendants argue, remains a federal judge under Article III. Indeed, as noted by Judge Stras and Professor Scott in their law review article:

> Both the verb and the definite article in the phrase "retain the office" suggest that senior judges retain the particular office they have always held. "Retain" implies continuity of ownership, and "the" implies continuity with respect to a particular office. Standing alone, this language suggests that senior judges do not change offices, but merely change status within the same office.

Stras & Scott, 92 CORNELL LAW REVIEW at 471-72 (footnotes omitted). As Judge Stras and Professor Scott further explain:

> In 1948, Congress amended and consolidated several provisions relating to judicial retirement. The new statute, codified at 28 U.S.C. § 371, provided that a judge "may retain his office but retire from regular active service." A revision note explained that those "[w]ords . . . were used to clarify the difference between resignation and retirement. Resignation results in loss of the judge's office, while retirement does not."

Id. at 477 (footnotes omitted). For the reasons given in their article, Judge Stras and Professor Scott ultimately reject this reading of the text of § 371(b)(1). They do not, however, rely upon any case law for their conclusion. The Court also has found no case law supporting the conclusion urged by Judge Stras and Professor Scott.

The Court does not question the structural importance of the Appointments Clause of the U.S. Constitution, which serves to protect separation of powers, a fundamental principle in our constitutional structure. The Supreme Court has stated that "one who makes a timely challenge to the constitutional validity of the appointment of an officer who adjudicates his case is entitled to a decision on the merits of the question and whatever relief may be appropriate if a violation indeed occurred." *Ryder v. United States*, 515 U.S. 177, 182-83 (1995). This discussion, however, brings into clear focus the primary flaw underlying all of Stafne's claims, including his argument under the Appointments Clause: this separately-filed lawsuit is not the proper time or place for Stafne to raise his arguments relating to the senior status of the Federal Judge Defendants. Further, as the Supreme Court also noted in *Ryder*, the remedy for an alleged

Appointments Clause violation is not to "subject public officials to personal damages." *Id.* at 185.

At some point, the constitutionality of § 371 may need to be resolved. That may even occur in the appeal of either *BNYM* or *Burnside*. For the reasons already discussed, however, this separate action brought against the Federal Judge Defendants presents neither the proper place nor the proper time to do so.

B. Defendant Trenary's Motion to Dismiss

Stafne also seeks a contingent recovery against Defendant Trenary. Stafner argues that if, in the future, Sheriff Trenary were to sell Stafne's real property pursuant to the judicial foreclosure order issued by Judge Zilly in *BNYM*, then, Stafne asserts, Sheriff Trenary would be liable to Stafne for damages. According to Stafne, it is improper for Sheriff Trenary to comply with a court order that he knows or should know is invalid because it was issued by someone who does not hold the authority of a federal judge under Article III. Sheriff Trenary moves to dismiss on the ground that Stafne's claim against him is barred by quasi-judicial immunity. Sheriff Trenary also argues that Stafne's claim against him is an improper collateral attack on another court's order.

As discussed above, Stafne's challenge in this lawsuit to Judge Zilly's order judicially foreclosing on Stafne's property constitutes an improper collateral attack. Furthermore, the very reason why Stafne argues that Judge Zilly's order is void—*i.e.*, that Judge Zilly cannot constitutionally exercise the power of a federal judge under Article III, already has been heard and rejected in *that* case. A judgment in Stafne's favor on that point in this separate lawsuit would require this Court to invalidate or enjoin the execution of an order issued by another district judge, which, for all of the reasons previously discussed, is an action this Court is not empowered to take. Finally, to the extent that Stafne seeks damages relating to any such

foreclosure and sale that has not yet occurred, Stafne's claim is not ripe. Not only has the judicial foreclosure not yet been executed, the case is currently stayed until further order by Judge Zilly. For all of these reasons, Stafne's claims against Sheriff Trenary are dismissed.

CONCLUSION

The Court GRANTS both the motion to dismiss brought by the Federal Judge Defendants (ECF 19) and the motion to dismiss brought by Sheriff Trenary (ECF 10). In addition, the Court dismisses this lawsuit with prejudice.

IT IS SO ORDERED.

DATED this 9th day of October, 2018.

/s/ Michael H. Simon
Michael H. Simon
United States District Judge

APPENDIX 3

33a

IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WASHINGTON

AT SEATTLE

SCOTT E. STAFNE, Plaintiff, v. **THOMAS S. ZILLY, JOHN C. COUGHENOUR, BARRY G. SILVERMAN, and TY TRENARY,** Defendants.	Case No. 2:17-cv-01692-MHS **ORDER**

Scott E. Stafne, STAFNE TRUMBULL LLC, 239 North Olympic Avenue, Arlington, WA 98223. *Pro se.*

Jared D. Hager, Special Assistant United States Attorney, UNITED STATES ATTORNEY'S OFFICE FOR THE DISTRICT OF OREGON, 1000 SW Third Avenue, Suite 600, Portland, OR 97202. Of Attorneys for Defendants Thomas S. Zilly, John C. Coughenour, and Barry G. Silverman.

Geoffrey A. Enns, SNOHOMISH COUNTY PROSECUTING ATTORNEY, CIVIL DIVISION, 3000 Rockefeller Avenue, M/S 504, Everett, WA 98201. Of Attorneys for Defendant Ty Trenary.

Michael H. Simon, District Judge.

Plaintiff Scott E. Stafne is an attorney in the State of Washington. He brings this action on his own behalf. In his Complaint, Plaintiff asserted claims against three senior federal judges

and a county sheriff. In an Opinion and Order, the Court previously granted the motion to dismiss brought by the Federal Judge Defendants and the motion to dismiss brought by the Sheriff. ECF 48. The Court also entered Judgment, dismissing this lawsuit with prejudice. ECF 49. Plaintiff then filed a motion asking the Court to amend or alter its Judgment, pursuant to Rule 59(e)[1] and Rule 60(b)(6) of the Federal Rules of Civil Procedure. ECF 50.

Under Rule 59(e), a court has discretion to alter or amend a judgment if: (1) it is presented with newly discovered evidence; (2) it committed clear error or made an initial decision that was manifestly unjust; or (3) there is an intervening change in controlling law. *Ybarra v. McDaniel*, 656 F.3d 984, 998 (9th Cir. 2011); *see also McDowell v. Calderon*, 197 F.3d 1253, 1255 (9th Cir. 1999) ("A motion for reconsideration under Rule 59(e) should not be granted, absent highly unusual circumstances, unless the district court is presented with newly discovered evidence, committed *clear error*, or if there is an intervening change in the controlling law." (emphasis in original) (citation and quotation marks omitted)).

Rule 60(b) governs reconsideration of final orders of a district court. Rule 60(b) allows a district court to relieve a party from a final judgment or order for the following reasons: "(1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence . . . ; (3) fraud . . . by an opposing party; (4) the judgment is void; (5) the judgment has been satisfied . . . or (6) any other reason that justifies relief." Fed. R. Civ. P. 60(b). The party making the Rule 60(b) motion bears the burden of proof. *See Rufo v. Inmates of Suffolk Cnty. Jail*, 502 U.S. 367, 383 (1992). Reconsideration is "an extraordinary remedy, to be used sparingly in the interests of finality and conservation of judicial resources." *Carroll v. Nakatani*, 342 F.3d 934, 945 (9th Cir. 2003) (citation and quotation marks omitted); *see also Shalit v. Coppe*, 182

[1] In his motion, Plaintiff referred to Rule 59(a)(2)(e) [*sic*]. ECF 50 at 2. There is no such rule, however. The Court assumes that Plaintiff meant to refer to Rule 59(e).

F.3d 1124, 1132 (9th Cir. 1999) (noting that "reconsideration is appropriate only in very limited circumstances").

Plaintiff is essentially rearguing the same points that the Court previously rejected. Further, to the extent that Plaintiff seeks leave to amend his complaint, the Court finds that any such amendment as described by Plaintiff would be futile because Plaintiff's claims would continue to suffer from many of the same legal deficiencies previously ruled upon by the Court. *See Carrico v. City & Cnty. of San Francisco*, 656 F.3d 1002, 1008 (9th Cir. 2011) (holding that a motion to amend may be denied if amendment would be futile).

Plaintiff's Post Judgment Motion (ECF 50) is DENIED.

IT IS SO ORDERED.

DATED this 2nd day of May, 2019.

/s/ Michael H. Simon
Michael H. Simon
United States District Judge

CONSTITUTIONAL PROVISIONS

ARTICLE III

SECTION ONE. The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

SECTION TWO. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State;—between Citizens of different States;—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

ARTICLE V

The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate.

STATUTES

28 U.S.C. § 371

(a) Any justice or judge of the United States appointed to hold office during good behavior may retire from the office after attaining the age and meeting the service requirements, whether continuous or otherwise, of subsection (c) and shall, during the remainder of his lifetime, receive an annuity equal to the salary he was receiving at the time he retired.

(b)

(1)Any justice or judge of the United States appointed to hold office during good behavior may retain the office but retire from regular active service after attaining the age and meeting the service requirements, whether continuous or otherwise, of subsection (c) of this section and shall, during the remainder of his or her lifetime, continue to receive the salary of the office if he or she meets the requirements of subsection (e).

(2)In a case in which a justice or judge who retires under paragraph (1) does not meet the requirements of subsection (e), the justice or judge shall continue to receive the salary that he or she was receiving when he or she was last in active service or, if a certification under subsection (e) was made for such justice or judge, when such a certification was last in effect. The salary of such justice or judge shall be adjusted under section 461 of this title.

* * *

(d) The President shall appoint, by and with the advice and consent of the Senate, a successor to a justice or judge who retires under this section.

(e)

(1) In order to continue receiving the salary of the office under subsection (b), a justice must be certified in each calendar year by the Chief Justice, and a judge must be certified by the chief judge of the circuit in which the judge sits, as having met the requirements set forth in at least one of the following subparagraphs:

(A) The justice or judge must have carried in the preceding calendar year a caseload involving courtroom participation which is equal to or greater than the amount of work involving courtroom participation which an average judge in active service would perform in three months. In the instance of a justice or judge who has sat on both district courts and courts of appeals, the caseload of appellate work and trial work shall be determined separately and the results of those determinations added together for purposes of this paragraph.

(B) The justice or judge performed in the preceding calendar year substantial judicial duties not involving courtroom participation under subparagraph (A), including settlement efforts, motion decisions, writing opinions in cases that have not been orally argued, and administrative duties for the court to which the justice or judge is assigned. Any certification under this subparagraph shall include a statement describing in detail the nature and amount of work and certifying that the work done is equal to or greater than the work described in this subparagraph which an average judge in active service would perform in three months.

(C) The justice or judge has, in the preceding calendar year, performed work described in subparagraphs (A) and (B) in an amount which, when calculated in accordance with such subparagraphs, in the aggregate equals at least 3 months work.

(D) The justice or judge has, in the preceding calendar year, performed substantial administrative duties directly related to the operation of the courts, or has performed substantial duties for a Federal or State governmental entity. A certification under this subparagraph shall specify that the work done is equal to the full-time work of an employee of the judicial branch. In any year in which a justice or judge performs work described under this subparagraph for less than the full year, one-half of such work may be aggregated with work described under subparagraph (A), (B), or (C) of this paragraph for the purpose of the justice or judge satisfying the requirements of such subparagraph.

(E) The justice or judge was unable in the preceding calendar year to perform judicial or administrative work to the extent required by any of subparagraphs (A) through (D) because of a temporary or permanent disability. A certification under this subparagraph shall be made to a justice who certifies in writing his or her disability to the Chief Justice, and to a judge who certifies in writing his or her disability to the chief judge of the circuit in which the judge sits. A justice or judge who is certified under this subparagraph as having a permanent disability shall be deemed to have met the requirements of this subsection for each calendar year thereafter.

(2) Determinations of work performed under subparagraphs (A), (B), (C), and (D) of paragraph (1) shall be made pursuant to rules promulgated by the Judicial Conference of the United States. In promulgating such criteria, the Judicial Conference shall take into account existing standards promulgated by the Conference for allocation of space and staff for senior judges.

(3) If in any year a justice or judge who retires under subsection (b) does not receive a certification under this subsection (except as provided in paragraph (1)(E)), he or she may thereafter receive a certification for that year by satisfying the requirements of subparagraph (A), (B), (C), or (D) of paragraph (1) of this subsection in a subsequent year and attributing a sufficient part of the work performed in such subsequent year to the earlier year so that the work so attributed, when added to the work performed during such earlier year, satisfies the requirements for certification for that year. However, a justice or judge may not receive credit for the same work for purposes of certification for more than 1 year.

(4) In the case of any justice or judge who retires under subsection (b) during a calendar year, there shall be included in the determination under this subsection of work performed during that calendar year all work performed by that justice or judge (as described in subparagraphs (A), (B), (C), and (D) of paragraph (1)) during that calendar year before such retirement.

28 U.S.C.§ 291

(a) The Chief Justice of the United States may, in the public interest, designate and assign temporarily any circuit judge to act as circuit judge in another circuit upon request by the chief judge or circuit justice of such circuit.

(b) The chief judge of a circuit or the circuit justice may, in the public interest, designate and assign temporarily any circuit judge within the circuit, including a judge designated and assigned to temporary duty therein, to hold a district court in any district within the circuit.

28 U.S.C. § 292

(a) The chief judge of a circuit may designate and assign one or more district judges within the circuit to sit upon the court of appeals or a division thereof whenever the business of that court so requires. Such designations or assignments shall be in conformity with the rules or orders of the court of appeals of the circuit.

(b) The chief judge of a circuit may, in the public interest, designate and assign temporarily any district judge of the circuit to hold a district court in any district within the circuit.

(c) The chief judge of the United States Court of Appeals for the District of Columbia Circuit may, upon presentation of a certificate of necessity by the chief judge of the Superior Court of the District of Columbia pursuant to section 11–908(c) of the District of Columbia Code, designate and assign temporarily any district judge of the circuit to serve as a judge of such Superior Court, if such assignment (1) is approved by the Attorney General of the United States following a determination by him to the effect that such assignment is necessary to meet the ends of justice, and (2) is approved by the chief judge of the United States District Court for the District of Columbia.

(d) The Chief Justice of the United States may designate and assign temporarily a district judge of one circuit for service in another circuit, either in a district court or court of appeals, upon presentation of a certificate of necessity by the chief judge or circuit justice of the circuit wherein the need arises.

(e) The Chief Justice of the United States may designate and assign temporarily any district judge to serve as a judge of the Court of International Trade upon presentation to him of a certificate of necessity by the chief judge of the court.

28 U.S.C. § 294

(a) Any retired Chief Justice of the United States or Associate Justice of the Supreme Court may be designated and assigned by the Chief Justice of the United States to perform such judicial duties in any circuit, including those of a circuit justice, as he is willing to undertake.

