

Case No.

Originating Case Ninth Circuit: 18-15202

(Nevada District Court Case No. 2:16-cv-01124-JCM-NJK)

20-1208

Supreme Court, U.S.

FILED

FEB 23 2021

OFFICE OF THE CLERK

In the

SUPREME COURT OF THE UNITED STATES

DECEMBER TERM, 2021

Salma Agha-Khan, M.D., *Petitioner*,

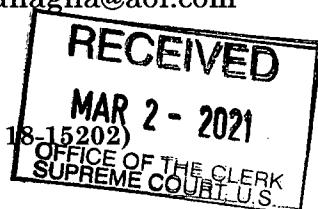
v.

Pacific Community Mortgage In. et. al., *Respondent*.

PETITION FOR WRIT OF CERTIORARI

Salma Agha-Khan, M.D.
Petitioner in Pro Se
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WRIT OF CERTIORARI (Originating Ninth Circuit Case 18-15202)



I. QUESTIONS PRESENTED

Petitioner's two filings below received by Ninth Circuit on November 03, 2019 were deliberately destroyed by the Ninth Circuit. (Appendix Ex A, B, C)

A. First removed and destroyed filing received by Ninth Circuit.

1	Ninth Circuit Case No. 18-15202	
2	Originating US District Court Case No. 2:16-cv-01124-JCM-NJK	
3	RECEIVED OFFICE OF THE CLERK U.S. COURT OF APPEALS PUBLIC INFORMATION UNIT	2020 NOV -3 PM 12:45
4	FILED _____	INITIALS _____
5	DOCKETED _____	DATE _____
6	IN THE UNITED STATES COURT OF APPEALS	
7	FOR THE NINTH CIRCUIT	
8	<hr/>	
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10	Salma Agha-Khan	
11	Appellant-Plaintiff	
12	v.	
13	Pacific Community Mortgage, Inc., et al.	
14	Appellees-Defendants	
15	<hr/>	
16	<hr/>	
17	APPELLANT'S THIRD MOTION TO DISQUALIFY	
18	NINTH CIRCUIT BASED UPON MANDATORY AND	
19	SELF-EXECUTING DISQUALIFICATION STATUTES	
20	28 U.S.C. §§ 144 and 455; AND JUDICIAL CODES OF	
21	CONDUCT AND ETHICS AS WELL AS JUDICIAL CANONS 1,	
22	2, 3; AFFIDAVIT/DECLARATION OF APPELLANT	

B. Second destroyed filing received by Ninth Circuit.

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1 Ninth Circuit Case No. 18-15202

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2 Originating US District Court Case No. 2:16-cv-01124-~~JCM-NJK~~

3 FILED

DOCKETED

DATE

INITIAL

4 **IN THE UNITED STATES COURT OF APPEALS**

5 **FOR THE NINTH CIRCUIT**

7 SALMA AGHA-KHAN, -M.D.

8 Plaintiff-Appellant

9 v.

10 Pacific Community Mortgage, In., et al.

11 Defendant-Respondent

13 **APPELLANT'S OPPOSITION TO APPELLEES MORTGAGE**
14 **ELECTRONIC REGISTRATION SYSTEMS, INC., THEODORE**
15 **SCHULTZ, AND TRISHA MCMULLIN'S RENEWED MOTION**
16 **FOR SUMMARY AFFIRMANCE FILED CONCURRENTLY WITH**
17 **THIRD MOTION FOR NINTH CIRCUIT DISQUALIFICATION**
18 **BASED UPON MANDATORY, SELF-EXECUTING STATUTES 28**

19 **U.S.C. §§ 144 and 455**

C. Docket lacks Petitioner's filings received on November 03, 2019.

10/08/2019 53
2 pg. 106.59 KB

Filed clerk order (Deputy Clerk: MKS): The court has received Aurora Loan Services, LLC's status report (Docket Entry No. [49]) and notice of entry of order extending the automatic stay imposed by 11 U.S.C. § 362 to certain non-debtor parties to this appeal (Docket Entry No. [39]). Appellate proceedings are stayed for Aurora Loan Services, LLC; Mortgage Electronic Registration Systems, Inc.; Theodore Schultz; and Trisha McMullin only. This appeal will proceed as to the remaining parties. The opposed motions for summary affirmance (Docket Entry Nos. [25], [30]) and appellant's motion for disqualification (Docket Entry No. [42]) will be addressed by separate order. The briefing schedule remains stayed pending further order of the court. [11458390] (AF) [Entered: 10/08/2019 03:35 PM]

12/17/2019 54
2 pg. 125.64 KB

Filed clerk order (Deputy Clerk: MKS): This appeal has been held in abeyance as to Aurora Loan Services, LLC ("Aurora") since April 15, 2019, and as to Mortgage Electronic Registration Systems, Inc.

Any reasonable person will ask “what “special interest did Ninth Circuit have in Petitioner’s case to act in this manner?” Petitioner is hoping that Supreme Court Judges will also have this question when this Petition is placed before them.

1. Can Ninth Circuit dismiss the Appeal by Affirming the Summary Affirmance of District Court after Ninth Circuit had deliberately destroyed Petitioner’s Opposition ? (App Ex B, C)
2. Can Ninth Circuit issue Dismissal with pending Motions for their Recusal, after they had deliberately and knowingly destroyed Petitioner’s Third Motion for their Disqualification?
3. Does deliberate destruction of Petitioner’s filings received by Ninth Circuit not constitute “Fraud Upon the Court by the Court Itself” so proceedings are void?
4. Can Ninth Circuit delegate “adjudication” to Clerks to perform legal analysis, quote statutes and case law to reach conclusions i.e. practice law without being an active member of Bar Association?
5. Does Judicial Oath, Judicial Canons and Codes of Conduct include Court Clerks?
6. Are Judges and Clerks the same entity and can their titles be used interchangeably in Orders? Or was this only because of a minority Pro Per?
7. Can a non-existing Lender have assets and assignees that can claim the assets?
8. Can such self-proclaimed “assignees” collect mortgage after “loan” is paid off in full in SEC filings and have standing to perform a “non-judicial” foreclosure?
9. Did Ninth Circuit demonstrate malice and retaliate for bringing a lawsuit naming three Ninth Circuit Judges as Defendants, including-Judge Consuelo M. Callahan, appointed to the Appeal? (See NV Bk. Adv. 19-01074-ABL)?

10. Is it not a duty of Federal employees to report Judicial Misconduct and other white collar crimes to appropriate authorities for investigation?

U.S. Supreme Court stated in *Price v. Vincent* 538 U.S. 634 (2003) that a party is "entitled to relief" if they can demonstrate that lower "court's adjudication of their claim was "contrary to" or an "unreasonable application of" this Court's clearly established precedents."

Based on above Petitioner is now turning to this Court for Justice through legal adjudication denied to her by the recused Ninth Circuit that deliberately and knowingly destroyed her filings in malicious retaliatory behavior to deliberately benefit Respondents and continue Petitioner depravation.

II. LIST OF PARTIES

Petitioner-Appellant-Plaintiff

Salma Agha-Khan, MD.

v.