(b) Any judge of the United States who has retired from regular active service under section 371(b) or 372(a) of this title shall be known and designated as a senior judge and may continue to perform such judicial duties as he is willing and able to undertake, when designated and assigned as provided in subsections (c) and (d).

(c) Any retired circuit or district judge may be designated and assigned by the chief judge or judicial council of his circuit to perform such judicial duties within the circuit as he is willing and able to undertake. Any other retired judge of the United

States may be designated and assigned by the chief judge of his court to perform such judicial duties in such court as he is willing and able to undertake.

(d) The Chief Justice of the United States shall maintain a roster of retired judges of the United States who are willing and able to undertake special judicial duties from time to time outside their own circuit, in the case of a retired circuit or district judge, or in a court other than their own, in the case of other retired judges, which roster shall be known as the roster of senior judges. Any such retired judge of the United States may be designated and assigned by the Chief Justice to perform such judicial duties as he is willing and able to undertake in a court outside his own circuit, in the case of a retired circuit or district judge, or in a court other than his own, in the case of any other retired judge of the United States. Such designation and assignment to a court of appeals or district court shall be made upon the presentation of a certificate of necessity by the chief judge or circuit justice of the circuit wherein the need arises and to any other court of the United States upon the presentation of a certificate of necessity by the chief judge of such court. No such designation or assignment shall be made to the Supreme Court.

(e) No retired justice or judge shall perform judicial duties except when designated and assigned.

28 U.S.C. § 295

No designation and assignment of a circuit or district judge in active service shall be made without the consent of the chief judge or judicial council of the circuit from which the judge is to be designated and assigned. No designation and assignment of a judge of any other court of the United States in active service shall be made without the consent of the chief judge of such court.

All designations and assignments of justices and judges shall be filed with the clerks and entered on the minutes of the courts from and to which made.

The Chief Justice of the United States, a circuit justice or a chief judge of a circuit may make new designation and assignments in accordance with the provisions of this chapter and may revoke those previously made by him.

28 U.S.C. § 296

A justice or judge shall discharge, during the period of his designation and assignment, all judicial duties for which he is designated and assigned. He may be required to perform any duty which might be required of a judge of the court or district or circuit to which he is designated and assigned.

Such justice or judge shall have all the powers of a judge of the court, circuit or district to which he is designated and assigned, except the power to appoint any person to a statutory position or to designate permanently a depository of funds or a newspaper for publication of legal notices. However, a district judge who has retired from regular active service under section 371(b) of this title, when designated and

assigned to the court to which such judge was appointed, having performed in the preceding calendar year an amount of work equal to or greater than the amount of work an average judge in active service on that court would perform in 6 months, and having elected to exercise such powers, shall have the powers of a judge of that court to participate in appointment of court officers and magistrate judges, rulemaking, governance, and administrative matters.

A justice or judge who has sat by designation and assignment in another district or circuit may, notwithstanding his absence from such district or circuit or the expiration of the period of his designation and assignment, decide or join in the decision and final disposition of all matters submitted to him during such period and in the consideration and disposition of applications for rehearing or further proceedings in such matters.

APPENDIX 5

42a

The Honorable _____

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF WASHINGTON AT SEATTLE

SCOTT E. STAFNE,

Plaintiff,

v.

THOMAS S. ZILLY; JOHN C. COUGHENOUR; BARRY G. SILVERMAN; and TY TRENARY

Defendant(s)

Case No.:

COMPLAINT

JURY DEMAND

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Plaintiff Scott E. Stafne, *pro se,* complains as follows:

I. PARTIES

1.1. Plaintiff Scott E. Stafne is a citizen of the United States who was born in Moline, Illinois on January 18, 1949.

1.2 Stafne was admitted to practice law in the courts of Washington State in 1976. Stafne was also admitted to practice law before this Court, the United States District Court for the Western District of Washington (USDCWW), that same year. Stafne is also admitted to practice law before the Ninth Circuit Court of Appeals as well as the United States Supreme Court.

1.3 Stafne has represented numerous clients as an attorney before the United States District Court for the Western District of Washington (USDCWW) and the Ninth Circuit Court of Appeals and intends to continue doing so in the future.

1.4 Stafne has also represented himself *pro se* in actions brought in this Court, the Ninth Circuit Court of Appeals, and the United States Supreme Court and will likely do so in the future.

1.5 Stafne owns real property in a rural settlement in unincorporated Snohomish County, Washington known as Twin Falls Estates (hereafter referred to as "property"). Stafne's property is one of 15 parcels which makes up Twin Falls Estates. These properties are the subject of an on going *in rem* quiet title litigation to determine and declare the legal descriptions of all the parcels in that rural settlement.

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1.6 While the in rem quiet title action was ongoing, Bank of New York Mellon through the law firm of Davis Wright Tremaine (DWT) brought an *in rem* foreclosure action before defendant Zilly seeking to foreclose on Stafne's property based on a 2005 deed of trust asserting a disputed legal description, the legitimacy and accuracy of which was then being resolved in the Twin Falls quiet title litigation.

1.7 Defendant senior judge Zilly chose to preside over Bank of New York Mellon v Stafne as if he held the position of an active Article III judge. Defendant Thomas S. Zilly (Zilly) was born on January 1, 1935 (82) and is a senior judge who is exercising judicial power as if he is an active Article III district court judge in the USDCWW when he does not hold such office but is only acting as a volunteer[1].

1.8 Defendant John C. Coughenour (Coughenour) was born on July 27, 1941 (76) and is a senior judge who is exercising judicial power in the case of *Stafne v Burnside* as if he is an active Article III district court judge when he does not hold such office but is only acting as a volunteer.

1.9 Defendant Barry G. Silverman (Silverman) was born on October 11, 1951 (66) and is a senior Ninth Circuit court of appeals judge who exercised judicial power in the appeal *Stafne v Bank of New York Mellon* as if he is an active Article III Ninth Circuit Court of Appeals Judge when he does not hold such office but is only acting as a volunteer.

[1] The government web site for United States Courts explains senior judges are volunteers who exercise judicial power. "Senior judges, who essentially provide volunteer service to the courts, typically handle about 15 percent of the federal courts' workload annually." This information about federal judges can be accessed at http://www.uscourts.gov/faqs-federal-judges#faq-What-is-a-senior-judge and was most recently accessed by the author on October 31, 2017.

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1.10 Defendant Ty Trenary (Trenary) is the Sheriff of Snohomish County, Washington. He has been order to conduct a judicial sale of Stafne's property by defendant Zilly. Defendant Trenary is being sued in both his individual and official capacities.

II. JURISDICTION, VENUE, and JURY DEMAND

2.1 Jurisdiction in this Court exists under 28 U.S.C. 1331 and 1343 (§§ (a) (3) and (4).

2.2 Jurisdiction further exists pursuant to the Constitution of the United States as well as 42 U.S.C. § 1983 and 42 U.S.C 1985 and such other provisions of the United States Constitution, statutes, treaties, and customary international law which may apply to the facts as are set forth in this complaint. *See* e.g. *Johnson v. City of Shelby*, 135 S. Ct. 346, 346-347 (2014).

2.3 Venue is appropriate in the United States District Court for the Western District of Washington pursuant to 28 U.S.C. § 1391 because that is judicial district where Stafne's property which is the subject matter of both the State Court and Federal Court *in rem* judicial actions is located.

2.4 Because this complaint challenges, among other things, the constitutionality of the practices of the United States District Court for the Western District of Washington (USDCWW) and the Ninth Circuit Court of Appeals with regard to such matters as appointment, use, number, and authority of senior judges in the USDCWW and if successful, these challenges will likely affect the present working conditions of senior federal judges and/ or future working conditions of Article III active judges during their good behavior *and*

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because the senior and active judges in this District, as well as their staff, may be witnesses with regard to evidence which will need to be adjudicated during this litigation, Stafne requests that all the Senior and active Judges of this USDCWW be disqualified from acting as an Article III judge in this case pursuant to the Due Process Clauses of the United States Constitution ("A fair trial in a fair tribunal is a basic requirement of due process."[2]) and 28 U.S.C 455 (a) and (b)(1).

2.5 Accordingly, Stafne requests this district court designate an active Article III judge from a different United States Court which does not utilize retired senior judge volunteers to routinely, and without the consent of litigants, adjudicate cases and controversies within the Constitutional limitations established by Article III,§ 2.

2.6 In the event no such federal District Court or Court of Appeals exists, Stafne requests an active US article III judge from a United States District Court which has a full contingent such judges, see infra. be designated to exercise federal judicial power over this case within this venue.

2.7 Scott Stafne requests a jury be empaneled to resolve all disputed factual issues related to USDCWW practices and any factual issue of judicial bias, especially where court officials, employees, and volunteers may have personal knowledge of facts related to such matters. In support of this request, Stafne acknowledges that while the role of juries in the federal judicial system has changed over time, it is clear our founders created juries as a Republican check on the exercise of national judicial power.

[2] *See e.g.* Gabriel D. Serbulea, " Due Process and Judicial Disqualification: The Need for Reform", 38 Pepp. L. Rev. 4 (2011) Available at: http://digitalcommons.pepperdine.edu/plr/vol38/iss4/4

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2.8 In cases where judges would benefit from their own rulings regarding factual issues, notions of justice and due process as well as the Seventh Amendment, requires that representatives of the people (not self-interested judges) resolve factual issues. For purposes of the Seventh Amendment Stafne alleges the value in controversy of this case is more than twenty dollars.

III. INTRODUCTION

The purpose of this introduction is to provide a brief roadmap of the legal contentions being raised by Stafne in the context of this complaint.

A. Senior Judges are volunteers and do not hold the office of Article III Judges

3.1 In March 2007 the Cornell Law Review published two law review articles related to the constitutionality of senior judges. These include an article by David R. Stras and Ryan W. Scott entitled "Are Senior Judges Unconstitutional?"[3] and a response article by the Honorable Ninth Circuit Court of Appeals Judge Betty Binns Fletcher entitled: "A Response to Stras & Scott's are Senior Judges Unconstitutional?"[4].

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[3] The citation to this article is 92 Cornell Law Review 523 (March 2007). This article can be accessed at http://cornelllawreview.org/files/2013/02/Stras_Scott_92-3.pdf and was last accessed by the author at this address on October 28, 2017.

[4] The citation to Senior Court of Appeal Judge Fletcher's article is also 92 Cornell Law Review at 293. This article can be accessed at http://www.lawschool.cornell.edu/research/cornell-law-review/upload/Fletcher_92-3.pdf and was last accessed by the author at this address on October 28, 2017. In her response Judge Fletcher appears to acknowledge the likely "technical" constitutional violations asserted by Stras and Scott, but argues policy considerations favor the use of such judges. *Id.*, at 523-524. Ultimately, she argues "I myself [she is a senior judge of the Ninth Circuit] am not unconstitutional." Towards the end of her response Senior Judge Fletcher candidly observes: "Do I have reservations about the wisdom or constitutionality of the statute? Yes, I have one. The statute denies salary increases … to senior judges who are able but not actively performing services to the courts. …" *Id.*, at 524-425. Senior Judge Fletcher devotes much of her response to the Anti nepotism statute, 28 U.S.C. 458, which was apparently rewritten by Congress when her son was nominated to be a judge on the the Ninth Circuit Court of Appeals by President Clinton. *See* Michael E. Solimine, Nepotism in the Federal Judiciary, 71 U. CIN. L. REV. 563, 565–66 (2002). Invoking the same appointments clause argument used by Straw and Scott to support their

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3.2 These two law review articles are incorporated herein so as to establish plausibility for purposes of FRCP 8 and 12(b)(6) that senior judge volunteers Zilly, Coughenour, and Silverman are not active judges having Article III attributes for the reasons stated in those law review articles and for those additional reasons stated in this complaint.

3.3 In their 2007 article Stras and Scott urge Congress to amend Title 28 in such a way as to make it more likely to be constitutional. While Congress did amend Title 28 in 2008, it did so in such a way as to accentuate the distinction between active Article III judges and those senior judges to whom Congress attempted to give similar powers. See e.g. Pub. L. 110–177 (2008) which inserted at end of second paragraph of 28 U.S.C. 396 the following language:

> However, a district judge who has retired from regular active service under section 371(b) of this title, *when designated and assigned to the court to which such judge was appointed*, having performed in the preceding calendar year an amount of work equal to or greater than the amount of work an average judge in active service on that court would perform in 6 months, and having elected to exercise such powers, *shall have the powers of a judge of that court to participate in appointment of court officers and magistrate judges, rulemaking, governance, and administrative matters.*

(Emphasis added)

3.4 The statutory amendment set forth above makes clear senior judges authority to act as active Article III judges exercising judicial power comes not from their appointment by the President with consent of the Senate, but from their own decisions to adjudicate specific cases *of their own choosing for free* after they have resigned the statutory office of an Article III judges and no longer have the attributes (tenure and compensation) of such judges.

---

contention that senior judgeship statutes are unconstitutional Fletcher argues the anti-nepotism statute violates the Constitution's Appointments Clause, U.S. Const. Art. II, § 2, cl. 2.

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3.5 Stafne asserts Congress cannot create a class of Article III judges, who do not comply with U.S. Const. Art 2, § 2, cl. 2, (the Appointments Clause) and thereby create havoc in the very organizational structure Congress has ordained and established for inferior Article III courts pursuant to U.S. Const. Article III § 1. See e.g. *Booth v United States,* where the Supreme Court observed:

> It is scarcely necessary to say that a retired judge's judicial acts would be illegal unless he who performed them held the office of judge. It is a contradiction in terms to assert that one who has retired in accordance with the statute may continue to function as a federal judge and yet not hold the office of a judge.

291 U.S. 339, 350 (1934)[5].

3.6 As an attorney admitted to practice and practicing before the USDCWW and the Ninth Circuit Court of Appeals Stafne seeks such relief as is necessary to prevent senior judge volunteers in these Courts from exercising judicial power after they have resigned their office and especially have been succeeded in that office.

3.7 Alternatively, as an attorney admitted to practice and practicing before the USDCWW and the Ninth Circuit Court of Appeals Stafne seeks such relief as is necessary to prevent senior judge volunteers in these Courts from exercising judicial power without the consent of the parties after they have resigned their office and been succeeded in office by

[5] *Booth* determined that the retired judge in that case remained a member of the bench and therefore a judge for purposes of Article III pursuant to an earlier predecessor retirement statute, 28 U.S.C. § 270. That statute has since been repealed to exclude language suggesting senior judges are members of the "bench".

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another judge who has been appointed by the President with the advice and consent of the Senate.

3.8 Further, as an attorney admitted to practice and practicing before the USDCWW and Ninth Circuit Court of Appeals Stafne seeks such relief as is necessary to require judges to perform the most sacred duty of an Article III court, which is explain how and why the presumption against subject matter jurisdiction by inferior federal courts has been rebutted in all cases where such jurisdiction has been challenged.

3.9 As a *pro se* litigant in *Bank of New York Mellon* Stafne seeks to have senior judge Zilly disqualified from acting as a substitute for an active judge holding the office of an Article III judge in the USDCWW. Stafne also seeks a an order decreeing that all defendant Zilly's orders in that case are *ultra vires* because they were entered without any subject matter jurisdiction over that case.

3.10 As a pro se litigant in *Bank of New York Mellon* Stafne seeks to have senior judge Silverman disqualified from acting as a substitute for an active judge holding the office of an Article III judge for the Ninth Circuit Court of Appeals and a rescission of Judge Hurwitz and Silverman's order remanding Judge Zilly's merits decision back to him without having first determined that the Ninth Circuit had jurisdiction over the appeal, which had been challenge by motion.

3.11 Stafne also seeks relief under 42 U.S.C. 1983 and 1985 against Defendants Zilly and Silverman because by purporting to act as federal judges ordering Snohomish County Sheriff Trenary to sell Stafne's real property *res* when they had no authority as Article III

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judges to do so, they have deprived Stafne of rights, privileges and immunities secured him by the Constitution and laws.

3.12 Stafne also seeks relief under 42 U.S.C. 1983 and 1985 against defendants Zilly and Silverman because they have purposefully exercised subject matter jurisdiction, which the Article III Courts do not have, to retaliate against Stafne for his criticism of federal courts and judges in violation of the First Amendment to the United States Constitution.

3.13 Stafne seeks relief against defendant Trenary should he sell Stafne's property based on the foreclosure order(s) of persons he knows or should know do not hold the office of an Article III judge, and/or was issued by the Court without the subject matter jurisdiction to do so, which will deprive Stafne of right, privileges and immunities secured him by the Constitution and laws of the State of Washington.

3.14 Additionally Stafne seeks all declaratory, injunctive, or writ relief which may be merited under the facts of this case, where gross violations relating to the exercise of judicial power pursuant to the United States Constitution are proven.

IV. FACTS

A. *Facts Related to Article III Courts Generally and USDCWW and Ninth Circuit Judges*

4.1. The Constitution sought to divide the delegated powers of the Federal Government into three defined categories, Legislative, Executive, and Judicial.

4.2 The declared purpose of separating the enumerated powers of the federal government and dividing governmental power generally with the States (as dual sovereigns) is to create a just society which protect the liberties of the people from governmental tyranny.

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4.3 A premise of our founders was the judicial department would be the weakest branch of government and the least capable of oppressing the civil and political rights of the people. This premise was based on the assumptions that under the Constitution:

> The Executive not only dispenses the honors, but holds the sword of the community. The legislature not only commands the purse, but prescribes the rules by which the duties and rights of every citizen are to be regulated. The judiciary, on the contrary, has no influence over either the sword or the purse; no direction either of the strength or of the wealth of the society; and can take no active resolution whatever. It may truly be said to have neither FORCE nor WILL, but merely judgment.
>
> Alexander Hamilton, The Federalist Paper 78.

4.4 Our founders recognised that if the Courts be disposed to exercise their *WILL* rather than their *JUDGMENT* the result would be tyranny. "For I agree, that 'there is no liberty, if the power of judging be not separated from the legislative and executive powers." Id. James Madison said the same thing in the Federalist Paper No. 47. Quoting French Judge Montesquieu who was instrumental in developing Separation of Powers doctrine, Madison writes:

> *Were the power of judging joined with the legislative, the life and liberty of the subject would be exposed to arbitrary control, for THE JUDGE would then be THE LEGISLATOR.*
>
> *Were it joined to the executive power, THE JUDGE might behave with all the violence of AN OPPRESSOR.*

4.5 The Constitution imposed checks and balances on each of the branches of the government. Among the primary checks and balances the Constitution imposed on the Judicial Department is that Congress was given sole power to establish and ordain inferior federal courts and to prescribe such court's jurisdiction. Article III, §§ 1 & 2.

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4.6 Under the Appointments Clause the Executive was given the power to appoint all judges of the judicial department with the advice and consent of two-thirds of the Senate.

4.7 In order to protect the Judicial Department the judges were assured their tenure and compensation for services rendered would not be manipulated by the Executive and Legislative branches of government while they were in office. Article III, § 1.

4.8 Americans have always demanded justice[6] and integrity from their courts, whose judges they insisted be and appear to be independent, fair, and *not beholden to any person or special interest. See* Ninth grievance to the Declaration of Independence which states in part: "[the king] "has made Judges dependent on his Will alone, for the tenure of their offices, and the amount and payment of their salaries."

4.9 Congress has ordained and established inferior district courts, which exercise judicial power through active Article III judges who have tenure and are paid compensation for their services. *See* 28 U.S.C. § 132[7]. The Supreme Court has suggested, however, that ***where Constitutional jurisdictional requirements are met***, litigants may consent to a substitute

[6] It is interesting to observe that our founders believed justice was the goal of government generally, not just the judicial department. "Justice is the end of government. It is the end of civil society. It ever has been and ever will be pursued until it be obtained, or until liberty be lost in the pursuit." The Federalist Paper No. 51, "The Structure of the Government Must Furnish the Proper Checks and Balances Between the Different Departments" (Feb. 8, 1778). But see Alexander Hamilton, Federalist Paper 78: "[T]hough individual oppression may now and then proceed from the courts of justice, the general liberty of the people can never be endangered from that quarter; *I mean so long as the judiciary remains truly distinct from both the legislature and the Executive.*"

[7] 28 U.S.C. 132(b) provides: **"**Each district court shall consist of the district judge or judges for the district ***in regular active service***. ***Justices or judges designated or assigned shall be competent*** to sit as judges of the court."

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(authorised by Congress, such as a bankruptcy judge or magistrate judge or senior judge) exercising judicial power over Article III cases and controversies and appeals thereof. *See e.g. Wellness Int'l Network, Ltd. v. Sharif,* 135 S. Ct. 1932 (2015). 4.10 28 U.S.C. 133(a) provides in pertinent part:

> (a) The President shall appoint, by and with the advice and consent of the Senate, district judges for the several judicial districts, as follows:

Districts		Judges
*	*	*
Washington		
Eastern		4
Western		7

4.11 Although the USDCWW is entitled and/or required to have 7 active Article III district court judges, it currently has only four: Chief Judge Ricardo S. Martinez, Judge Ronald B. Leighton, Judge Benjamin H. Settle, and Judge Richard A. Jones.

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4.12 Notwithstanding the USDCWW has only 4 active district court judges it has 9 senior judges[8], 6 magistrate judges[9], 3 recalled and part time magistrate judges[10], and 5 bankruptcy Court judges[11].

4.13 On information and belief the four active judges of the USDCWW are not capable of providing meaningful oversight for all the non-Article III active judges which are authorised to exercise judicial power with the consent of the litigants, particularly with regard to senior judges, who at over 75 year of age age likely are not competent or are biased because they are paid no money for the work they do.

4.14 The USDCWW has in place a policy that litigants must consent to a magistrate or bankruptcy judge exercising Article III judicial powers normally reserved to active Article III Judges, but has no similar policy in place regarding senior judges. See e.g. USDCWW General Orders regarding Magistrate consents and consent procedures.

4.15 Stafne asks the court to take judicial notice the cognitive abilities of human beings begin to fade as they age beyond 75. Further, that judges, like the rest of us, are human beings

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[8] The senior judges identified on the web site for the USDCWW on November 1, 2017 include: Judge Walter T. McGovern, Judge Barbara J. Rothstein, Judge John C. Coughenour, Judge Carolyn R. Dimmick, Judge Robert J. Bryan, Judge Thomas S. Zilly, Judge Robert S. Lasnik, Judge Marsha J. Pechman,and Judge James L. Robart)

[9] The magistrate judges identified on the website for the USDCWW on November 1, 2017 include: Chief Magistrate Judge James P. Donohue,Judge Mary Alice Theiler, Judge Brian A. Tsuchida, Judge J. Richard Creatura, Judge David W. Christel, and Judge Theresa L. Fricke

[10] The recalled and part time magistrate judge identified on the web site for the USDCWW on November 1, 2017 include: Judge John L. Weinberg (Recalled), Judge Karen L. Strombom (Recalled), and Judge Paula McCandlis (Part-time)

[11] The bankruptcy court judges identified on the the web site for the bankruptcy court for the western district of Washington on November 1, 2017 include: Chief Judge Brian D. Lynch, Judge Marc Barreca,Judge Timothy W. Dore, Judge Christopher M. Alston,and Judge Mary Jo Heston.

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and that a large percentage of senior judges are over the age of 75. Senior judges in their eighties, nineties, and beyond 100 years of age who exercise judicial power when they want to for free have the attributes of a monarch, not a competent judge who takes the cases she is assigned and is paid a guaranteed wage for the services she renders.

4.16 Many of these senior judges are likely experiencing significant cognitive dysfunction which worsens as they continue to age. Stafne aware that judges were intended to be an important component of a system of separate and divided powers designed to protect the the liberties of the people alleges that this purpose has been betrayed by a government which refuses to staff its courts and pay active judges a fair wage because it would rather spend taxpayers' money buying weapons of war.

4.17 Stafne alleges a senior judge, and in this case defendant Zilly, is not competent within the meaning of 28 U.S.C. § 132 and U.S. Const. Art III to exercise judicial power if he does not comprehend his duty to not arbitrarily and without explanation invoke jurisdiction an Article III district court does not have.

4.18 On information and belief Defendant Thomas S. Zilly (Zilly) was born in 1935 and is no longer an active Article III judge having assumed senior status in 2004 and been replaced in office at that time by James L. Robart.

4.19 Defendant Zilly was nominated by President Reagan and consented to by the Senate to be an active United States District Judge for USDCWW in 1988 to replace retiring active Article III district court judge Walter T. McGovern. On information and belief, at the time of his appointment, defendant Zilly was the managing partner for Lane Powell LLC.

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4.20 Defendant Zilly retired and assumed senior judge status in 2004 and was replaced as an active judge by James L. Robarts. Robarts was nominated by President George W. Bush and approved by two-thirds of the Senate to replace Zilly as an Active Article III judge in 2004.

4.21 On information and belief Robarts, like Zilly, was a partner at Lane Powell when he was appointed and approved by the Senate as an Article III judge. On information and belief, the timing of Zilly's retirement and assumption of senior status, with the appointment and approval of his replacement Robarts, was designed to achieve maximum political and economic value for Lane Powell. *See e.g.* Kelly J. Baker, Note, Senior Judges: Valuable Resources, Partisan Strategists, or Self-Interest Maximizers?, 16 J.L. & POL. 139, 140-1 (2000); ARTICLE: The Law and Policy of Judicial Retirement: An Empirical Study, 42 J. Legal Stud. 111, 118-119 (January 2013) *Cf.* Michael E. Solimine, *Nepotism in the Federal Judiciary*, 71 U. CIN. L. REV. 563, 565–68 & n. 21 (2002).

4.22 Defendant Zilly has a longstanding relationship with Davis Wright Tremaine LLP (DWT) and several other large law firms entrenched in the Seattle area. Zilly has friends at such firms and frequently his clerks and externs are later employed by DWT or other large firms. These relationships allow DWT and other large firms access to senior judge Zilly, his judicial staff, and the clerks of the USDCWW that Stafne and other *pro se* litigants do not have. The result is defendant Zilly displaying obvious bias in favor of attorneys at big firms and against individuals such as Stafne. *See* infra. One of the obvious indications of obvious

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bias (or perhaps just incompetence) by defendant Zilly against Stafne is his failing to establish the existence of subject matter jurisdiction before proceeding on to merits litigation.

4.23 As a senior judge defendant Zilly only exercises judicial power in those cases in which he *choses to become involved*. On information and belief this is different for active Article III judges who must accept and decide those cases assigned to them unless there is an appropriate ground for recusal[12]. See USDCWW General Order: Re Division of Court Business.

B. ***Facts re: Stafne and his Political Criticism of the American "Justice" System.***

i. Stafne's Background Information

[12] Stafne is not sure how active and senior judges are assigned in the USDCWW. However, The United States Court government web site informs:

> How are judges assigned to cases?
>
> Judge assignment methods vary. The basic considerations in making assignments are to assure equitable distribution of caseloads and avoid judge shopping. By statute, the chief judge of each district court has the responsibility to enforce the court's rules and orders on case assignments. Each court has a written plan or system for assigning cases. The majority of courts use some variation of a random drawing. One simple method is to rotate the names of available judges. At times judges having special expertise can be assigned cases by type, such as complex criminal cases, asbestos-related cases, or prisoner cases. The benefit of this system is that it takes advantage of the expertise developed by judges in certain areas. Sometimes cases may be assigned based on geographical considerations. For example, in a large geographical area it may be best to assign a case to a judge located at the site where the case was filed. Courts also have a system to check if there is any conflict that would make it improper for a judge to preside over a particular case.

USDCWW General Order Re: Division of Court Business is vague regarding the issue of whether this Court uses a rotation system. It states in pertinent part:

> 2. All civil cases filed in this district will be assigned as follows:
>
> All civil cases in the Tacoma division equally to all the active judges.
> All civil cases in the Seattle division equally to the active judges.
> Civil cases may also be assigned to a senior judge.

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5.1. The following allegations are intended to establish the plausibility of Stafne's competence as an attorney or *pro se* litigant vis a vis the attorneys who work for large law firms. They are also alleged to establish the plausibility that treating Stafne or other litigants differently simply because the litigate *pro se* is arbitrary and capricious and likely violates due process.

5.2 Stafne is a third generation lawyer. On information and belief his grandfather Albert J. Stafne was, for a time, an attorney with the Department of Justice. Stafne's father Albert J. Stafne, Jr. was a respected attorney and long time City Attorney of Bettendorf, Iowa.

5.3 Before Stafne attended law school he worked two summers for Congressman Fred Schwengel of Iowa. Schwengel served as the Representative for Iowa's First Congressional District from 1955–1965 and 1967-1973. Schwengel founded and served as President of the Capitol Hill Historical Society from 1962 through 1993. Schwengel also served chairman of the National Civil War Centennial Commission and the Joint Sessions of Congress for the Lincoln Sesquicentennial.

5.4 Stafne has a good academic record, which he believes rivals or betters most attorney at large law firms as well as defendants Zilly and Sullivan and the attorneys involved in the lawsuits which are part of the basis for this litigation. [13].

[13] Stafne graduated summa cum laude from DePauw University in 1971 and that same year was awarded the Taylor Scholarship Award. Stafne was a Rector Scholar during part of the time he attended DePauw. In 1974 Stafne obtained his Juris Doctorate degree from the University of Iowa. He graduated Summa Cum Laude (fourth in his class) and was the recipient of Phi Delta Phi scholarship award for that year.. Stafne also was awarded a Masters of Law degree in Law and Marine Affairs from the University of Washington in 1977.. Stafne is also member of Phi Eta Sigma, Phi Beta Kappa and the Order of the Coif. (The Order of the Coif is an honorary scholastic society whose purpose is to encourage excellence in legal education by fostering a spirit of careful study, recognizing those who as law students attained a high grade of scholarship, and honoring those who as lawyers, judges and teachers attained high distinction for their scholarly or professional accomplishments). Additionally, Stafne was certified by

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5.5 After graduation Stafne was hired by Baker and Daniels, which at the time was a large Indiana Law Firm which represented banks and large corporations. Stafne's law practice at Baker and Daniels included primarily labor law and defense of employment discrimination class actions against corporations. During the first two years Stafne worked there he was asked to participate as a lecturer at a CLE program for lawyers with regard to employment discrimination cases and did so.