Respondents-Appellees-Defendants

Pacific Community Mortgage Inc., a suspended California Corporation; Pacific Community Mortgage Inc., a suspended California Corporation, its successors and assignees; Gold Reverse Inc., a dissolved California Corporation; Kurt Kingsolver, an individual, and as agent for Pacific Community Mortgage Co. Inc., and as agent for Gold Reverse Inc.; Quality Loan Service Corp., a California corporation – form unknown; Bobbie Irias/Irlas, an individual and as agent for Quality Loan Service Corp; Ronald Alonzo, an individual, and as authorized agent of Quality Loan Service Corp; Bee Vang, an individual and as agent for Quality Loan Service Corp; Mortgage Electronic Registration Systems, Inc. a Delaware agency/ corporation – form unknown, Mary Jane Sarne, an individual and as Vice President of Mortgage Electronic Registration Systems, Inc.; Trisha McMullin, agent for Aurora Loan Services; Theodore Schultz, an individual and as Vice President of Mortgage Electronic Registration Systems, Inc.; Servicelink, a business organization form unknown; Servicelink-Irvine, a business organization form unknown; Aurora Loan Services, a surrendered Corporation; Fidelity National Title , a business

organization form unknown; Steven Joe, an individual; Michael McNeill, an individual; Juliann McNeil, an individual; Christopher J. Flaharty, an individual; Nichole R. Flaharty, an individual; Wells Fargo Bank, N.A., a US national bank; Wells Fargo Financial National Bank, a US bank; Christopher J. Flaharty, and Nichole R. Flaharty, as Trustees of the Flaharty Family Trust; Flaharty Family Trust, a trust including subject property; American Securities Company of Nevada, a company form unknown; Noble Title, a Title company in Nevada; William Go, an individual and Realtor in Prudential Americana Group; Prudential Americana Group, a real estate company; Aurora Loan Services, LLC., a surrendered Corporation; And Does 1 to 100 inclusive.

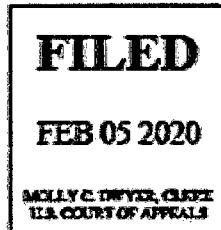
Appellees-Respondents

III. OPINION

No "Opinion" was issued by Ninth Circuit. The entire Appeal was adjudicated by the Court Clerk, Molly C. Dwyer. Eighteen (18) out of total twenty-one (21) "orders" in the Docket, were from this Clerk. (ECF 2, 4, 5, 6, 8, 14, 15, 16, 24, 33, 47, 53, 54, 56, 57, 58, 61, 64). Clerk issued Mandate, Recalled it, Issued Partial Mandate.

Case: 18-15202, 02/05/2020, ID: 11585750, DktEntry: 58, Page 1 of 1

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT



SALMA AGHA-KHAN, M.D., M.D.,

Plaintiff - Appellant,

v.

**PACIFIC COMMUNITY
MORTGAGE, INC., a suspended
California Corporation, its successors
and assigns; et al.,**

Defendants - Appellees.

No. 18-15202

D.C. No. 2:16-cv-01124-JCM-NJK
U.S. District Court for Nevada, Las
Vegas

MANDATE

The judgment of this Court, entered January 14, 2020, takes effect this date.

This constitutes the formal mandate of this Court issued pursuant to Rule 41(a) of the Federal Rules of Appellate Procedure.

FOR THE COURT:

**MOLLY C. DWYER
CLERK OF COURT**

Above Mandate was Recalled, "Issued in Error" and Partial Mandate Issued by Clerk

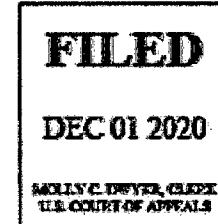
04/24/2020 57 Filed clerk order (Deputy Clerk: cw): The mandate issued on 02/05/2020 is recalled as issued in error.
[11670910] (CW) [Entered: 04/24/2020 11:35 AM]
1 pg. 80.33 KB

04/24/2020 58 PARTIAL MANDATE ISSUED issued as to all parties except Aurora Loan Services, LLC, Mortgage
Electronic Registration Systems, Inc., Theodore Schulz, and Trisha McMullin. (CMC, JHN and ADH)
[11670921] (CW) [Entered: 04/24/2020 11:38 AM]
1 pg. 88.62 KB

Then another Final Mandate was issued by the Clerk.

Case: 18-15202, 12/01/2020, ID: 11910277, DktEntry: 64, Page 1 of 1

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT



SALMA AGHA-KHAN, M.D., M.D.,

Plaintiff - Appellant,

v.

**PACIFIC COMMUNITY
MORTGAGE, INC., a suspended
California Corporation, its successors
and assigns, et al.,**

Defendants - Appellees.

No. 18-15202

D.C. No. 2:16-cv-01124-JCM-NJK
U.S. District Court for Nevada, Las
Vegas

MANDATE

The judgment of this Court, entered November 09, 2020, takes effect this
date.

This constitutes the formal mandate of this Court issued pursuant to Rule
41(a) of the Federal Rules of Appellate Procedure.

FOR THE COURT:

**MOLLY C. DWYER
CLERK OF COURT**

WRIT OF CERTIORARI (Originating Ninth Circuit Case 18-15202)

IV. CORPORATE DISCLOSURE

In accordance with Supreme Court Rule 29.6 Petitioner, Salma Agha-Khan, MD., Pro Se certifies that there are no other parties, corporations or entities that have a direct or pecuniary interest in the outcome of this case.

V. APPENDIX

I.	QUESTIONS PRESENTED.....	2 - 5
II.	LIST OF PARTIES.....	6 - 7
III.	OPINION.....	8 - 9
IV.	CORPORATE DISCLOSURE.....	10
V.	APPENDIX.....	11 - 12
VI.	BASIS FOR JURISDICTION.....	13 - 15
VII.	UNITED STATES CONSTITUTION, LAWS STATUTES.....	16 - 26
VIII.	INTRODUCTION.....	27 - 32
IX.	STATEMENT OF CASE.....	33 - 45
X.	LEGAL ARGUMENTS PERSUANT TO 10(a) FOR GRANTING THE WRIT OF CERTIORARI.....	46
	A. NINTH CIRCUIT'S DELIBERATE DESTRUCTION OF PETITIONER'S FILINGS ESTABLISHED VALIDITY OF HER CLAIM.....	47 - 50
	B. NINTH CIRCUIT DELEGATED ADJUDICATION OF APPEAL TO CLERK VIOLATING JUDICIAL AND CLERICAL DUTIES.....	51 - 59
	C. NINTH CIRCUIT FAILED TO PERFORM DE NOVO REVIEW EVEN WITH SEC FRAUD ALLEGATION.....	60 - 62
	D. NINTH CIRCUIT VIOLATED JUDICIAL OATH, JUDICIAL CANONS AND CODES OF CONDUCT AND ETHICS.....	63 - 67
	E. NINTH CIRCUIT LACKED JURISDICTION TO ISSUE JUDGMENTS SINCE FILING OF PETITIONER'S FIRST RECUSAL MOTION BASED UPON MANDATORY SELF-EXECUTING STATUTES.....	68 - 71

F. NINTH CIRCUIT JUDGES ACTING WITHOUT JURISDICTION LOST THEIR JUDICIAL IMMUNITY.....	72 - 73
G. NINTH CIRCUIT'S APPLICATION OF 28 USC 455, MANDATORY RECUSAL STATUTE REEKS OF ABOLISHED "DOCTRINE TO SIT" VASTLY VARYING FROM ITS APPLICATION BY SUPREME COURT AND OTHER CIRCUITS. WHY IS THERE THIS SPLIT?.....	74 - 81
H. NINTH CIRCUIT HAS INCONSISTENT RULINGS WHERE RULING HEREIN CONTRADICTS THEIR OWN PRIOR RULINGS.....	82 - 87
I. NINTH CIRCUIT'S PROCEEDINGS WERE DEPARTED FROM USUAL COURSE, LAW AND STATUTES DIRECTLY VIOLATING THEM....	88 - 91
J. NINTH CIRCUIT DELIBERATELY AND KNOWINGLY FAILED TO ACT ON CRITICAL ISSUES.....	92 - 94
K. NINTH CIRCUIT ACTIVELY OBSTRUCTED JUSTICE.....	95 - 98
L. PETITIONER WAS DENIED DUE PROCESS.....	99 - 102
M. PETITIONER, WAS TREATED DIFFERENTLY PERHAPS BECAUSE SHE WAS A MINORITY WOMAN.....	103 - 106
N. NINTH CIRCUIT'S USE OF WORD "INSUBSTANTIAL" IS WITHOUT LEGAL DIGNITY AND IT MUST PROHIBIT ARBITRARINESS....	107 - 109
O. FEDERAL EMPLOYEES VIOLATED DUTY TO REPORT MISCONDUCT	
P. FRAUD UPON THE COURT VITIATES PROCEEDINGS.....	112 - 114
XI. CONCLUSION.....	115 - 119
XII. WORD COUNT CERTIFICATION.....	120
XIII. PROOF OF SERVICE WITH SERVICE LIST.....	121 - 125