5.6 Baker and Daniels, like most law firms has grown over time and is now known as Faegre Baker Daniels LLP. It is a full-service international law firm, and one of the 75 largest law firms headquartered in the United States and employs over 750 legal personnel. Both DWT[14] and Lane Powell[15] , on the other hand, appear to have significantly less lawyers and offices than Stafne's old law firm.

5.7 Stafne left Baker and Daniels in 1976 to obtain an LLM in Law and Marine Affairs from the University of Washington Law School, a program in which he was mentored by William T. Burke, an internationally renowned expert on the "Law of the Sea" and fisheries. After he graduated, Stafne taught a class on Fisheries Law at the University of Washington Law School while he was practicing law. Stafne also participated in several CLE

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the American College of Exercise as a athletic trainer in 1993. (His ACE certification has now expired) In 2017 Stafne was certified by the John Jay School of Justice as a Level I advocate under the American with Disabilities Act.

[14] There is a note on the Wikipedia web site which suggests the information contained in the article on them may be biased "A major contributor to this article appears to have a close connection with its subject. It may require cleanup to comply with Wikipedia's content policies, particularly neutral point of view."

[15] Wikipedia does not report the information about Lane Powell may be biased.

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programs as an instructor on marine related subjects, including those sponsored by the University of Washington Law School and Oregon's Lewis and Clark University.

5.8 On information and belief after graduating with their LLMs Stafne and fellow class mate Sara Hemphill created the first law firm in the United States exclusively devoted to the interests of American fisher persons and processors under the Magnuson Fisheries and Conservation Management Act. Stafne and Hempell were both appointed as industry advisors to the North Pacific Fisheries Management Council. Stafne was also appointed to the advisory board of the Pacific Fishery Management Council. Stafne also was appointed an industry observer to the Salmon Treaty Negotiations between the United States and Canada.

5.9 Stafne was one of three witnesses asked to testify before the United States Senate about a lawsuit against the Secretary of Commerce and several other Executive Department official where USDCWW active Article III Judge Donald S. Voorhees ruled the President's executive order allowing Canadian Trollers to fish off the Washington coast violated the separation of powers and was void. *See* Hearing before the Committee on Commerce, Science, and Transportation United States Senate, 95th Congress, second session on the Reciprocal Fisheries Agreement between the United States and Canada. (May 10, 1978).

5.10 Prior to this Stafne had previously testified before other Congressional Committees regarding the impact of the Fisheries Conservation and Management Act both with regard the salmon fishery and foreign joint ventures.. See e.g. Full text of "Fishery conservation and management act oversight : hearings before the Committee on Commerce,

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Science, and Transportation, United States Senate, Ninety-fifth Congress, second session on oversight of the FCMA and S. 3050 ... April 26, 27, and June 5, 1978"

5.11 On information and belief Stafne was admitted to practice law before the United States Supreme Court in 1979 (when he was 30). That same year he obtained an order in favor of his clients requiring the Ninth Circuit Court of Appeals to decide a separation of powers issue where Stafne alleged active Article III judge William Schwarzer had violated the Fishery Conservation and Management Act by enjoining the implementation of fishery management regulations notwithstanding specific statutory provisions prohibiting such conduct. A copy of this 1979 order can be found in Stafne's blog "Scott Stafne Revisits his Past" (October 13, 2015). (The United States judicial department has for some reason been unable to find it.) *See Id.*

5.12 Stafne's partner Sara Hemphill was appointed by the Secretary of Commerce to be a member of the North Pacific Fisheries Management Council. Thereafter Stafne expanded the nature of his practice into several specialized legal areas, including without limitation administrative law, admiralty law, personal injury law, medical malpractice law, Longshore and Harbor Workers Compensation law, constitutional law, land use law, and foreclosure law. Although most of Stafne's clients were individuals he did represent some significant entity clients, such as the State of Alaska, Local 19 of the ILWU, and Marine Resources, the first Russian fishing joint venture after the United States expanded the EEZ to 200 miles from the United States Coastline. Stafne presently serves as the Church Advocate for Church of the Gardens.

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5.13 Many of Stafne's cases after he started practicing personal injury law were referred to him by other lawyers.

5.14 In 1993 Stafne was diagnosed with a terminal medical condition. Because of this Stafne stopped practicing law full time, but did continue handling some cases from time to time. Stafne has always maintained his license to practice law.

5.15 When it became apparent that he was likely not going to die, Stafne returned to the full time practice of law in approximately 2006. As of today's date Lexis-Nexis and Westlaw indicate Stafne has been involved in numerous reported federal and published decisions as well as numerous report and federal State Court appellate decisions. A likely incomplete document providing links to those decisions can be accessed at this link. These decisions are provided to substantiate the diversity of Stafne's practice over time. Stafne alleges that his academic credentials as well his history practicing law demonstrate that he is entitled to be judged on the basis of his arguments and not on his status as a *pro se* litigant or attorney who has purposely chosen not to work for a large law firm.

5.16 From 1993 through 2007 significant changes occurred with regard to judging. In *Culhane v. Aurora Loan Servs*., 826 F. Supp. 2d 352, 355 *1-3, n.1 (D. Mass. 2011) *aff'd* 708 F.3d 282 (ist Cir. 2013) Judge William G. Young briefly discusses some of the kinds of changes he has observed in American judging which have occurred during the course of his lifetime. He is, of course, well known for his lament of vanishing jury trials. *See e.g.* Honorable Judge William G. Young, (2011)"In Celebration of the American Jury Trial" (2014); Honorable William G. Young, "A Lament for What Was and Can Yet Be." 32 Boston

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College International and Comparative law Review (2009). Of course active Article III Judge Young is not the only person concerned that America's jury trial system of justice is now pretty much extinct. See e.g. Suja. A. Thomas, "*The Missing Branch of the Jury*",77 Ohio St. L.J. 1261 (2016); Stephen B. Burbank & Stephen N. Subrin, Litigation and Democracy: Restoring a Realistic Prospect of Trial, 46 HARV. C.R.-C.L. L. REV. 399, 408 (2011).

5.17 Other significant changes in judging and judicial practice which occurred while Stafne was not engaged in the full time active practice of law was the demise of the adversary system - a system which assumes justice can be achieved when all litigants are represented by attorneys who present their cases to *neutral* judges. The United States loss of its once well thought of adversary system of justice is well documented. *See e.g.* Washington Supreme Court, "Washington State 2003 Civil Legal Needs Study" (2003); Russell G. Pearce, Redressing Inequality in the Market for Justice: Why Access to Lawyers Will Never Solve the Problem and Why Rethinking the Role of Judges Will Help, 73 Fordham L. Rev. 969, 978 (2004); Gillian K. Hadfield, "Higher Demand, Lower Supply? A Comparative Assessment of the Legal Resource Landscape for Ordinary Americans", 37 Fordham Urb. L.J. 129 (2009). This erosion of the adversary system which Americans once relied upon as a foundation for achieving justice is now, like our jury system, almost gone. *See* Richard A. Posner, Reforming the Federal Judiciary (2017); ABA Law Journal, "86 percent of low-income Americans' civil legal issues get inadequate or no legal help, study says" (June 14, 2017); Legal Services Corporation, The Justice Gap: measuring the Unmet Civil Legal Needs of Low-income Americans (June 2017); Lawyerist.com, "Measuring the Access-to-Justice Gap: Nearly 70% of

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All Civil Defendants Aren't Represented" (2016) ; ABA Journal, "Can the access-to-justice gap be closed" (2016); Washington Supreme Court, Washington State 2015 Civil Legal Needs Study Update (2015)(Summing up the point that as a result of the loss of our adversary system: "Justice is absent for low-income Washingtonians who frequently experience serious civil legal problems." Id., p. 3.)

5.18 And as if the loss of the juries and our traditional adversary system was not enough the courts began dismantling the system of precedent our founders intended would make the common law predictable to the people and protect their liberties[16]. *See e.g.* Todd Peterson: Restoring Structural Checks on Judicial Power in the Era of Managerial Judging, 29 U.C. Davis L. Rev. 41 (Fall, 1995)(("[Judges] are limited by prior case law and by congressional statutes. In defending the independent judiciary, Hamilton expressly relied on the power of precedent as a check on judicial power: 'To avoid an arbitrary discretion in the courts, it is indispensable that they should be bound down by strict rules and precedents which serve to define and point out their duty in every particular case that comes before them . . . .' The framers did not grant judges the right to exercise their own unlimited discretion or will instead of judgment.") Today, with the loss of precedent, the only thing that is clear about America's judicial system is the party who has the most money always wins. Scott E. Stafne, www.scottstafne.com, Scorched Earth Litigation Model, September 15, 2015.

[16] The loss of precedent as a guidepost for justice in the American judicial system can be traced to the sparring opinions between the eighth circuit in a judicial *Anastasof v. United States*, 223 F.3d 898 (8th Cir. 2000) (Courts are required to make and follow precedent) *with* *Hart v. Massanari*, 266 F.3d 1155 (9th Cir. 2001)(Judges can decide when they want and if they want to create precedent) *with* Judge Posner's observations that today courts need not even explain their reasons for their decisions by simply stating "Appeal Dismissed".

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5.19 And as Stafne was returning to the practice of law and getting into the swing of things the Supreme Court announced a substantial change in the federal rules in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007) and *Ashcroft v. Iqbal*, 556 U.S.554 (2009) without even going through the statutory rule-making procedure. The failure of the Supreme Court to follow the statutory rule-making procedure for changing the Federal Rules of Civil Procedure provoked abundant criticism from State courts and prominent legal commentators as well. See e.g. *Hawkeye Foodservice Distrib. v. Iowa Educators Corp.*, 812 N.W.2d 600, 607-608 (2012); *See* Arthur R. Miller, From Conley to Twombly to Iqbal: A Double Play on the Federal Rules of Civil Procedure, 60 Duke L.J. 1 (October 2010); Stephen N. Subrin, Thoma O. Main, The Fourth Era of American Civil Procedure, 162 U. Pa. L. Rev. 1839 (June 2014).

5.20 Concerned about what he perceived to be very basic problems with our justice system, Stafne ran for the Supreme Court of Washington in 2012. A copy of Stafne's campaign web site can be accessed here. As part of his campaign Stafne also began on July 1, 2012 writing a blog, "SCOTT E. STAFNE, Contemporary Thought Leadership and the Law" which can be accessed at www.scottstafne.com. Stafne has continued to engage in political speech about the law and justice on this blog since then. See e.g. "JULY 15 [2012] "JUDICIAL REVIEW: IT IS A SLIPPERY SLOPE"; "Continuing Legal Education Seminar about the Roots of Law. June 1, 2015"; "CRISIS in U.S. - Lack of Justice for 99% updated July 19, 2017

5.21 At some point following the sabotage of the Stafne Trumbull web site, Stafne began making posts on Academia.edu as well. His posts on Academia.edu include mostly legal materials. These can be accessed at https://nomaduniversity.academia.edu/ScottStafne. Stafne

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uses this site for political and educational purposes. Although aware of the controversy surrounding the site, Stafne believes it promotes full spectrum advocacy of his and his church's political, social, and spiritual agendas.

5.22 In 2016 Stafne ran for Congress. In his blog, in a post titled "Why Congress?" Stafne explained:

> Federal courts jurisdiction in most circumstances to decide cases is determined by statute. This means that Congress can and should be playing a much greater role in making sure that the check and balances in our system work. Congress does not, and should not abdicate, all of its authority to the Court to determine how that branch of government functions. A self-regulated judicial department gives judges way more authority than those citizens who ratified our Constitution intended the judicial branch of government would have. The judicial branch of government was supposed the 'weakest branch,' but as legislative and executive officers became more concerned with the money needed to secure their own elections they cared less about making sure that [the judicial] branch of government functioned properly."
>
> If elected to Congress in Washington's First Judicial District one of my foremost priorities will be to investigate judicial corruption and bias at the federal level. I will propose legislation designed to end rule of America by a judicial oligarchy of judges who are often appointed to office because of their affiliation with either the republican or democratic parties.
>
> The people who wrote and ratified the Constitution surely did not expect that the separation of powers they envisioned to protect the people would be abdicated to two political parties, both of which are dedicated to promoting the benefit of the one percent, which finances them.

5.23 On information and belief, Stafne alleges under its current system of judging, federal courts unfairly discriminate against *pro se* litigants and attorneys from small law firms based on an unreasonable and arbitrary bias in favor parties who are represented by large law

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firms. This bias is palpable and observable in the way active Article III judges and their substitutes ensnare people within subject matter jurisdiction the federal courts do not have.

C. *The Federal Court's Usurpation of Power Under the Separation of Powers and Federalism Structure of the Constitution.*

6.1 The allegation of facts and evidence in this section are intended to establish the plausibility of Stafne's allegations that federal lower courts in the USDCWW have purposely and consistently exercised judicial power to resolve the merits of foreclosure disputes in the absence of subject matter jurisdiction under Article III, § 2 to do so. *See* *Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83, 94-95, (1998)(" ... a federal district court must ascertain whether it has subject matter jurisdiction before considering a defendant's motion to dismiss"); *Sheldon v. Sill*, 49 U.S. 441, 448 (1850) ("Congress, having the power to establish the courts, must define their respective jurisdictions."); *See also Robertson v. GMAC Mortgage, LLC*, 640 Fed. Appx. 609 (9th Cir. 2016).(Acknowledging district court did not have jurisdiction when it became engaged in merits litigation.)

6.2 The jurisdiction of the lower federal courts is presumptively limited. *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375 (1994); *Bender v. Williamsport Area Sch. Dist.*, 475 U.S. 534, 546, (1986). The burden of proving jurisdiction is on the party asserting federal jurisdiction. *Yokeno v. Mafnas*, 973 F.2d 803, 806 (9th Cir.1992). Lower federal courts must decide whether jurisdiction exists before requiring people to engage in merits litigation. *Tenet*

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v. Doe, 544 U.S. 1, 6, n. 4 (2005), *citing Steel Co. v. Citizens for a Better Environment,* 523 U.S. 83, 94–95, (1998). This includes, where jurisdictional and merits issues are intertwined resolving the subject matter jurisdiction aspect first. *See e.g.* *Mansfield C. & L.M. Ry. Co. v. Swan,* 111 U.S. 379, 4 S.Ct. 510, 28 L.Ed. 462 (1884) *Cf.* *Bolivarian Republic of Venez. v. Helmerich & Payne Int'l Drilling Co.*, 137 S.Ct 1312 (2017)(We recognize that merits and jurisdiction will sometimes come intertwined. ... *If so, the court must still answer the jurisdictional question* [first]. *If to do so, it must inevitably decide some, or all, of the merits issues, so be it. Id., at 1319)* (Emphasis Added)

6.3 Judges of the USDCWW and the Ninth Circuit routinely abuse their Article III judicial power by acting without subject matter jurisdiction. This has caused injury to Stafne, his clients, and those people who have litigated, are now litigating, or will litigate foreclosure issues in the federal courts within the Ninth Circuit.