STATUTES AND US CONSTITUTION

28 U.S.C. § 455.....	2, 3, 20, 27, 28, 42, 43, 47, 48, 66, 67, 69, 70, 74, 75, 77, 78, 79, 80, 81, 87, 104
28 U.S.C. § 144.....	2, 3, 19, 27, 28, 42, 43, 47, 48, 66, 67, 69, 70, 78, 79, 80, 81, 87, 104
Judicial Code of Conduct and Ethics.....	2, 4, 18, 28, 42, 47, 63, 66, 67, 69, 78, 90, 96, 106
Judicial Canons 1, 2, 3.....	2, 4, 19, 28, 42, 47, 63, 64, 65, 66, 67, 69, 81, 90, 96
FRAP 41(a).....	8, 9
U.S. Const. art. III, § 2, cl. 1, 2.....	13
28 U.S.C. § 1251(a).....	13
28 U.S.C. § 1251.....	13
US Constitution.....	13, 17, 30, 31, 32, 40, 45, 67, 73, 91, 94, 96, 98, 99, 104, 109, 110, 115, 116, 117, 118, 119
28 U.S.C. § 1254(1).....	15
25 CFR § 11.420.....	16, 49
18 U.S.C. § 1519.....	16, 49
California Penal Code Section 141.....	16, 49
California Penal Code Section 132.....	16, 49
California Penal Code Section 134.....	16, 49
California Penal Code Section 135.....	16, 49
California Title 15 Crimes.....	16, 49

NRS.199.220.....	16, 49
Felony.....	16, 25, 49
First Amendment.....	17, 96, 97, 98
Fourth Amendment.....	17, 96, 104
Fifth Amendment.....	17, 96, 99, 104
Seventh Amendment.....	17, 96, 104
Eleventh Amendment.....	17, 96, 104
Fourteenth Amendment.....	17, 96, 99, 104, 118
California Civil Rights.....	17, 96, 104, 115, 116, 117
California Civil Rights Article 1 Section 2.....	17
California Civil Rights Article 1 Section 3.....	17
California Civil Rights Article 1 Section 7.....	18
California Civil Rights Article 1 Section 9.....	18
California Civil Rights Article 1 Section 13.....	18
Nevada Civil Rights.....	18, 32, 40, 45, 96, 115, 116, 117
28 U.S.C. section 535(b) (2002).....	20, 110
Federal Whistle Blower Statute.....	20, 110
5 C.F.R. § 2635.101.....	20, 110
Codes of Professional Conduct.....	20
42 U.S. Code § 1981: Equal Rights Under the Law	20, 73, 96
42 U.S. Code § 1982: Property Rights of Citizens.....	20, 115, 116

42 U.S. Code § 1983: Civil Action for Deprivation of Civil Rights.....	20, 73, 85, 115, 116, 117
42 U.S. Code § 1985: Conspiracy to Interfere with Civil Rights.....	20
42 U.S. Code § 1986:.....	20
NRS 205.090.....	20
NRS 193.130.....	20
NRS 205.095.....	20
NRS 205.110.....	21
NRS 205.115	21
NRS 205.120.....	21
NRS 205.330.....	21
NRS 598D.020	21
NRS 645A.010	21
NRS 645B.0121	21
NRS 598D.050	21
NRS 645B.0125	21
NRS 645E.100	21
NRS 645B.0127	21
NRS 205.375.....	21
NRS 205.377	21
NRS 598.0903 to 598.0999, inclusive.....	21
NRS 207.380.....	21

NRS 205.395.....	21
Nev. Rev. Stat. § 112.230.....	21
NRS 42.001 et. seq.....	21, 115, 116
NRS 42.005.....	21
NRS 645.440.....	21
NRS 107.080.....	21
NRS 645F.....	21, 116
NRS 645F.320.....	21, 116
NRS 645F.330	21, 116
NRS 645F.365.....	21, 116
NRS 645F.063	21, 116
NRS 645F.267.....	21, 116
NRS 645F.400.....	21, 116
NRS 645F.405.....	21, 116
NRS 645F.410.....	21, 116
NRS 645F.420.....	22, 116
NRS 645F.430.....	22, 116
NRS 645F.440.....	22, 116
NRS 645F.445.....	22, 116
NRS 645F.450.....	22, 116
NRS 645.....	22, 115, 116
NRS 675.....	22, 115, 116

11 U.S.C. § 101 et. seq.....	22
11 U.S.C. § 546.....	22
11 U.S. Code § 362(a), (c), (k).....	22
28 U.S.C. § 586.....	22
28 U.S.C. § 586(a)	22
28 C.F.R. § 58.6(a)(3).....	22
28 C.F.R. § 58.5.....	22
28 U.S.C. § 586(d).....	22
28 C.F.R § 58.3.....	22
11 U.S.C. § 321.....	22
11 U.S.C. § 704(a).....	22
11 U.S.C. § 554.....	22
11 U.S.C. § 704.....	22
Section 363(b).....	22
Fed. R. Bankr. P. 2002(a)(2)	22
Fed. R. Bankr. P. 6004(a).....	22
11 U.S.C. § 327(a).....	22
11 U.S.C. § 330.....	22
11 U.S.C. § 704(a)	22
11 U.S.C. § 101(14)	22
11 U.S.C. § 327(b).....	22
11 U.S.C. § 327(c).	22

11 U.S.C. § 327(e)	22
Section 328(c)	22
Section 326(d).....	22
11 U.S.C. § 327(f).....	22
11 U.S.C. § 704(a)(3).....	23
11 U.S.C. § 704(a)(4).....	23
11 U.S.C. § 704(a)(5).....	23
Fed. R. Bankr. P. 3001.....	23
Fed. R. Bankr. P. 3002(a).....	23
18 U.S.C. § 3057.....	23
18 U.S.C. § 152.....	23
18 U.S.C. § 153.....	23
18 U.S.C. § 154.....	23
18 U.S.C. § 155.....	23
18 U.S.C. § 157.....	23
Sarbanes-Oxley Act of 2002.....	23
18 U.S.C. § 1519.....	23
California Civil Code Section 43.....	23
California Civil Code Section 51.....	23
California Civil Code Section 52.....	23
Hobbs Act 18 U.S.C. § 151.....	23
18 U.S.C. § 1346.....	24

18 U.S.C. § 666.....	24
18 U.S.C. § 1341 Mail Fraud.....	24, 25, 93, 95, 115, 116
18 U.S.C. § 1343 Wire Fraud.....	24, 25, 93, 95, 115, 116, 117
18 U.S.C. § 1344 Financial Institution Fraud.....	25, 93, 95, 115, 116, 117
18 U.S.C. § 1503 Obstruction of Justice.....	25, 45, 46, 95
18 U.S.C. § 1510 Obstruction of Justice.....	25
18 U.S.C. § 1511 Obstruction of Justice related.....	25
18 U.S.C. § 1512 Obstruction of Justice related.....	25
18 U.S.C. § 1513 Obstruction of Justice related.....	25
18 U.S.C. § 1951.....	25
18 U.S.C. § 1952.....	25
18 U.S.C. § 1953.....	25
18 U.S.C. § 1956.....	25
18 U.S.C. § 1957.....	25
Section 2332(b)(g)(5)(b).....	25
18 U.S.C. § 154 Adverse Interest and Conduct of Officers.....	25
18 U.S.C. § 1001.....	25
18 U.S.C. § 1961 ET SEQ RICO.....	25, 93, 115, 116, 117
18 U.S.C. § 201.....	25
18 U.S.C. § 659.....	25
18 U.S.C. § 641.....	25
18 U.S.C. § 654.....	26