6.4 Stafne believes the following examples establishes the plausibility of his claim that federal courts in the Ninth Circuit are unconstitutionally aggrandising power to themselves by not respecting the limits of their authority prohibiting them from engaging in merits litigation before the district court has established in writing how and why the presumption against their jurisdiction been rebutted after it has been challenged.

i. Robertson v GMAC

6.5 Duncan Robertson (Robertson) handled his case *pro se* for part of his litigation in USDCWW. Stafne became his attorney soon after Judge Pechman denied Robertson's motion

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for remand after first resolving a dispositive merits motion against a possible in-state forum defendant.

6.6 On June 6, 2012 Robertson, a citizen of Oregon, filed a complaint with the Washington Superior Court of King County alleging among other things a quiet title action with regard to real property he owned.

6.7 On November 15, 2012, DWT through attorney Fred Burnside removed the action to USDCWW based on spurious jurisdictional allegations, including "residence" rather than citizenship for all parties, failure to allege principal places of business for corporate defendants and later inaccurate and frivolous allegations about the state citizenship of defendants.

6.8 In response, on November 30, 2012 Robertson, then acting *pro se*, filed a motion to remand premised on several deficiencies with the notice of removal, including DWT's failure to allege facts establishing diversity of citizenship pursuant to 28 U.S.C. 1332.

6.9 Before resolving Robertson's jurisdictional challenge then active Article III judge Marsha Pechman decided a potential "in forum" defendant's merits motion to dismiss, in direct violation of Supreme Court precedent prohibiting such conduct. *See e.g. Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 94; *Cf. Moore v. Maricopa County Sheriff's Office*, 657 F.3d 890 (9th Cir. 2011).

6.10 After granting "merits" relief, Judge Pechman denied the motion for remand thereby requiring Robertson to litigate the merits of the case in USDCWW when it had no subject matter jurisdiction to do so.

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6.11 Robertson filed a writ of mandamus with the Ninth Circuit to overturn the district court's decision. Among those reasons Robertson claimed justified mandamus was that in the USDCWW "[r]emoval is frequently accomplished by the district courts either ignoring, as the district court did here any 'in forum' inquiry … or by assuming a trustee is a nominal trustee when this is not so. *See* Writ, at pp. 22-24.

6.12 Although the writ of mandamus was denied in a sentence, "Petitioner has not demonstrated that this case warrants the intervention of this court by means of the extraordinary remedy of mandamus…", the Ninth Circuit Court found on appeal after final judgment that the district court had no subject matter jurisdiction under Article III when active Judge decided numerous merits issues. *Robertson v. GMAC Mortg., LLC*, 640 Fed. Appx. 609 (9th Cir. 2016). The Ninth Circuit then left it up to Judge Pechman to determine for the Court of Appeals whether subject matter jurisdiction existed without regard for the plethora of removal statute violations committed, the fact that removal jurisdiction had never been established (and ultimately never was), and the havoc this type of prolonged judicial tyranny had imposed on Robertson, who was by then impoverished and disabled as a result of the federal court's flagrant misuse of Article III judicial power.

6.13 This result was all the more constitutionally intolerable because the Ninth Circuit acknowledged that the attorneys in these large legal cabals been persistently making false jurisdictional to both the USDCWW and the Ninth Circuit, yet nonetheless found their lies merited no sanctions. (See Ninth Circuit Sanction order in that case by clicking here. ("We do

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not condone the defendants' attorneys' unreasonable persistence throughout the litigation in claiming BNY to be a citizen of Florida when it was not."))

6.14 The panel in Robertson's appeal included two senior judges, Michael Daly Hawkins, a senior circuit judge and Joan Lefkow, a senior court judge who is from Illinois. The only active judge Article III judge on the panel was Richard C. Tallman, who replaced Ninth Circuit Judge Betty Binns Fletcher. *See supra.* Tallman recently announced he will assume senior status on his 65th birthday.

6.15 By handing the appeal of the district court's lack of jurisdiction back to the very judge who improperly failed to determine whether the presumption against jurisdiction had been rebutted the Ninth Circuit violated 28 U.S.C. § 47, which clearly states:"No judge shall hear or determine an appeal from the decision of a case or issue tried by him.". Furthermore, by the time the case was remanded to her and she issued a her decision for the Ninth Circuit Court of Appeals that both the district court and the Ninth Circuit Court of Appeals had jurisdiction, Pechman had resigned her active Article III status. As a district court judge.

ii. Scotts v Northwest Trustee

6.16. Floyd and Margaret Scott, *pro se*, filed a complaint in the Washington Superior Court for Clark County against Northwest Trustee Services Inc. and Wells Fargo Bank, N.A. to stop a nonjudicial foreclosure of real property they owned.

6.17 Defendant's filed a removal notice with the USDCWW. The Scotts' case was assigned to active U.S. Article III district court judge Ronald B. Leighton.

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6.18 On or about October 3, 2016 the Scotts *pro se* filed a motion to remand the case back to state court and for attorney fees. The motion was carefully crafted and should have been promptly granted. A copy of the motion can be accessed by clicking here.

6.19 On October 6, 2016 while Scotts' motion to remand was pending, Wells Fargo and Northwest Trustee brought a 12 (b)(6) motion to dismiss. The filing of such a motion on the merits was inappropriate because the court had not yet resolved whether it had subject matter jurisdiction.

6.20 On October 24, 2016 the Scotts, now represented by Stafne, responded to the motion to dismiss by filing another motion for remand to the Clark County Superior Court. A copy of that motion can be accessed here. That response to the motion to dismiss and second motion for remand began:

> Undeterred from seeking to inappropriately remove cases in violation of the Supreme Court's warnings to attorneys that federal courts will not look favorably on such shenanigans [footnote 1] Northwest Trustee Services, Inc. ("NWTS") has improperly attempted to remove this case to federal court. *Riedesel v. Bank of Am.*, C13-1854-JCC, 2013 WL 12072691, at *1–2 (W.D. Wash. Nov. 21, 2013). Because this Court does not have subject matter jurisdiction over this case in the absence of complete diversity of citizenship this Court has no authority to resolve motions on the merits. *See Steel Co. v. Citizens for a Better Environment, 523 U.S. 83, 94-95, 118 S.Ct. 1003, 1012 (1998)*(" ... a federal district court must ascertain whether it has subject matter jurisdiction before considering a defendant's motion to dismiss"); *See also Robertson v. GMAC Mortgage, LLC*, 640 Fed. Appx. 609 (9th Cir. 2016).

6.21 Footnote 1, referenced in the quote above, states:

> *See Caterpillar Inc. v. Lewis*, 519 U.S. 61, 77–78, 117 S. Ct. 467, 477, 136 L. Ed. 2d 437 (1996) where the Supreme Court in responding to an argument that defendants will remove in the hope that some subsequent developments, such as the eventual dismissal of non diverse defendants, will permit the case to be kept in federal court remarked they were unconcerned because that fear "rests on an

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> assumption we do not indulge—that district courts generally will not comprehend, or will balk at applying, the rules on removal Congress has prescribed." The Court went on to observe: "[t]he prediction furthermore assumes defendants' readiness to gamble that any jurisdictional defect, for example, the absence of complete diversity, will first escape detection, then disappear prior to judgment." The Court apparently believed that there weren't defendants like NWTS out there. Bank in 1996 the prevailing thought was "[t]he well-advised defendant, we are satisfied, will foresee the likely outcome of an unwarranted removal—a swift and non reviewable remand order, see 78 28 U.S.C. §§ 1447(c), (d), attended by the displeasure of a district court whose authority has been improperly invoked." But obviously that is not happening. NWTS is taking the gamble and this Court appears to be doing nothing about it.

6.22 On November 14, 2016 Wells Fargo filed an opposition to plaintiff's second motion for remand. In that opposition defendants cited to numerous cases from the USDCWW which violate 28 U.S.C. 1332. *Id.* at pp. 5-9. (Note that many of these are the same cases which Robertson urged to the Ninth Circuit established the USDCWW was consistently violating 28 U.S.C. 1332.)

6.23 On that same day (November 14, 2016) Northwest Trustee Services joined in Wells Fargo's opposition to the remand and also argued against any award of fees for wrongful removal.

6.24 On December 22, 2016 Judge Leighton ruled on both motions to remand. Although Judge Leighton granted both remand motions he offered an inappropriate advisory opinion to the State court judge regarding the merits of the the defendants motions to dismiss. Notwithstand the Scotts prevailed on their motion for remand and had moved for attorney fees the Court holds the Court does not consider that motion erroneously concluding the request was moot. A copy of Judge Leighton's remand order can be accessed by clicking here.

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iii. Alexander v Washington State

6.25 On April 13, 2017 Rebecca Alexander through Stafne as her attorney filed a complaint under Case No. 17 2 03709 31 in the Washington Superior Court for Snohomish County against King County, the State of Washington, Northwest Trustee, Inc., U.S. Bank National Association as Trustee for Harborview Mortgage Loan Trust 2005-12, Mortgage Loan Pass -through Certificates Series 2005-23 Trust (U.S. Bank), Nationstar Mortgage LLC, and MERS.

6.26 Defendants Nationstar, U.S. Bank, and MERS filed a Notice of Removal in USDCWW and Alexander's case was assigned as Case No: 2:17-cv-00653 to active U.S. Article III district court Judge Ricardo S. Martinez.

6.27 Alexander filed a motion to remand on May 9, 2017. The motion also requested an award of fees and costs for wrongful removal.

6.28 On May 18, 2017 while Alexander's motion for remand was pending, defendants Nationstar, U.S. Bank, and MERS brought a merits motion to dismiss Alexander claims against them pursuant to FRCP 12(b)(6).

6.29 On June 5, 2017 Alexander filed a "Response to Motion to Dismiss and Request for Sanctions Pursuant to 28 U.S.C § 1927".

6.30 On June 8, 2017 Active Article III Judge Martinez issued an "Order Granting Plaintiff's Motion for Remand." Although the Order granted fees and costs pursuant to 28 U.S.C. § 1447 (c), Martinez failed to address Alexander's motion for an award of sanctions pursuant to 28 U.S.C. § 1927.

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6.31 On June 19, 2017 Alexander filed a "Motion to Partially Reconsider this Court's Order Granting Plaintiff's Motion for Remand to the Extent It Precludes Alexander's Requests for Sanction for Filing Dispositive Merits Motion Prior to the Establishment of Subject Matter Jurisdiction"

6.32 In support of her motion for reconsideration of the District Court's failure to even consider her motion for sanctions, Alexander argued:

> While it is true lower federal courts generally have no authority to exercise judicial power if they have no subject matter jurisdiction this rule has a significant exception. When, as here, parties like US Bank, Nationstar, and MERS abuse the judicial system lower federal courts retain jurisdiction to determine whether sanctions are appropriate to remedy such abuse. *See* Willy v. Coastal Corp., 503 U.S. 131 (1992); Westlake North Property Owners Ass'n v. Thousand Oaks, 915 F.2d 1301, 1303 (9th Cir. 1990) (Sanctions for abuse of the federal judicial system are not limited to those authorised by Rule 11. Id. at 1303.)
>
> Because this Court has jurisdiction to consider Alexander's request for sanctions pursuant to 28 U.S.C. § 1927 against U.S. Bank, Nationstar, and MERS for filing a merits motion prior to the resolution of the motion to remand (and while there was an unrebutted presumption against this Court's authority to exercise judicial power), it erred in holding that Alexander's request for relief on this ground was moot because this Court had the authority to grant relief. *Id.*

6.32 Alexander went on to argue the USDCWW should issue sanctions because "[t]his Court's previous conduct in allowing such constitutionally inappropriate motions to occur merits this Court entering a published opinion holding that litigants in this Court cannot be abused by being required to respond to motions this Court has no authority to hear."

6.33 On June 20, 2017 Active Article III Judge Martinez, who is presently the Chief district judge for USDCWW, entered an Order Denying Motion for Reconsideration based on such motion being moot. However, the court never considered this issue in its earlier order as

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the motions for dismissal was not filed until after the motion for remand was already pending and had been responded to. Thus, the Court's mootness determination presumed the USDCWW longstanding and continuing practice of resolving merits motions prior to establishment of the Court's subject matter jurisdiction was not important enough for the court to consider.

6.34 As per Martinez' instructions Stafne filed a petition requesting $33,247.58 in fees and costs. See Alexander fee petition. Defendants Nationstar, U.S. Bank, and MERS requested these fees and costs be reduced to only $3,000 dollars. So Chief active Judge Martinez only awarded Stafne $3,000.00 in fees. *See* Order.

D . *Facts related to Retaliation against Stafne*

i. Stafne's speech and conduct

7.1 By 2015 Stafne and Stafne Trumbull (the law firm Stafne was a member of at that time) had obtained limited success in representing foreclosure victims in court.

7.2 On January 30, 2014 Stafne received a ruling from a Snohomish County Superior Court Washington State Judge which vacated the wrongful foreclosure sale of of Jacob Bradburn's home. A copy of the Judge's ruling in that case can be accessed by clicking here: Bradburn v ReconTrust, et al. Like all of the few homeowner victories in courts Bradburn, which was eventually settled, received a fair amount of public attention. *See e.g.* STOPForeclosureFraud.com, "Washington (state): Bradburn v ReconTrust; Bank of America – Scott Stafne won using our Constitution and simple, straightforward words" (February 19, 2014); Ansel Herz, The Stranger SLOG, "Judge Overturns Bank of America Foreclosure"

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(Feb. 5, 2014); "American Free Press, "Foreclosed Homeowner Beats Big Bank; Judge Voids Sale of Man's Home (April 21, 2014)". A video of Stafne's oral argument in Bradburn is used as an online instructional video regarding foreclosure litigation.

7.3 The law firm which lost *Bradburn* was Lane Powell.

7.4 By late July 2015 it appeared Stafne Trumbull clients had gotten by the judicial gauntlet of dispositive motions in several cases, which were headed to trial. On information and belief, there were approximately six cases which were headed for trial at the time a deputy attorney general who had previously worked for Lane Powell served a Civil Investigative demand on Stafne, which will be discussed more fully *infra*.

7.5 Copies of several of the dispositive orders which Stafne and/or Stafne Trumbull prevailed upon can be accessed by clicking on the following links: Ewing v Glogowski, ; Pardo v Northwest Trustee Services, et. al. and Schiavone v First American Title ; Knecht v Fidelity National Title Insurance Company.