11 U.S.C. § 362.....	28, 43, 48, 70
18 U.S.C. § 1952.....	25
Perjury.....	29, 93, 95, 109, 117
Due Process.....	30, 31, 32, 40, 45, 46, 80, 99, 101, 102, 115, 116
Rule 10(a).....	46, 74, 88
FRCP 54(b).....	52, 68
FRCP 54.....	52
FRCP 42.1.....	52, 53, 55, 68, 89, 96, 104
California Business and Professions Code 6125.....	52, 65
California Business and Professions Code 6126.....	52, 65
FRAP 45.....	52, 59, 90
Local Rule 30-1.7.....	53
Local Rule 27-11.....	53, 55
Rule 41(a).....	57, 58
12(b)(6).....	60, 86, 92
28 U.S. Code § 453: Judicial Oath.....	63
Judiciary Act of 1789.....	63
TILA.....	93, 118
RESPA.....	93
State Created Danger.....	102
28 U. S. C. §2254(d)(1).....	102
Federal Question.....	108

FRCP Rule 60(b)(3).....	112
FRCP Rule 60(b)(4).....	112
FRCP Rule 60(b).....	112
UFTA.....	115, 118
NRS 112.180.....	115, 116
NRS 112.190.....	115, 116
18 U.S.C. § 1342.....	115, 116
15 U.S.C. § 1601.....	115, 116
26 U.S.C. § 860g.....	115, 116
Lack of Notice and Takings Clause.....	115, 116
FDCPA.....	115, 116, 118
Racketeering.....	115, 116
Negligence.....	115, 116
15 U.S.C. § 1692.....	115, 116
Unjust Enrichment.....	115, 116
NRS 645F.400.....	116
Conversion.....	116
Trespass to Chattel.....	116
Slander.....	115, 116, 118

CASE LAW

<u><i>Agha-Khan v. United States et. al.</i></u>	NV Bk. Adv. 19-01074-ABL/GS (Bankruptcy Lead Case No. 16-16593 Title <u><i>Alessi & Koenig, LLC</i></u>	4, 14, 29, 33, 41, 81, 91
<u><i>In Re Salma H. Agha</i></u>	California Eastern District Bankruptcy Case 10-16183.....	39
<u><i>Agha-Khan v. Mortgage Registration System Inc. et. al.</i></u>	Nevada District Court Case No. 2:17-cv-02739-GMN-CWH.....	33, 54, 55, 89, 104
<u><i>Price v. Vincent</i></u>	538 U.S. 634 (2003)	5
<u><i>United States v. Hooten</i></u> ,	693 F.2d 857, 858 (9 th Cir. 1982).....	29, 107
<u><i>Hebbe v. Pilier</i></u> ,	627 F.3d 338, 341-42 (9 th Cir. 2010)	29, 107
<u><i>Williams vs. Pennsylvania</i></u> ,	Certiorari to Supreme Court of Pennsylvania No. 15-5040. Argued February 29, 2016—Decided June 9, 2016. In the BRIEF OF FORMER APPELLATE COURT JURISTS AS AMICI CURIAE IN SUPPORT OF PETITIONER.....	30, 31
<u><i>Aetna Life Ins. Co.</i></u> ,	475 U.S. 813, 822 (1986)	30
<u><i>Ward v. Village of Monroeville</i></u> ,	409 U.S. 57, 60 (1972).....	30
<u><i>Mayberry v. Pennsylvania</i></u> ,	400 U.S. 455, 466 (1971).....	30
<u><i>Withrow v. Larkin</i></u> ,	421 U.S. 35, 47 (1975).....	31
<u><i>In re Murchison</i></u> ,	349 U.S. 133, 136 (1955).....	31, 91, 101, 103
<u><i>Tellabs nc. v. Makor Issues & Rights Ltd.</i></u> ,	551, 322, 127 S. Ct. 2499, 168 L.Ed.2d 179 (2007).....	32, 60, 86, 92
<u><i>Caperton v. A. T. Massey Coal Co</i></u>	556 U.S. 868 129 S.Ct. 2252 (S. Ct. 2009) 173 L.Ed.2a 1208. 77 USLW 4456.	32, 99, 103

<u><i>Chacon v. Babcock</i></u> , 640 F.2d 221 (9 th Cir.).....	52, 68
<u><i>Fidelity & Deposit Co. v. City of Adelanto</i></u> , 87 F.3d 334, 336 (9 th Cir.).....	53
<u><i>Anderson v. Allstate Ins. Co.</i></u> , 630 F.2d 677, 680-81 (9 th Cir.).....	53
<u><i>Freeman v. DirecTV, Inc.</i></u> , 457 F.3d 1001, 1004 (9th Cir. 2006).....	60, 86
<u><i>Agyeman v. INS</i></u> , 296 F.3d 871, 876 (9th Cir. 2002),	60, 86
<u><i>Stilwell v. Smith & Nephew, Inc.</i></u> , 482 F.3d 1187, 1193 (9th Cir. 2007).....	60, 86
<u><i>United States v. Waites</i></u> , 198 F.3d 1123, 1126 (9th Cir. 2000).....	60, 86
<u><i>Lawrence v. Dep't of Interior</i></u> , 525 F.3d 916, 920 (9th Cir. 2008).....	61, 86
<u><i>Lewis v. United States</i></u> , 641 F.3d 1174, 1176 (9th Cir. 2011).	61, 86
<u><i>Branch Banking & Tr. Co. v. D.M.S.I., LLC</i></u> , 871 F.3d 751, 759 (9th Cir. 2017)...	61, 86
<u><i>Mull for Mull v. Motion Picture Indus. Health Plan</i></u> , 865 F.3d 1207, 1209 (9th Cir. 2017).....	61, 86
<u><i>Szajer v. City of Los Angeles</i></u> , 632 F.3d 607, 610 (9th Cir. 2011).....	61, 86
<u><i>Universal Health Servs., Inc. v. Thompson</i></u> , 363 F.3d 1013, 1019 (9th Cir. 2004)...	61, 86
<u><i>Barrientos v. Wells Fargo Bank, N.A.</i></u> , 633 F.3d 1186, 1188 (9th Cir. 2011).....	62, 86
<u><i>Ditto v. McCurdy</i></u> , 510 F.3d 1070, 1075 (9th Cir. 2007).....	62, 86
<u><i>Rabkin v. Oregon Health Sciences Univ.</i></u> , 350 F.3d 967, 971 (9th Cir. 2003).....	62, 86
<u><i>Frudden v. Pilling</i></u> , 877 F.3d 821, 828 (9th Cir. 2017).....	62, 86
<u><i>Olsen v. Idaho State Bd. of Medicine</i></u> , 363 F.3d 916, 922 (9th Cir. 2004).[123]...	62, 86
<u><i>Balint v. Carson City</i></u> , 180 F.3d 1047, 1054 (9th Cir. 1999).....	62, 86
<u><i>Simo v. Union of Needle trades</i></u> , 322 F.3d 602, 610 (9th Cir. 2003).....	62, 86

<i>Rhode Island v. Massachusetts</i> , 37 U.S. 657, 718, 12 Pet. 657, 726, 9 L. Ed. 1233 (1838).....	71
<i>Elliot v. Piersol</i> , 1 Pet. 328, 340, 26 U.S. 328, 340 (1828).....	71
<i>Harlow v. Fitzgerald</i> , 457 U.S. 800, 818, 102 S.Ct. 2727, 73 L.Ed.2d 396 (1982).....	72
<i>Rankin v. Howard</i> , 633 F.2d 84-49 (9 th Cir. 1980). Cert. denied, 451 U.S. 939, 101 S.Ct. 2020, 68 L.Ed.2d 326 (1981).....	72
<i>Lopez v. Vanderwater</i> , 620 F.2d 1229, 1235-37 (7th Cir.1980).....	72
<i>Bradley v. Fisher</i> , 80 U.S. (13 Wall.) 335, 351-2 (1872), 20 L.Ed. 646.....	72, 73
<i>Sparks v. Duval County Ranch Co., Inc.</i> , 604 F.2d 976 (5th Cir.1979) (en banc), <i>aff'd sub nom.</i>	72
<i>Dennis v. Sparks</i> , _ U.S. _, 101 S.Ct. 183, 66 L.Ed.2d 185 (1980), (5 th Cir.) 604 F.2d at 978. Supreme Court granted 445 U.S. 942, 100 S.Ct. 1336, 63 L.Ed.2d 775 (1980), denied 445 U.S. 943, 100 S.Ct. 1339, 63 L.Ed.2d 777 (1980).....	72
<i>Turner v. Raynes</i> , 611 F.2d 92, 95 (5th Cir.1980)	73
<i>Stump</i> 435 U.S. at 358, 98 S.Ct. at 1105.....	73
<i>Duba v. McIntyre</i> , 501 F.2d 590, 592 (8th Cir.1974), <i>cert. denied</i> , 424 U.S. 975, 96 S.Ct. 1480, 47 L.Ed.2d 745 (1976).....	73
<i>Ryan v. Scoggin</i> , 245 F.2d 54, 58 (10th Cir.1957).....	73
<i>El Fenix de Puerto Rico v. The M/Y Johanny</i> 36 F.3d 136 (1 st Cir. 1994)	75
<i>United States v. Cowden</i> , 545 F.2d 257, 265 (1 st Cir. 1976).....	75
<i>United States v. Arache</i> , 946 F.2d 129, 140 (1 st Cir. 1991).....	75
<i>In Re Drexel Burnham Lambert Inc.</i> 861 F. 2d. 1307	75

<u>Pepsico, Inc. v. McMillen</u>	764 F.2d 458, 460 (7 th Cir. 1985)	75
<u>United States v. Bernstein</u>	, 533 F. 2d 775, 7785 (2d Cir.).....	75
<u>In Re Kensington Intern Ltd.</u>	353 F. 3d. 211 (3 rd Cir. 2003).....	75
<u>Alexander v. Primerica Holdings Inc.</u>	, 10 F.3d 155, 162 (3 rd Cir. 1993).....	76
<u>Trevino v. Johnson</u>	168 F.3d 173 (5 th Cir. 1999).....	76
<u>Davis v. Board of Sch. Comm'rs</u>	, 517 F.2d 1044, 1052 (5 th Cir. 1975)	76
<u>United States v. Norton</u>	, 700 F.2d 1072, 1075 (6th Cir.), cert denied, 461 U.S. 910 (1983).....	76
<u>United States v. Dandy</u>	, 998 F.2d 1344, 1349 (6 th Cir. 1993),.....	76
<u>Roberts v. Bailar</u>	, 625 F.2d 125, 129 (6th Cir. 1980).....	77
<u>U.S. v. State of Ala</u>	, 828 F.2d 1532 (11 th Cir. 1987).....	77, 78
<u>Fletcher v. Conoco Pipe Line Co</u>	323 F. 3d 661 (8 th Cir. 1994).....	77
<u>Nichols v. Alley</u>	71 F.3d. 371 (10 th Cir. 1995).....	77
<u>Bonner v. City of Prichard</u>	, 661 F.2d 1206, 1209 (11 th Cir. 1981) (en banc).....	77
<u>Baker Hostetler v. U. S. Dept of Commerce</u>	471 F.3d 1355 (D. C. Cir.2006).....	78
<u>Liljeberg v. Health Services Acquisition Corp.</u>	, 486 U.S. 847, 858 n. 7, 108 S. Ct. 2194, 2202 100 L. Ed.2d 855 (1988).....	78
<u>Liteky v. United States</u>	, 510 U.S. 540, 555 S.Ct. 1147, 1157, 127 L.Ed.2d 474 (1994) ..	79
<u>Offutt v. United States</u>	, 348 U.S. 11 (1954).....	79
<u>United States v. Sibla</u>	, 624 F.2d 864 (9th Cir. 1980).....	80, 87
<u>United States v. Olander</u>	, 584 F.2d 876, 882 (9th Cir. 1978).....	80, 87
<u>United States v. Carignan</u>	, 600 F.2d 762, 764 (9th Cir. 1979).....	80, 87

<u><i>Davis</i></u> , 517 F.2d at 1052.....	80, 87
<u><i>Kester v. Citimortgage</i></u> , Ninth Circuit Memorandum decision (2017).....	82, 83
<u><i>In re Mortg. Elec. Registration Sys. Inc.</i></u> 754 F.3d 772, 783-84 (9 th Cir. 2014)....	83, 117
<u><i>Lucas v. Dep’t of Corr.</i></u> , 66 F.3d 245, 248 (9th Cir. 1995).....	83
<u><i>Flowers v. First Hawaiian Bank</i></u> , 295 F.3d 966, 976 (9th Cir. 2002).....	83
<u><i>Gerber v. Hickman</i></u> , 291 F.3d 617, 623 (9th Cir. 2002) (en banc).....	83
<u><i>Thinket Ink Info. Res., Inc. v. Sun Microsystems, Inc.</i></u> , 368 F.3d 1053, 1061 (9th Cir. 2004).....	83
<u><i>Swartz v. KPMG LLP</i></u> , 476 F.3d 756, 764 (9th Cir. 2007).....	84
<u><i>NL Indus., Inc. v. Kaplan</i></u> , 792 F.2d 896, 898 (9th Cir. 1986).....	84
<u><i>United States of America v. Nicholas Lindsey</i></u> (9 th Cir. No. 14-10004).....	84
<u><i>United States v. Jinian</i></u> 725 F.3d 954, 960 (9 th Cr. 2013).....	84
<u><i>United States v. Dimiceli</i></u> (9 th Cir. Case No. 16-10157. Aug 19, 2019 Opinion).....	84
<u><i>Unsher v. City of Los Angeles</i></u> 828 F.2d 556 (9 th Cir. 1987).....	85
<u><i>Watson v. Weeks</i></u> , 436 F.3d 1152, 1157 (9th Cir. 2006).....	85
<u><i>Kirtley v. Rainey</i></u> , 326 F.3d 1088, 1092 (9th Cir. 2003).....	85
<u><i>Knox v. Davis</i></u> , 260 F.3d 1009, 1012 (9th Cir. 2001).....	85
<u><i>Zimmerman v. City of Oakland</i></u> , 255 F.3d 734, 737 (9th Cir. 2001).....	85
<u><i>Bardzik v. County of Orange</i></u> , 635 F.3d 1138, 1144 (9th Cir. 2011).....	85
<u><i>Webb v. Sloan</i></u> , 330 F.3d 1158, 1163 n.4 (9th Cir. 2003).....	85
<u><i>Cortez v. County of Los Angeles</i></u> , 294 F.3d 1186, 1188 (9th Cir. 2002).....	85
<u><i>United Transp. Union</i></u> , 401 U.S. at 585.....	96