7.6 The *Knecht* order was by a federal court, authored by active Article III district court judge Richard A. Jones. Normally, such orders are reported. The failure to report only federal district court decisions which go against homeowners distorts and adversely impacts the creation of "federal" common law interpreting Washington statutes.

7.7 Stafne reports in his blog April 3, 2015 "Do Private Publishers of legal Decisions attempt to manipulate the creation of precedent":

> It seemed curious that it would not be reported by either of the two primary private legal publishers used by the courts.

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> So I called Westlaw, the legal database system to which our firm subscribes, and asked why the decision had not been reported by Westlaw. Further, I asked if the failure to report this particular decision was because of an intervention by MERS.
>
> Stella, the tech, who answered my phone call indicated that she did not know why the case had not been reported, but doubted that MERS could have had anything to do with it.
>
> Stella indicated she would file some sort of form to bring my concerns about possible manipulation of reporting federal court decisions to the attention of the "higher ups" at Westlaw. She anticipated the decision would be reported within the next two weeks. We'll see…
>
> It is a concern to me as a lawyer and a citizen that the Empire's modern judicial industrial complex can so easily and arbitrarily affect the course of precedent based on the whims of private publishers. Perhaps allowing the free market to disseminate only those decisions which it prefers be published should be more closely watched; even eliminated.
>
> This article, Supreme Court Justices Quietly Rewrite Opinions after they have been Published[17], evidences related concerns about the elasticity of modern [United States] jurisprudence.

7.8 In this same blog Stafne commented on the abusive behavior of DWT counsel Fred Burnside at a deposition where he harassed a homeowner. Stafne also commented with regard to his observation about those attorney who represented those entities seeking to take homes. Stafne stated:

> So now let's return back to what happened at the deposition. At some point counsel for MERS made a point of stating that I had never won a motion against him. I wondered what he was talking about because less than a couple of months ago my office, in a brief I participated in writing, had clearly prevailed against MERS with regard to a motion he had brought. A copy of that decision against

[17] *Supreme Court Justices Quietly Rewrite Opinions after they have been Published*. (2017). *AllGov*. Retrieved 7 November 2017, from http://www.allgov.com/news/controversies/supreme-court-justices-quietly-rewrite-opinions-after-they-have-been-published-140427?news=853252

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MERS, in which he was lead counsel, can be found at:Knecht v Fidelity National Title Insurance Company[18].

After his strategic and dishonest attempt at an insult , I leaned back in my chair and looked hard at the MERS attorney questioning the witness. I do not recall having any animosity toward him as that is not a good trait for an advocate to have. Rather, I was observing the man across the table in my writer/poet mode, which involves a more philosophical and higher focus.

As the attorney asked questions (some objectionable and some not) I observed his hollow face, made even more homely than it already was when he smiled all his teeth and gums when he thought he got an answer which he could use against my client. I pondered whether his hollow face was indicative of his apparent soullessness.

This attorney mentioned above is not alone. I remember another attorney representing banks and servicers I met shortly after he got out of law school. Then he was a handsome, fit man. Two years later when we met again I noticed that he was bloated and dark.

I believe there is an ugliness which attaches to those people who chose to earn money working for those wealthy elites evicting people from their homes day after day based on untrustworthy, often fraudulent documents utilized by the MERS system. Even now when I argue against lawyers who are representing what I believe to be an obviously corrupt financial system, I gently suggest they think about changing sides. Few do. But I have no doubt that in time they will be held accountable, perhaps by God

7.9 In his April 10, 2015 blog, "Update to April 3, 2015 blog: West published case against MERS…" Stafne published an email from a Thomson Reuters employee, which states:

Dear Scott,

Here is the online version of the Knecht case now available on Westlaw. Please let me know if you need anything else!

Search:

[18] This link to the Knecht decision is the original one, which is included by blog article. If you try to access the decision through this link now, it states: "Google Scholar **404.** That's an error. Sorry, no content found for this URL. That's all we know." The link worked when the article was written. One wonders why it does not now and Google implies it is an error.

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Knecht v. Fidelity nat. title Ins. Co.

W.D.Wash. February 27, 2015

Slip Copy

2015 WL 1514911

Thank you for using WestlawNext. link

7.10 Stafne commented in this blog: "***I still wonder how often West chooses not to report cases based on the alliances of its corporate parent?*** For those of you who do not subscribe to West ... you can find a copy of this decision on Google scholar by clicking on this link." If you click on the link you can see Google appears to have disabled it. See note 16, supra.

7.11 On June 3, 2015 an interview with Stafne was published in Occupy.com. A copy of this interview can be accessed at Occupy.com, The People's Lawyer: Fighting Against Fraud and Court's Abuse of Power (June 3, 2015).In the interview Stafne asserts that wrongful foreclosures are a normal everyday tort that courts have refused to allow be prosecuted in order to benefit the 1%. Among other things, the article states:

> Attorney Scott Stafne, of Washington state, is known in foreclosure fraud circles as the "people's lawyer" – one who not only understands the complicity of mortgage fraud, but who plays an active role on social media and elsewhere sharing his knowledge and opinions with the general public. For people facing their own foreclosures, neglected by their own government and pushed aside while the banks still continue with their old stealing practices, Stafne's engagement means a lot. Here he explain why he does what he does, and his motivations for fighting the big banks on behalf of the people.
>
> * * *
>
> **SS:** [Scott Stafne] I think this economic collapse was carefully calculated as a means to redistribute wealth from the middle class to the wealthy. We lost any meaningful control over the banks during the Clinton administration. By the time

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> several of them became "too big to fail" they had effectively purchased all three branches of our government and most state governments.
>
> **SH:** [Senka Huskic**] How could we stop this and clean up what has occurred, making sure that something like this never happens again?**
>
> **SS:** I believe Americans will have to take to the streets in order to take their country back from the empire which has replaced it. We, the people, will have to join together at risk of peril to stand down the evil which has overcome our land.

ii. The Washington Attorney General's Investigation of Stafne and Stafne Trumbull

8.1 On July 29, 2015 Benjamin J. Roesch, an Assistant Washington Attorney General whose previous job was with Lane Powell as an attorney where he was tasked with representing clients adverse to homeowners, served a Civil Investigative Demand on Stafne and Stafne Trumbull. Based on information and belief this demand was part of a coordinated effort to harm Stafne and Stafne Trumbull as well as to hamper their representation of their clients.

8.2 Based on information and belief attorneys who advocate ardently on behalf of the people who cannot afford to be represented by large law firms are systematically punished and mistreated by government, including judges. Stafne alleges the more successful a lawyer is representing homeowners against lenders, servicers, and debt collectors the more likely they will be attacked and assailed by law firm that represent such clients. See Scott Stafne, www.Scottstafne.com, "Scorched Earth Litigation Model", September 15, 2015.

8.3 Roesch's civil investigative demand was frivolous and sought to prevent Stafne and the other attorneys at Stafne Trumbull from devoting the time necessary to try those cases on behalf of homeowners identified above.

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8.4 A copy of the Civil Investigative Demand with Answers was last accessed by the author on October 29, 2017.

8.5 The Civil Demand was specious, yet designed designed to be intimidating. It demanded Stafne provide information about homeowner clients in violation of the client's attorney-client privilege, was based on trick questions, and made allegations of misconduct by Stafne for the same conduct deputy attorney-general Roesch had engaged in offensively against homeowners. See Stafne October 29,2015 letter to Benjamin Roesch.

8.6 Further evidence the Civil Investigative Demand was without merit is that it has never been followed up on.

iii. Monetary Sanctions Imposed by active Article III judge Rosanna Malouf Peterson in Cervantes Orchards & Vineyards, et. al. v. Deere and Company, et. al.

9.1 In 2011 Stafne began representing Jose and Cynthia Cervantes with regard to the non-judicial foreclosure and sale of their home.

9.2 Prior to the crash in 2008 Cervantes and his business related entities had been among the largest orchardists in Washington State.

9.3 While Stafne was representing the Cervantes on this matter, Jose Cervantes requested Stafne bring a claim on behalf of the Cervantes and associated business entities against Deere and Company and other related defendants for national origin lending discrimination and violations of the Racketeering Influenced and Corrupt Organizations Act.

9.4 Before taking Cervantes' lending discrimination and RICO case against Deere and related entities Stafne referred the Cervantes to an attorney, Dean Browning Webb, with

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expertise in these areas for an evaluation of the legal merits of such a case. Further, Stafne did his own factual investigation of the likelihood that a Hispanic might experience national origin discrimination in Yakima County, Washington.

9.5 After performing an adequate factual and legal investigation under FRCP 11, Stafne and Webb signed a complaint commencing a federal lawsuit on behalf of the Cervantes entities against the Deer related defendants on September 2, 2014.

9.6 On information and belief after the complaint was filed two law firms were hired to represent Deere. One was Lane Powell which was hired by Deere primarily to harass and economically harm the Cervantes, Stafne and Webb. Other attorneys were hired to represent each of the other defendants Cervantes sued. On information and belief Lane Powell's job was, among other things, to coordinate defendant's litigation strategy to economically harm Cervantes so that he could not continue the lawsuit and to obtain sanctions against Stafne and Webb which would make it difficult for them to represent the downtrodden in the future.

9.7 Then active U.S. District Court Judge Rosanna Malouf Peterson took the case and dismissed Cervantes complaint; finding among other things that lending discrimination based on an Hispanic National Origin was not plausible in Yakima, Washington; that Plaintiffs had only pled only one RICO predicate act with particularity in the severely limited 30 page complaint Judge Malouf allowed Cervantes to file; and that the statute of limitations had run on Cervantes lending discrimination claim.

9.8 After granting the motion to all dismiss Cervantes' causes of action active U.S. District Court Judge Rosanna Malouf Peterson next granted the defendants motion for Rule 11

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sanctions and required Stafne and Webb jointly and severally to reimburse ***all*** defendants attorney fees and costs in the litigation, regardless of what they were for. As Judge Peterson acknowledged this award violated the American Rule with regard to attorneys and accordingly Stafne and Webb's due process rights by not limiting her award of fees to those issues which defendants prevailed on. See e.g. Goodyear Tire & Rubber Co. v. Haeger, 137 S. Ct. 1178 (2017)

9.9 Although Stafne and Webb had prevailed on the primary arguments advanced for dismissal and sanctions, *i.e.* that Cervantes' law suit was barred by res judicata and/or collateral estoppel, Judge Peterson required Stafne and Webb to pay for all attorneys work on this non-meritorious argument. Judge Peterson also ordered Stafne and Webb to pay attorney fees for Lane Powell and all other attorneys extra-judicial efforts to economically harm the Cervantes so they would not have the resources to continue on with that litigation. *See* Declaration of Lane Powell attorney in support of Request for Fees under Rule 11.

9.10 Notwithstanding, Judge Peterson knew or should have known she had no authority to transfer all attorney fees and costs to Stafne and Webb pursuant to Rule 11, she did so anyway without any explanation or appreciation that Article III judges do not have unlimited judicial power over the liberties of the people.

9.11 Notwithstanding, Scott Stafne filed a declaration explaining that Judge Peterson's threat of violating the American Rule had forced his office to close and that he was unable to pay the costs for medications necessary to keep him alive, Judge Peterson refused to follow Ninth Circuit precedent requiring such circumstances be taken into account and then

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unlawfully transferred all (over $100,000) of defendant's attorneys fees and costs to Stafne and Webb with the knowledge her actions had already destroyed Stafne's law firm and that imposing them would affect his ability to pay for necessary medications[19].

9.12 The primary opinion Lane Powell has relied upon in the appeal of Judge Malouf's sanction as the basis for its contention that Stafne and Webb should be required to pay sanctions because they couldn't squeeze all of the relevant facts into 30 pages is the Ninth Circuit Court of Appeals unpublished decision in *California Coal. for Families and Children v*

[19] Paragraphs 11,14, &15 of 9/25/2015 declaration of Scott Stafne filed with Judge Peterson clearly informed her that her threat of violating the American Rule had already caused Stafne's law firm to dissolve and would likely cause him injury or death. Stafne testified in these paragraphs:

> 11. This Court's orders inviting sanctions motions against ST and myself, as well as its telegraphing that it intends to award Deere attorneys over $100,000 in fees from ST and myself, has caused ST's members to dissolve the law firm. That dissolution should be complete by October 31, 2015. The dissolution is not premised on any belief that sanctions are merited; it is based on our belief that given this Court's past actions and orders it is likely to award well over $100,000 in Rule 11 sanctions against the firm. In that case, Deere and the other defendants may well be able to obtain judgments against ST, which will challenge its ability to continue providing quality legal representation to its clients.
>
> * * *
>
> 14. The truth is most people who cannot pay their mortgages also cannot afford to the pay "market rate" legal fees of solo practitioners or small law firms. Nor can many of them afford to pay basic litigation costs, such as for depositions or for expert witnesses. Of course, the inability of most people in Washington to afford licensed legal counsel in Washington State is not a new problem. As far back as 2003 the Washington Supreme Court was aware that the vast majority of people with low and moderate-high incomes cannot not afford legal services. See 2003 Washington State Civil Legal Needs Study, http://www.courts.wa.gov/newsinfo/content/taskforce/CivilLegalNeeds.pdf This remains true today. See 2015 Civil Legal Needs Study Update (June 2015) http://ocla.wa.gov/wp-content/uploads/2015/06/CLNS14-Executive-Report-05-28-2015-FINAL1.pdf
>
> 15. *Of course, my clients inability to pay for the services I provide affects my income, which is a factor this Court can consider in sanctioning me. In 2015 I have earned $4,000 gross per month. Much of the work I have done (as has always been the case to some extent) was pro bono (or turned out that way). I do not expect my income to increase in the future as I have accepted a job as an officer for a relatively new and small church. Presently, I am foregoing taking several medications prescribed to treat life threatening illness because I cannot afford them.*

(Emphasis Supplied)

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San Diego Bar Association, 657 Fed.Appx 675 (9th.Cir 2016). With regard to this case, Lane Powell writes in its brief:

> A complaint can violate Rule 8 by virtue of its excessive length. *California Coal.*, 2016 WL 4174772. The *California Coalition* case was filed by Mr. Webb, the Cervantes' attorney in the instant case. *Id*. Plaintiffs in California Coalition initially filed a 175-page complaint with 1,156 attached pages of exhibits. *Id*. at *1. The district court dismissed the complaint with leave to amend, finding that the complaint did not comply with Rule 8 and ***instructing plaintiffs to limit the length of the amended complaint to 30 pages***. *Id*. Plaintiffs then disregarded the court's instruction and filed a 251-page amended complaint with 1,397 attached pages of exhibits. *Id*. The Ninth Circuit upheld the dismissal of the lawsuit with prejudice, concluding that dismissal of the complaint was within the discretion of the trial court. *Id*. Thus, California Coalition stands for the dual proposition that a complaint may justify a Rule 12(e) or (f) motion based on excessive length, and that page-limits may be an appropriate remedy for such a violation of the Federal Rules.
>
> * * *
>
> As this Court has affirmed, 30 pages is plenty of space to assert a short and plain statement, even in a theoretically complex case. *California Coal*., 2016 WL 4174772.

9.13 The Ninth Circuit has fabricated an order from the District Court, i.e. that the district judge ordered a complaint be limited to 30 pages, so that it could exercise judicial power pretending to affirm an order of the district court which never existed., *See* Scott Stafne, Church of the Gardens Press, "Poking the Bear: A Question of Judicial Authority" (2017) for a copy of the district court's actual order and the parties briefing related to whether the Ninth Circuit Court of Appeals has subject matter jurisdiction to review an order that was never made so that it can create legislative rules.

9.14 On information and belief Stafne alleges and believes the Ninth Circuit Court of Appeals without any subject matter jurisdiction to do so purported to affirm an order of the

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district court which never existed. Further, Stafne alleges the Court of Appeals committed this abuse of judicial power so that it could use this decision as a basis to sanction and thereby physically, emotionally and professionally harm Scott Stafne..

9.15 Although informed of the Ninth Circuit Court of Appeals abuse of power, *see* Stafne's letter to United States Senate Judiciary Committee, the United States Congress seems not to care. This tends to prove the Separation of Powers has broken down and is no longer working in the United States as a mechanism to prevent judicial tyranny.

iv. Bank of New York Mellon, a Delaware corporation, v Stafne

10.1 On January 19, 2016 DWT through Fred Burnside and Zana Bugaighis, who were acting as attorneys for Nationstar Mortgage, LLC, a Texas corporation (Nationstar), brought an action styled *Bank of New York Mellon, a Delaware corporation, as trustee for Structured Asset Mortgage Investments II Trust, Mortgage Pass-Through Certificates Series 2005-AR2 v Scott Stafne, an individual, Todd Stafne, an individual; and Real Time Resolutions, Inc. a Texas Corporation*, in the USDCWW. A copy of that complaint and relevant Exhibits are attached as Exhibit 1.

10.2 Exhibit 1 asserts that federal jurisdiction is premised on diversity of citizenship pursuant to 28 USC § 1332.

10.3 Based on information and belief, the assignment of defendant Zully to adjudicate this case was manipulated by DWT and officials at USDCWW to assure defendant Zilly would be assigned as judge to adjudicate this case brought by DWT as the attorneys for servicer Nationstar in the false name of Bank of New York Mellon as plaintiff.

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10.4 On January 20, 2016, defendant Zilly agreed to adjudicate the case against Stafne. After doing so defendant Zilly determined Exhibit 1 (DWT's complaint) violated FRCP 11[20], but without explanation excused the violation and accepted the complaint notwithstanding it was facially insufficient to invoke the district court's diversity subject matter jurisdiction. The complaint was facially deficient because it failed to allege facts establishing diverse citizenships between the parties. See Exhibit 1 .

10.5 Based on information and belief, Stafne alleges defendant Zilly excused the FRCP 11 violation because of bias against Stafne and in favor of DWT and large law firms generally, who Stafne frequently criticises.

10.6 A copy of the Docket in USDCWW for the case of Bank of New York Mellon v Stafne is attached as Exhibit 2.

10.7 After the complaint was filed and defendant Zilly agreed to hear the case as a senior judge, Scott Stafne appeared *pro se*.

10.8 Neither the USDCWW nor Defendant Zilly notified defendants Scott Stafne or Todd Stafne that defendant Zilly would be adjudicating the case for no compensation (i.e. without being paid to do so), that defendant Zilly had decided he wanted to adjudicate this specific case against Stafne, or of his longstanding relationship with DWT and his former

[20] A docket entry for January 20, 2016 states:

> **NOTICE to FILER - SIGNATURE IMPROPER:** The Complaint was improperly signed by Counsel Bugaighis. Pursuant to FRCP 11 and LCR 9(d), signatures must comply with Section III.(L.0 of the Electronic Filing Procedures, "An electronically filed pleading or other document which requires an attorney's signature must have signed name(s) printed or typed on the line and under all signature lines. You do not have to re-file this document, but please be sure all documents are properly signed. Thank you. (cda)

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relationship with Lane Powell. Stafne also was not told he had the right to have an active Article III judge, rather than a substitute for one, adjudicate this case.

10.9 Stafne has never consented and does not now consent to defendant Zilly acting as a substitute for an active article III judge, with regard to the dispute identified as Exhibit 1.

10.10 Stafne repeatedly and consistently challenged the standing of Bank of New York Mellon and any of its related entities to bring this action. Stafne also challenged the subject matter jurisdiction of the USDCWW on other grounds as well.. These challenges included without limitation: Ex 2, Dkt, 11 (FRCP 12(b)(1) motion to dismiss based on exclusive jurisdiction rule and the failure to allege allege facts establishing whether the named plaintiff was a acting as a traditional or business trust.); Ex.2 Dkt 18 (submission of supplemental authority *American Realty Trust v Conagra Trust, Inc*. 2016 W.L. 854159 (U.S. 3-17-2016 regarding citizenship of traditional trusts); Ex. 2, Dkt 21 (Supplemental declaration by Scott Stafne reminding defendant Zilly that lower federal courts have a duty to determine standing and subject matter jurisdiction along with the declaration of process server that there was no Delaware corporation identified as "Bank of New York Mellon" in Delaware. To access a copy of the of the process servicer's declaration click here.); Ex. 2, Dkt 28 (Motion to require DWT to prove it had authority to bring this action against against Stafne on behalf of Bank of New York Mellon, a Delaware corporation *or any of its subsidiaries* in order not to have the case dismissed under the authority of *Pueblo of Santa Rosa v. Fall*, 273 U.S. 315 (1927); *Southern Pine Lumber Co. v. Ward*, 208 U.S. 126 (1908) *affirming* 16 Okl. 131, 85 P. 459 (1905); *Shelton v. Tiffin*, 47 U.S. 163, 186, 12 L. Ed. 387 (1848); and *In re Retail Chemists Corp*., 66

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F.2d 605, 608 (2nd Cir. 1933) holding that cases prosecuted by attorneys who do not have an attorney-client relationship with purported plaintiff are null and void[21]. See also *Hollingsworth v. Perry*, 133 S. Ct. 2652, 2665-6 (2013) (rejecting argument that "mere authorization to represent a third party's interests is sufficient to confer Article III standing on private parties with no injury of their own"); Dkt. 42(FRCP 12(b)(1) factual attack asserting parties complaint does not allege facts necessary to establish diversity of citizenship and jurisdiction was collusively made or joined in violation of 28 U.S.C. § 1359)[22]

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[21] Notwithstanding DWT ultimately admitted it did not represent the named plaintiff or any BNY Mellon entity, see Burnside declaration, Dkt 38, and did not attempt to distinguish any of the precedent set forth, Defendant Zilly decided **not** to reach the jurisdictional issue posed by these precedents based on a lie by attorney Fred Burnside that Stafne had raised this issue before then Active Article III judge Pechman, who determined the challenge to be without merit in the Robertson case, *see supra*.But even assuming Burnside's lies were true (they were not) and Pechman held misconduct had waived subject matter jurisdiction, this did not explain how and why Stafne's conduct rebutted the presumption against the district court's jurisdiction.. See Ex. 2, dkt.69) Order, pp. 5:7-6:6. Moreover, the jurisdictional lie Burnside told defendant Zilly was similar to that which the Ninth Circuit found Burnside, DWT, and other legal cabals persistently told the USDCWW and the Ninth Circuit in the Robertson case and appeal. *See supra*, which they did not condone but for which they refused to award sanctions.

[22] See e.g. Ex 2, Reply, Dkt 55, where Stafne argued:

> **IV. Nationstar has not presented any facts sufficient to rebut the presumption that the POA in this case is being used to improperly or collusively invoke the jurisdiction of such court.**
>
> DWT argued in reply to Stafne's assertions in Dkt. 46 that Nationstar and DWT are improperly utilizing the POA to create diversity jurisdiction as well as evidentiary and procedural advantages inconsistent with Article III standing that:
>
> > Stafne's authorities are distinguishable. A power of attorney is not an assignment of a claim. Thus, Stafne's citation to Dweck v Japan CBM Corp., 877 F 2d 790, 792-93 (9th Cir. 1989) and Dobyns v Trautner, 552 F. Supp 2d 1150, 1153 (W.S. 2008) are inapposite.
>
> Dkt. 49, 6:5-12.
>
> But 28 USC § 1359, which Dweck is based upon is not limited to Assignments. This statute provides: "A district court shall not have jurisdiction of a civil action in which any party, by assignment ***or otherwise***, has been improperly or collusively made or joined to invoke the jurisdiction of such court." 28 USC § 1359 (emphasis added); *see e.g.*, *W. Farm Credit Bank v. Hamakua Sugar Co., Inc*., 841 F. Supp 976, 980 (D.Haw.1994), *aff*'d, 87 F.3d 1326 (9th Cir.1996). This federal anti-collusion statute is aimed at preventing parties from manufacturing diversity jurisdiction to inappropriately channel ordinary litigation over which the States usually have jurisdiction into the federal courts. *Yokeno v. Mafna*s, 973 F.2d 803, 809 (9th Cir.1992) (citing *Kramer v. Caribbean Mills, Inc*., 394 U.S. 823, 828–29 (1969)). "[T]he statute is to be

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10.11 At all material time Bank of New York Mellon was a non-existent corporation which was not a person with the meaning for purposes of diversity jurisdiction and therefore had no citizenship.

10.12 DWT was only the attorney for Nationstar Mortgage, LLC. (Nationstar) and not Bank of New York Mellon.. See Ex. 2, Dkt 36 & 38. At the time the lawsuit was filed against Stafne, Nationstar was the only possible real party in interest and a citizen of Texas. Nationstar controlled the litigation and was paying DWT's attorney fees.

10.13 Defendant Real Time Resolutions was also a citizen of Texas and accordingly the USDCWW did not have diversity jurisdiction over this case. To the extent there is a factual dispute regarding any of the factual issues going to subject matter jurisdiction Defendant Zilly was required to have held an evidentiary hearing to resolve them as jurisdictional issues before proceeding proceeding to decide the case on the merits [23].

10.14 Nationstar and its attorneys DWT did not bring the foreclosure action against Stafne as a fiduciary for the benefit of any trust or trust beneficiaries or even to recover money for itself. At the time Exhibit 1 was filed Nationstar and DWT were fully aware of the title

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construed broadly to bar any agreement whose primary aim is to concoct federal diversity jurisdiction." *Zee Med. Distrib. Ass'n v. Zee Med., Inc.*, 23 F.Supp.2d 1151, 1158 (N.D.Cal.1998). "A party may not create diversity jurisdiction by the use of an improper or collusive assignment," and "[t]he party asserting jurisdiction has the burden of proof" in showing that jurisdiction has not been manufactured. *Dweck*, 877 F.2d at 792.

The USDCWW court had a constitutional duty to address Stafne's challenge that it had no jurisdiction under 28 U.S.C. § 1359, but defendant Zilly for some reason appears chose not to even address the claim.

[23] Similarly Stafne had presented evidence from BNY Mellon that The Bank of New York Corporation Mellon nor any of its subsidiaries had any economic interest in Stafne's mortgage either as trustee or on its own behalf. Under these circumstances defendant Zilly should have either found BNY had no standing or held an evidentiary hearing for purposes of resolving whether it did.

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problems with the property. Nationstar and DWT knew that as a result of construction defects any foreclosure litigation would likely cost more or an amount similar in value to the cost of legal fees and costs to bring the foreclosure action; and that if Stafne won on the merits he would not be able to pay deficiency costs. DWT and Nationstar brought this action not to recover anything but in an attempt to put Stafne out of business for the reasons set forth above.

10.15 DWT and Nationstar brought the action against Stafne in federal court before defendant Zilly, who agreed to take this specific case against Stafne, to retaliate against Stafne physically, emotionally, and professionally by attempting to show him that federal courts were rigged and that the concept of subject matter jurisdiction as a check in favor of the people against judicial tyranny no longer works and cannot be successfully invoked in the inferior courts of the United States established by Congress pursuant to Art. III, § 1. On information and belief another purpose of bringing this case against Stafne was to impress upon homeowners they had no chance of obtaining justice when they were sued servicers, banks, or hedge funds who had the money to foreclose and who will spend whatever is necessary to win regardless regardless of the worth of the house. See Scott Stafne, "*Scorched Earth Litigation Model*" (September 15, 2015).

10.16 This model of litigation is intended to and does result in a genocide of the people which the government refuses to track or account for.

10.17. After defendant Zilly rejected Stafne's motion to strike DWT's motion pursuant to FRCP 56 on Constitutional grounds, i.e. lower federal courts cannot resolve merits litigation having first determined subject matter exists (without even waiting for a response from DWT)

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and further without ever providing an explanation as to why the district court had subject matter jurisdiction over the case, notwithstanding the presumption it did not, Stafne chose to appeal defendant Zilly's refusal to explain how the presumption against the district court's jurisdiction had been rebutted based on the Collateral Order doctrine. *See* EX. 2, Dkt 71 & 72..

10.18 Notwithstanding Stafne's appeal was pending (and defendant Zilly had no jurisdiction to resolve the merits motion because of this as well) Defendant senior judge Zilly did so anyway. Although, Stafne had good defenses on the merits to the judicial foreclosure of his property[24] he refused to engage in any merits litigation procedures so as not to waive challenge to the USDCWW Article III subject matter jurisdiction arguments.

10.19 Stafne's reason for refusing to participate in any merits litigation included *without limitation*: A.) Defendant Zilly's failure to issue an order rebutting the presumption against the district court having jurisdiction over the case or controversy identified in Exhibit 1; B.) Stafne's concern based on *Robertson v. GMAC Mortgage, LLC*, 640 Fed. Appx. 609 (9th Cir. 2016) that the Ninth Circuit might view participation in merits litigation, even notwithstanding the absence of jurisdiction at the time the case was filed, as a grounds for later sustaining merits decisions; C.) Stafne's concern that the jurisdictional tricks used by Nationstar and DWT against him were also being used by these same entities and others like them to force property owners and junior lienholders inappropriately into lower federal courts, where they

[24] See e.g. Ex2, Dkt 94, Declaration of Scott E. Stafne in opposition to Motion for Summary Judgment against Todd Stafne. This declaration was filed by Scott Stafne as evidence in support of Todd Stafne's opposition to the motion for summary judgment DWT had separately filed against him. The declaration established there were material factual disputes about 1.) the accuracy and the legitimacy of the the legal description set forth on the 2005 deed of trust at issue in the federal case and 2.) whether 28 U.s.c. 1359 had been violated.

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were treated harshly by federal judges prejudiced against them. Further, that these unconstitutional actions by federal courts were resulting in a genocide of poor and middle class Americans, like himself, and if not challenged would result in his injury and death; and D.) Stafne's observations in his case and others that servicers and their lawyers were inappropriately and routinely using merits discovery to physically and emotionally abuse parties.