<i>Bounds v. Smith</i> , 430 U.S. 817 (1977).....	96
<i>Delew v. Wagner</i> , 143 F.3d 1219, 1222 (9th Cir. 1998).....	96
<i>Borough of Duryea v. Guarnieri</i> , 564 U.S. 379, 388, 403 (2011).....	97
<i>District of Columbia v. Heller</i> , 554 U.S. 570, 577 (2008).....	97
<i>Dep’t of Revenue v. Ass’n of Wash. Stevedoring Cos.</i> , 435 U.S. 734, 759 (1978).....	97
<i>Rhode Island v. Palmer</i> , 253 U.S. 350, 407 (1920).....	97
<i>Knowlton v. Moore</i> , 178 U.S. 41, 87 (1900).....	97
<i>Marbury v. Madison</i> , 5 U.S. 137, 174 (1803).....	97
<i>Holder v. Humanitarian Law Project</i> , 561 U.S. 1, 4 (2010).....	97
<i>Rhodes v. Chapman</i> , 452 U.S. 337 (1981).....	98
<i>Bill Johnson’s Rests., Inc. v. NLRB</i> , 461 U.S. 731(1983).....	98
<i>Tumey v. Ohio</i> , 273 U.S. 510, 523, 47 S.Ct. 437, 71 L.Ed, 749.....	99
<i>Withrow v. Larkin</i> 421 U.S. 35, 47, 95 S. Ct. 1456, 43 L.Ed.2d 712.....	99
<i>Ward v. Monroeville</i> , 409 U.S. 57, 93 S.Ct. 80, 34 L.Ed.2d 267.....	99
<i>Aetna Life Ins. Co. v. Lavole</i> , 475 U.S. 813, 106 S.Ct. 1580, 89 L.Ed.2d 823.....	99
<i>Mathews v. Eldridge</i> 424 U.S. 319 96 S.Ct. 893.....	99, 100
<i>Wolfe v. McDonnell</i> , 418 U.S. 539, 557-558 (1974).....	100, 101
<i>Phillips v. Commissioner</i> , 283 U.S. 589, 596-558 (1974).....	100
<i>Dent v. West Virginia</i> , 129 U.S. 114, 124-125 (1889).....	100
<i>Joint Anti-Fascist Comm. V. McGrath</i> , 341 U.S. 123, 168 (1951).....	100
<i>Armstrong v. Manzo</i> , 380 U.S. 545, 552 (1965).....	100
<i>Grannis v. Ordean</i> , 234 U.S. 385, 394 (1914).....	100

<i>Goldberg v. Kelly</i> <i>supra</i> , at 263-271.....	100
<i>Fusari v. Steinberg</i> , 419 U.s. 379, 369 (1975).....	100
<i>Daniels v. Williams</i> , 474 U.S. 327, 331 (S.Ct. 1986).....	100, 101, 119
<i>Murray's Lessee</i> 332*332 <i>v. Hoboken Land & Improvement Co.</i> , 18 How 272, 277 (1856).....	100
<i>County of Sacramento v. Lewis</i> Supreme Court.....	100
<i>Bank of Columbia v. Okely</i> , 4 Wheat. 235—244 [(1819)]:.....	100
<i>Hurtado v. California</i> , 110 U.S. 516, 527 (1884).....	100
<i>Fuentes v. Shevin</i> , 407 U.S. 67, 82 (1972).....	101
<i>Gromley v. Wood El.</i> (S.Ct. 2014).....	102
<i>Price v. Vincent</i> 538 U.S. 634 (2003).....	102
<i>Williams v. Taylor</i> , 529 U.S. 362, 405-406.....	102
<i>Page v. United States</i> , 356 F.2d 337, 339 n. 1 (9th Cir. 1966).....	107
<i>Bell Atlantic Corp. v. Twombly</i> , 550 U.S. 544, 570 (2007).....	108
<i>Hishon v. King & Spalding</i> , 467 U.S. 69, 73 (1984).....	108
<i>Hosp. Bldg. Co. v. Trustees of Rex Hosp.</i> , 425 U.S. 738, 740 (1976).....	108
<i>Love v. United States</i> , 915 F.2d 1242, 1245 (9th Cir. 1989).....	108
<i>Haines v. Kerner</i> , 404 U.S. 519, 520 (1972).....	108
<i>Western Mining Council v. Watt</i> , 643 F.2d 618, 624 (9th Cir. 1981).....	108
<i>Department of Commerce v. United States House of Representatives</i> , 525 U.S. 316 (1999)	108
<i>Bullock v. United States</i> , 763 F.2d 1115, 1121 (10th Cir. 1985),.....	112

<u><i>In re Village of Willowbrook</i></u> , 37 Ill.App.2d 393 (1962).....	112
<u><i>Allen F. Moore v. Stanley F. Sievers</i></u> , 336 Ill. 316; 168 N.E. 259 (1929).....	112
<u><i>Dunham v. Dunham</i></u> , 57 Ill.App. 475 (1894), affirmed 162 Ill. 589 (1896).....	112
<u><i>Skelly Oil Co. v. Universal Oil Products Co.</i></u> , 338 Ill.App. 79, 86 N.E.2d 875, 883-4 (1949).....	112
<u><i>Thomas Stasel v. The American Home Security Corporation</i></u> , 362 Ill. 350; 199 N.E. 798 (1935).....	112
<u><i>United States v. Burke</i></u> , No. 05-5277, 2006 WL 2135044, *1 (3d Cir. 2006).....	112
<u><i>Herring v. United States</i></u> , 424 F.3d 384, 389 (3d Cir. 2005).....	112
<u><i>United States v. Barbosa</i></u> , No. 07-1292, 2007 WL 2050881, *1 (3d Cir. 2007).....	112
<u><i>Demjanjuk v. Petrovsky</i></u> , 10 F.3d 338, 348 (6th Cir. 1993),.....	112
<u><i>Kupferman v. Consol. Research & Mfg. Corp.</i></u> , 459 F.2d 1072.....	113
<u><i>Hadges v. Yonkers Racing Corp.</i></u> , 48 F.3d 1320.....	113
<u><i>Bailey v. Internal Revenue Service</i></u> , No. 98-CV-123-TUC-RTT (JMR), 1998 U.S. Dist. Lexis 21517 at *26 (D. Ariz. 1998).....	113
<u><i>Wright, Miller & Kane</i></u> at 2870.....	113
<u><i>England v. Doyle</i></u> , 21 F.2d 304, 309 (9th Cir. 1960).....	113
<u><i>Elliot v. Piersol</i></u> , 1 Pet. 328, 340, 26 U.S. 328, 340 (1828).....	114
<u><i>Rochin v. California</i></u> 342 U.S. 165 (1952).....	118
<u><i>McCulloch v. Maryland</i></u> 4 Wheat, 316, 407 (1819).....	119

MISCELLANEOUS PUBLICATIONS

The Brennan Center's Brief in Support of Petitioner in the Williams Case:

The Brennan Center for Justice <u><i>amicus curiae</i> brief</u>	31
<u>Brief amici curiae of Brennan Center for Justice and Justice at Stake, filed on 12/7/15</u>	32
<u>Brief amicus curiae of Constitutional Accountability Center, filed on 12/7/15</u>	32
<u>Brief amici curiae of The American Civil Liberties Union, and The ACLU of Pennsylvania, filed on 12/7/15</u>	32
<u>Brief amicus curiae of The American Academy of Appellate Lawyers, filed on 12/7/15</u>	32
<u>Brief amici curiae of Former Judges with Prosecutorial Experience, filed on 12/7/15</u>	32
<u>Brief amici curiae of The American Bar Association, filed on 12/7/15</u>	32
<u>Brief amici curiae of The Ethics Bureau at Yale, filed on 12/7/15</u>	32
<u>Brief amici curiae of Former Appellate Court Jurists, filed on 12/7/15</u>	32
FBI Press Release: “Public Corruption: Court Room For Sale. Judge Gets Jail Time In Racketeering Case” <u>https://www.fbi.gov/news/stories/public-corruption-courtroom-for-sale1</u>	32
<u>https://www.lexisnexis.com/lawschool/resources/p/casebrief-tellabs-inc-v-makor-issues-rights-ltd.aspx</u>	60, 87
<i>The First Amendment Right to a Remedy:</i> Benjamin Plener Cover University of California, Davis [Vol. 50:1741].....	97

James E. Moliterno, *Federal Government Lawyers Duty to Breach Confidentiality*;
Roger C. Cramton, *The Lawyer as Whistleblower*; Robert P. Lawry. *Who is the Client*
of the Federal Government Lawyer: An Analysis of the Wrong Question, 37 Fed.
B.Ass'n J. 61, 62 (1978).....110 - 111

<https://www.justice.gov/jmd/ethics-handbook>.....111

VI. BASIS FOR JURISDICTION

The United States Constitution provides that the Supreme Court shall have jurisdiction in all cases in which a State is a party. U.S. Const. art. III, § 2, cl. 1, 2. “The Supreme Court shall have original *and exclusive* jurisdiction of all cases between two or more States.....” 28 U.S.C. § 1251(a)

Recent Supreme Court practice has read § 1251’s “shall” as meaning “may.” In cases where this Court declines to exercise its exclusive jurisdiction, it deprives a citizen of a forum in which to have grievances against others heard. This Court, therefore, has in effect taken sides in these controversies, which is contrary to the Framers’ design. The Petitioner therefore asks this Court to use its jurisdiction. Petitioner has no other redress for her remedy and obtain justice denied to her.