10.20 On December 7, 2016, while Stafne's appeal was still pending, defendant Zilly without having established any subject matter jurisdiction to do so granted DWT's summary judgment motions based on, among other things, his finding that there was no dispute regarding the accuracy and legitimacy of the property description contained in the 2005 deed of trust foreclosed upon. See Ex. 2, Dkt. Nos. 113; 114; and 115. Zilly did not award specific damages in that order because none had been asked for and therefore there was no evidence in the summary judgment record which would support them.

10.21 The next day on December 13, 2016, following Zilly's grant of a purported final order within the meaning of 28 U.S.C. Stafne filed a second Notice of Appeal challenging all of defendant Zilly's rulings based on Zilly's failure to establish the USDCWW had subject matter jurisdiction for purposes of proceeding to the merits of the litigation. That second appeal was docketed as Appeal No. 16-36032.

10.22 On January 3, 2017, approximately three weeks after the second appeal (Appeal No. 16-36032) had been filed with the Ninth Circuit, DWT filed a motion asking defendant Zilly to amend the judgment to find facts that had not been resolved pursuant to the the

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summary judgment motion against Stafne. DWT conceded in its pleadings that it had not provided with its summary judgment pleadings any evidence to justify the finding of fact it now sought the district court to make via a motion to amend the judgment. Ex. 2, Dkt. 120. DWT also admitted the motion it had filed was a proximate cause of Defendant Zilly not signing an order which would allow foreclosure pursuant to Washington State statutes and customs. *Id.*

10.23 On February 3, 2017, Defendant Zilly, now apparently appreciative of the fact a district court does not have jurisdiction over a case while it is on appeal, issued another MINUTE ORDER, which stated in pertinent part:

> In issuing its judgment, ***the Court intended to enable plaintiff to foreclose on the property encumbered by the deed of trust***. In light of plaintiff's representation that the Court's failure to include certain information required by RCW 4.64.030 prevents plaintiff from registering and executing the judgment, thus precluding a foreclosure sale, amendment is appropriate.
>
> (2) Plaintiff is directed to promptly notify the Ninth Circuit Clerk under Federal Rule of Appellate Procedure 12.1, that the district court would grant the motion to amend.
>
> (3) The Clerk is directed to send a copy of this Minute Order to all counsel of record and to the Ninth Circuit Court of Appeals.

(Emphasis added)

10.24 On its face defendant Zilly's order states that he intended to allow plaintiffs to foreclose reflects prejudice because it concedes defendant Zilly's wants to enable the foreclosure of Stafne's real property notwithstanding the appropriate evidence to so under Washington law was not presented as part of the merits FRCP 56 proceeding. Such evidence

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was necessary to obtain a judgment as a matter of law which would allow the USDCWW to issue a final foreclosure order allowing the taking of Stafne's property under color of Washington state law.

10.25 On January 27, 2017 Scott Stafne filed a Motion to stay any foreclosure orders by the USDCWW because defendant Zilly had no subject matter jurisdiction of the underlying case. Further Stafne demonstrated the same presumption against inferior courts' jurisdiction applied to the Ninth Circuit Court of Appeals as applied to the USDCWW. Stafne argued this presumption also required active Article III judges of the Ninth Circuit to establish that both inferior courts had subject matter jurisdiction over the final decision of the the district court before an Article III Court of Appeal could take an action other than to order the district court to dismiss the case.

10.26 On April 20, 2017, active Article III ninth circuit judge Andrew Hurwitz and senior circuit judge Barry Silverman, without first determining whether the district judge or the Court of Appeals had subject matter jurisdiction to review an allegedly final decision by defendant Zilly on the merits, directed defendant Zilly to essentially reconsider the summary judgment and take new evidence relating thereto, while the matter of the district court's subject matter jurisdiction was the subject of a the second appeal.

10.27 Judge Silverman is not an active Article III Ninth Circuit Court of Appeals judge and Stafne did not consent to Silverman exercising judicial power related to his appeal. Accordingly, defendant Silverman should not have been a member of the motions panel to the extent his function was to exercise judicial power pursuant to Article III.

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10.28 Circuit Advisory Committee Note to Rule 27-1 states: "All three judges of the motions panel participate in ruling on motions that dispose of the appeal."

10.29 Stafne's motion for a stay of the district court's order was premised on the district court's lack of subject matter jurisdiction, which if sustained would have resolved the appeal and required the case before the USDCWW be dismissed. Nonetheless, the Ninth Circuit did not convene a three judge panel to rule on Stafne's motion. Nor did the two judge panel determine whether the Ninth Circuit Court of Appeals had subject matter jurisdiction over the case.

10.30 After the Ninth Circuit's order was issued Todd Stafne, Scott Stafne's brother died from a heart attack related to stress. A proximate cause of Todd Stafne's death was Non Article III defendant substitute judges' decisions in this case and appeal. These decisions ignored the structural provisions of the United States Constitution intended to protect the from judicial tyranny.

10.31 A buyer wishes to purchase the property owned by the estate of Todd Stafne. The legal description of this property was in dispute in both the originally filed State Court *in rem* quiet title action filed in the Washington State court as well as the later filed in rem foreclosure complaint (Exhibit 1) filed by DWT which defendant Zilly decided he wanted to adjudicate.

10.32 The personal representative would like to enter into a settlement agreement with DWT and Nationstar which would stipulate to the legal description of the Twin Falls parcels notwithstanding this was was a disputed issue of with regard to the Court's subject matter jurisdiction as well as in the merits summary judgment motion, which Scott Stafne asserts

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defendant Zilly and the USDCWW has no constitutional authority to resolve for those numerous reasons set forth above and because under Washington law no judge has the authority to reform the legal descriptions of Washington parcel unless there has been compliance with Washington State's Land Use Petition Act unless there is a timely filed objection (within 21 days) to any boundary line adjustment.

10.33 Stafne is willing to enter into such a settlement as would help his brother's estate achieve its purposes, but only with the understanding that such settlement is not intended to waive any challenges to defendant Zilly's failure to establish subject matter jurisdiction. Moreover, it would be Stafne's position that the need for such a settlement demonstrates the merits of his subject matter jurisdiction arguments and is a significant concession tending to prove that there was a dispute factual issue defendant Zilly overlooked in his desire to help DWT and Nationstar foreclose on Stafne's property.

v. Stafne v Burnside.

11.1 On May 24, 2016 Scott Stafne filed a complaint in the USDCWW against Frederick Benjamin Burnside; Zana Zarha Bugaighis; DWT; Structured Asset Mortgage Trust Investments II Trust, Mortgage Pass-Through Certificates Series 2005-AR2; The Bank of New York Mellon Corporation; The Bank of New York Mellon Trust Company, N.A.; BNY Mellon, N.A.; JPMorgan Chase Bank N.A.; Nationstar Mortgage, LLC; Select Portfolio Services..

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11.2 Judge Coughenour, a senior judge, agreed to hear the case, but did not advise Stafne that he was doing so as a volunteer, or that Stafne had a right not to consent to senior judges exercising judicial power as a substitute for an active Article III judge.

11.3 Stafne does not consent to defendant Coughenour hearing the case and requests an active Article III judge adjudicate his case against Burnside.

CAUSES OF ACTION

V. Constitutional Violations

12.1 Stafne realleges all his previous allegations.

12.2 The government has purposely frustrated the workingings of structural provisions of the Constitution designed to protect the lives, liberties, and property of the people against governmental tyranny.

12.3 The failure to appoint the number statutorily required active judges to the bench judges so as to allow retired elderly, likely cognitively impaired senior judges or senior judges with longtime loyalties to work for free on cases of their choosing is inconsistent with those Article III attributes designed to preserve the integrity of the Article III branch of government and the Appointments Clause of the United States Constitution.

A. Defendant Zilly

12.4 Defendant Zilly is acting as a judicial volunteer (not as a judicial officer who is being paid compensation for his services) purporting to exercise Article III judicial power over Stafne without Stafne's consent in *Bank of New York Mellon v Stafne*.

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12.5 The merits judgments of Defendant Zilly, whatever they may be, are null and void because he has no authority under State or Federal law to decree them as Stafne because he is not an active Article III judge and is not competent to exercise such power.

12.6 Alternatively, even if Defendant Zilly had the authority to act as an Article III active judge, he did not have the authority to proceed to a merits litigation without having first addressed the district court's jurisdiction pursuant to Article III § 2.

12.7 Notwithstanding Stafne's repeated challenges to the District Court's subject matter jurisdiction Defendant Zilly purposely and repeatedly refused to explain how and why the District Court had subject matter jurisdiction to proceed to the merits litigation given the presumption against its authority to do so.

12.8 Defendant Zilly's persistent failure to establish the District Court's subject matter jurisdiction violated the most fundamental duty of any official which exercises Article III judicial power pursuant to Art. III, § 2 and constitutes misconduct under Art. III, § 1 and a lack of that competence necessary to act as a substitute judge.

12.9 Defendant Zilly's merits judgments (whatever they may turn out to be) are null and void because they were made by an official acting on behalf of a District Court which did not have the authority to enter a judgment on the merits.

12.10 In addition to infringing upon those structural provisions of the Constitution designed to protect Stafne's liberty, defendant Zilly has denied Stafne's due process rights under both the United State Constitution and Washington Constitution. These violations of Stafne's due process rights have proximately caused Stafne injury, including medical,

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psychological, and financial injuries which will be established at trial. Notwithstanding defendant Zilly has proximately cause Stafne egregious personal damages, Stafne seeks only a nominal award of damages of $1.00 because Stafne goal is to bring to the attention of Congress and the rest of world the shoddy condition of the United State's judicial system[25].

12.11 In addition to infringing upon those structural provisions of the Constitution designed to protect Stafne's liberty, defendant Zilly and other Article III active and senior judges have intentionally, purposely, and unlawfully retaliated against Stafne for the exercise of his First Amendment rights. Such retaliation has proximately caused Stafne injury, including physical, psychological, and financial injuries which will be established at trial. Notwithstanding defendant Zilly has proximately cause Stafne egregious personal damages, Stafne seeks only a nominal award of damages of $1.00 because Stafne goal is to bring to the attention of Congress and the rest of world the shoddy condition of the United State's judicial system[26].

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[25] This month (November 2017) the American Bar Association published an article title "Measuring justice: Rule of Law Index helps compares strengths and weaknesses of countries legal systems" which reports that the United States ranking in the 2016 Rule4 of Law Index was 18 out of 112.. The article discusses this index which can be accessed here: "WJP Rule of Law Index 2016 Report" Stafne believes this report gives the United States a better ranking than it deserves because it assumes the predictability of law in the United States law which no longer exists following the demise of precedent, *see e.g.* Rempell, Scott, Unpublished Decisions and Precedent Shaping: a Case Study of Asylum Claims, 31 Geo. Immigr. L.J. (Fall 2017), and dramatically understates the on-going corruption of United States Article III courts. See e.g.

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B. Defendant Barry G. Silverman

12.12 Defendant Coughenour is acting as a judicial volunteer not as a judicial officer who is being paid compensation for his services notwithstanding he purports to exercise judicial power over Stafne without Stafne's consent in the case of *Stafne v Burnside*.

12.13 Stafne requests Coughenour withdraw from acting as a substitute for an active Article III judge in *Stafne v Burnside*.

C. Defendant John C. Coughenour

12.14 Defendant Coughenour is acting as a judicial volunteer not as a judicial officer who is being paid compensation for his services notwithstanding he purports to exercise judicial power over Stafne without Stafne's consent in the case of *Stafne v Burnside*.

12.15 Stafne request Coughenour withdraw from acting as a substitute for an active Article III judge in *Stafne v Burnside*.

28 U.S.C. 1983

13.1 Stafne realleges all previous allegations.

13.2 28 U.S.C. provides:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

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13.3 If the Court finds that senior judges are Article III judges, or that Stafne has consented to their exercise of judicial power under Article III, Stafne maintains all judges exercising Article III judicial power commit misconduct within the meaning of the Constitution when they fail to explain in a writing, capable of appellate review, how and why the district court has subject matter jurisdiction in light of the presumption against such jurisdiction and a party's' challenge to such jurisdiction. Stafne alleges defendant Zilly has violated this obligation in order to benefit Lane Powell and DWT interests.

13.4. Stafne alleges that under the circumstances of these cases none of defendant's decisions in *Bank of New York Mellon v Stafne* or *Stafne v Burnside* are entitled to a res judicata and/or collateral estoppel effect because no final judgment has been issued in either case and that doctrine does not apply cases resolve on or which should have been resolved on subject matter jurisdiction principles.

13.5 A unanimous Supreme Court observed in *Booth v United States*:

> It is scarcely necessary to say that a retired judge's judicial acts would be illegal unless he who performed them held the office of judge. It is a contradiction in terms to assert that one who has retired in accordance with the statute may continue to function as a federal judge and yet not hold the office of a judge.

291 U.S. 339, 350 (1934).

13.6 Defendant senior judges have violated Stafne's rights under color law by denying Stafne's rights, privileges, or immunities secured by the Constitution to have Article III cases heard by an active Article III judge, who holds an office established by Congress for such judgeship.

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13.7 Additionally, defendants Zilly and Silverman have further violated Stafne's rights under color of law for the reasons stated in the previous section of this Complaint.

13.8. Sheriff Trenary's enforcement and/or imminent enforcement of defendant Zilly's void merits judgment under color of State law violates or will violate Stafne's life, liberty, and property interests protected by the structural provisions of the United States Constitution and the Privileges and Immunities clause the federal constitution set forth in Article IV as well as the First and Fifth Amendment to the United States Constitution.

Prayer For Relief

WHEREFORE, Stafne prays for the following relief:

Stafne asks that such a judgment be entered against Defendants, each and every one of them, jointly and severally, because Defendants illegal actions are causing demonstrable injury to Stafne with reckless indifference. Stafne requests an active Article III judge, who does not serve within the USDCWW or the Ninth Circuit, be assigned to adjudicate this case in order to issue a judgment:

1.) Adjudicates, in the context of a jury trial, the the rights of the parties under the facts of this case;

2.) Adjudicates, in the context of a jury trial, what injunctive relief is available under the facts of this case;

3.) Adjudicates, in the context of a jury trial, whether Stafne is entitled to damages from any of the defendants, with the understanding that once determined Stafne is willing to accept only nominal or no damages for his injuries because the purpose

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of this litigation is to restore the judicial department's adherence to those aspects and provisions of the Constitution necessary to protect the liberty of people and to protect against that judicial tyranny which pervades the judicial department and the United States government generally; and

4.) For such other relief as may be appropriate under law and equity to provide an appropriate remedy for the facts pled in this complaint. See e.g. *Johnson v. City of Shelby*, 135 S. Ct. 346, 346-347 (2014).

DATED this 9th day of November, 2017 at Arlington, Washington.

By: x *s/Scott E. Stafne*

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