A. District Court of Nevada:

Petitioner filed the Complaint on May 19, 2016 (ECF 1), alleging Fraud with Specificity, SEC Fraud, Bankruptcy Fraud, Attorney Fraud etc., deliberate and knowing violations of United States Constitution, Laws and Statutes, mortgage fraud, recording of forged title documents signed by well-established robo-signers, to lay fraud claim, collect mortgage and steal Petitioner’s home.

Petitioner also alleged that since a “lender” did not exist, assets and loan could not exist and no assignees, beneficiaries etc could exist. Also the “loan” was fully paid off in a few months of origination in SEC filings. Respondents were self-proclaimed assignees defrauding Petitioner, Courts, SEC.

The Complaint provided copies from State of Nevada and California as to non-existent status of Lender, SEC filings showing unsigned Deed of Trust, paid off loan.

Other recordings showed fraud flings signed by well-established robo-signers. Petitioner was not allowed Discovery or to Amend her Complaint upon discovery that Quality Loan “beneficiary” was owned by Attorneys that obtained fraudulent relief from Bankruptcy Court. (ECF 105 Ex 1). Not one hearing held.

District Court tried to keep Petitioner unaware of proceedings as no Proof of Service was attached to any of their Orders, Notices and proceedings. Petitioner’s Motion for recusal was also denied (ECF 98).

Complaint was dismissed on July 31, 2018, ECF 190, also awarding judgment against Plaintiff to defaulted defendants.

B. Ninth Circuit:

Appeal Brief was entered in the Docket on April 02, 2019, ECF 20 following original submission on Oct 25, 2018. (collecting twice the amount of filing fee).

The entire Appeal was adjudicated by the Court Clerk, Molly C. Dwyer. Total twenty-one (21) “orders” were in the Docket. Eighteen (18) were from this Clerk.

Judge Consuelo M. Callahan was appointed to the case who with two other Ninth Circuit Judges were simultaneously defending their actions in Nevada Bankruptcy Court Case No. 19-01074-ABL-GS. (ECF 60).

Petitioner’s first Motion for Disqualification of Ninth Circuit was ignored; second unopposed motion was kept hanging (ECF 42) was ignored till Appeal Dismissal; Third Motion for Disqualification was destroyed.

Three (3) Orders in the Docket entered by Clerk were by Judges but actual Orders did not bear any signatures to authenticate them. (ECF 55, 60, 63). No Orders were not signed by anyone.

Appeal was dismissed by Ninth Circuit Affirming the Summary Affirmance of District Court first by Defendant-Judge Callahan on January 14, 2020 (ECF 55). Then Defendant Judge was switched by Judge Barry L. Silverman and same Order reissued July 17, 2020 (ECF 60).

Mandate issued by Clerk on February 05, 2020 (ECF 56); Recalled by Clerk on April 24, 2020 (ECF 57); Partial Mandate by Clerk issued April 24, 2020 (ECF 58). Order of Affirmance recalled by Clerk on July 17, 2020 (ECF 59). Mandate reissued by Clerk August 10, 2020 (ECF 61). Mandate reissued by Clerk December 01, 2020 (ECF 64). All were unsigned.

No Opinion and Orders were published.

Review of this Judgment by Ninth Circuit Court is invoked based up 28 U.S.C. § 1254(1).

**VII. UNITED STATES CONSTITUTION, AMENDMENTS,
CALIFORNIA AND NEVADA CIVIL RIGHTS AND OTHER
STATUTES**

A. CRIMINAL CODES (Pertaining to Tampering)

Destruction of Court records is a criminal offence.

1. FEDERAL CODES

25 CFR § 11.420: Tampering with records.

A person commits a misdemeanor if, knowing that he or she has no privilege to do so, he or she falsifies, destroys, removes or conceals any writing or record, with purpose to deceive or injure anyone or to conceal any wrongdoing.

18 U.S. Code § 1519 Destruction, Alteration or Falsification of Records

Whoever knowingly alters, destroys, mutilates, conceals, covers up, falsifies, or makes a false entry in any record, document, or tangible object with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States or any case filed under title 11, or in relation to or contemplation of any such matter or case, shall be fined under this title, imprisoned not more than 20 years, or both.

California Penal Code Section 141

It is illegal to alter, modify, plant, place, conceal, manufacture, or move any physical matter with the intention of causing someone to be charged with a crime, or for the physical matter to be used as evidence in a trial, inquiry, or proceeding.

2. CALIFORNIA CODES

California Penal Code Section 132,

California Penal Code Section 134,

California Penal Code Section 135

California Title 15 Crimes

3. NEVADA CODES

NRS 199.220 prohibits purposely **destroying evidence**. Specifically, it is a crime to destroy evidence with the intent either to 1) Conceal a felony; 2) Protect a felon; 3) Obstruct the law; or 4) Prevent the production of the evidence.

B. UNITED STATES CONSTITUTION

FIRST AMENDMENT: Congress shall make no law abridging the freedom of speech.....and to petition the Government for a redress of grievances.

FOURTH AMENDMENT: The right of the people to be secure in their persons, houses, papers, and effects.....

FIFTH AMENDMENT: No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury,; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor be deprived of life, liberty, or property, without due process of law;.....

SEVENTH AMENDMENT: In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved...

ELEVENTH AMENDMENT: The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

FOURTEENTH AMENDMENT: Section. 1.No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

C. CALIFORNIA CIVIL RIGHTS AMENDMENTS

Article 1 Section 2:

(a) every person may freely speak, write and publish his or her sentiments on all subjects, being responsible for the abuse of this right. A law may not restrain or abridge liberty of speech or press.

Article 1 Section 3: The people have the right topetition government for redress of grievances

- (a) No person shall be denied the right to prosecute any petition in any court on its merits, and in particular, on the basis of prior petitions or his performance in pursuing such.
- (b) No person shall be denied the right to prosecute a claim against any official or office of government on the basis of any practice or doctrine, such as "sovereign immunity". Only the people are sovereign and immune.....
- (c) Any person shall have standing in any court.....for declaratory or injunctive relief, or both, from any statute, regulation, administrative order, repeal, or other official act on the grounds that it is unconstitutional, unlawful, or inapplicable, without having to first become a defendant under such act, and without a presumption that such act is lawful or applicable.
- (d) For any petition for possession or custody, for declaratory or injunctive relief, for disablement for incompetency, or for compensatory, damage, or punitive relief involving value equal or greater than 866.67 troy ounces of standard silver, the petitioner shall have the right to have a decision by a randomly-selected jury of twelve.....

Article 1, Section 7:

- (a) A person may not be deprived of life, liberty or property without due process of law or denied equal protection of the law.

Article 1, Section 9: A bill of attainder, ex post facto law, or law impairing the obligation of contracts may not be adopted.

- (c) Due process rights may not be disabled.

Article 1, Section 13: The right of the people to be secure in their persons, houses, papers, and effects against all unreasonable seizures and searches may not be violated; and a warrant may not issue except on probable cause, supported by oath or affirmation, particularly describing the place to be searched and the persons and things to be seized.

D. NEVADA CIVIL RIGHTS

E. CODE OF JUDICIAL CONDUCT AND JUDICIAL CANONS

"The Code of Conduct for United States Judges includes the ethical canons that apply to federal judges and provides guidance on their performance of official duties and engagement in a variety of outside activities.

This Code applies to United States circuit judges, district judges, Court of International Trade judges, Court of Federal Claims judges, bankruptcy judges, and magistrate judges.....”

Canon 1: A Judge Should Uphold the Integrity and Independence of the Judiciary. An independent and honorable judiciary is indispensable to justice in our society. A judge should maintain and enforce high standards of conduct and should personally observe those standards, so that the integrity and independence of the judiciary may be preserved. The provisions of this Code should be construed and applied to further that objective.

Canon 2: A Judge Should Avoid Impropriety and the Appearance of Impropriety in all Activities

(A) Respect for Law. A judge should respect and comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

(B) Outside Influence. A judge should not allow family, social, political, financial, or other relationships to influence judicial conduct or judgment. A judge should neither lend the prestige of the judicial office to advance the private interests of the judge or others nor convey or permit others to convey the impression that they are in a special position to influence the judge. A judge should not testify voluntarily as a character witness.

Canon 3: A Judge Should Perform the Duties of the Office Fairly, Impartially and Diligently

The duties of judicial office take precedence over all other activities. In performing the duties prescribed by law, the judge should adhere to the following standards:

- (A) Adjudicative Responsibilities.
- (B) Administrative
- (C) Disqualification
- (D) Remittal of Disqualification.

F. OTHER STATUTES

28 U.S.C. Section 144: “Whenever a party to any proceeding in a district court makes and files a timely and sufficient affidavit that the judge before whom the

matter is pending has a personal bias or prejudice either against him or in favor of any adverse party, such judge shall proceed no further therein, but another judge shall be assigned to hear such proceeding.....”

28 U.S.C. Section 455: Disqualification of justice, judge, or magistrate judge

(a) Any justice, judge, or magistrate judge of the United States **shall disqualify himself** in any proceeding in which his impartiality might reasonably be questioned. (emphasis added)

28 U.S.C. section 535(b) (2002): requires that any information, allegation, matter, or complaint witnessed, discovered or received in a department or agency of the executive branch of the Government relating to violations of Federal Criminal Law involving Government Officers and employees to be expeditiously reported to the Attorney General by the head of the department or agency, or the witness, discoverer, or recipient, as appropriate.

Federal Whistle Blower Statute.

Codes of Professional Conduct.

42 U.S. Code § 1981: Equal Rights Under the Law

42 U.S. Code § 1982: Property Rights of Citizens

42 U.S. Code § 1983: Civil Action for Deprivation of Civil Rights

42 U.S. Code § 1985: Conspiracy to Interfere with Civil Rights

42 U.S. Code § 1986: Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in section 1985 of this title, are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed, shall be liable to the party injured, or his legal representatives, for all damages caused by such wrongful act, which such person by reasonable diligence could have prevented;.....

G. NEVADA STATUTES

NRS 205.090

NRS 193.130

NRS 205.095

NRS 205.110
NRS 205.115
NRS 205.120
NRS 205.330
NRS 598D.020
NRS 645A.010
NRS 645B.0121
NRS 598D.050
NRS 645B.0125
NRS 645E.100
NRS 645B.0127
NRS 205.375
NRS 205.377
NRS 598.0903 to 598.0999, inclusive
NRS 207.380
NRS 205.395
Nev. Rev. Stat. § 112.230
NRS 42.001
NRS 42.005
NRS 645.440
NRS 107.080
NRS 645F
NRS 645F.320
NRS 645F.330
NRS 645F.365
NRS 645F.063
NRS 645F.267
NRS 645F.400
NRS 645F.405
NRS 645F.410

NRS 645F.420

NRS 645F.430

NRS 645F.440

NRS 645F.445

NRS 645F.450

NRS 645

NRS 675

H. BANKRUPTCY STATUTES

These apply. Due to Bankruptcy Fraud

Bankruptcy Code 11 U.S.C. § 101 et. seq.

11 U.S.C. § 546

11 U.S. Code § 362(a), (c), (k)

28 U.S.C. § 586

28 U.S.C. § 586(a)

28 C.F.R. § 58.6(a)(3).

28 C.F.R. § 58.5.

28 U.S.C. § 586(d)

28 C.F.R. § 58.3

11 U.S.C. § 321.

11 U.S.C. § 704(a)

11 U.S.C. § 554

11 U.S.C. § 704

Section 363(b)

Fed. R. Bankr. P. 2002(a)(2)

Fed. R. Bankr. P. 6004(a).

11 U.S.C. § 327(a).

11 U.S.C. § 330

11 U.S.C. § 704(a).

11 U.S.C. § 101(14).

11 U.S.C. § 327(b)

11 U.S.C. § 327(c).

11 U.S.C. § 327(e).

Section 328(c)

Section 326(d).

11 U.S.C. § 327(f).

11 U.S.C. § 704(a)(3)
11 U.S.C. § 704(a)(4)
11 U.S.C. § 704(a)(5)
Fed. R. Bankr. P. 3001
Fed. R. Bankr. P. 3002(a)

18 U.S.C. § 3057.
18 U.S.C. § 152
18 U.S.C. § 153
18 U.S.C. § 154
18 U.S.C. § 155
18 U.S.C. § 157

Sarbanes-Oxley Act of 2002

18 U.S.C. § 1519: “Whoever knowingly alters, destroys, mutilates, conceals, covers up, falsifies, or makes a false entry in any record, document, or tangible object with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States or any case filed under title 11, or in relation to or contemplation of any such matter or case, shall be fined under this title, imprisoned not more than 20 years, or both.”

California Civil Code Section 43
California Civil Code Section 51
California Civil Code Section 52

F. CRIMINAL STATUTES:

These apply because all involved Federal Officer (Government Employees) failed to uphold the law and ignored their duty to report misconduct

Hobbs Act: 18 U.S.C. 1951:

(a) Whoever in any way or degree obstructs, delays, or effects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires to do so, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section shall be fined under this title or imprisoned not more than twenty years or both

(b) As used in this section

(2) The term “extortion” means the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right.

18 U.S.C. §§ 1346: Definition of “scheme or artifice to defraud”:

For the purposes of this chapter, the term “scheme or artifice to defraud” includes a scheme or artifice to deprive another of the intangible right of honest services.

18 U.S.C. § 666:

(a) Whoever, if the circumstance described in subsection (b) of this section exists
(1) being an agent of an organization, or of a State, local, or Indian tribal government, or any agency thereof

(A) embezzles, steals, obtains by fraud, or otherwise without authority knowingly converts to the use of any person other than the rightful owner or intentionally misapplies, property that— (i) is valued at \$5,000 or more.....or

(B) corruptly solicits or demands for the benefit of any person, or accepts or agrees to accept, anything of value from any person, intending to be influenced or rewarded in connection with any business, transaction, or series of transactions of such organization, government, or agency involving any thing of value of \$5,000 or more;in connection with any business, transaction, or series of transactions of such organization, government, or agency involving anything of value of \$5,000 or more; shall be fined under this title, imprisoned not more than 10 years, or both.

18 U.S.C. §§ 1341 - Frauds and swindles:

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, . . . for the purpose of executing such scheme or artifice or attempting so to do, places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Postal Service, or deposits or causes to be deposited any matter or thing whatever to be sent or delivered by any private or commercial interstate carrier, or takes or receives therefrom, any such matter or thing, or knowingly causes to be delivered by mail or such carrier according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such matter or thing, shall be fined under this title or imprisoned not more than 20 years, or both.

18 U.S.C. §§ 1343: Fraud by wire, radio, or television:

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transmits or causes to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce, any writings, signs, signals, pictures, or sounds for the purpose of executing such

scheme or artifice, shall be fined under this title or imprisoned not more than 20 years, or both

18 U.S.C. § 154: Adverse Interest and Conduct of Officers

18 U.S.C. § 1001:

(a) Except as otherwise provided in this section, whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully

- (1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact;
- (2) makes any materially false, fictitious, or fraudulent statement or representation; or
- (3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry; shall be fined under this title, [and/or] imprisoned not more than 5 years.

18 U.S.C. § 1961 ET SEQ: RICO

"racketeering activity" means (A) any act or threat involving kidnapping, robbery, bribery, extortion, which is chargeable under State law and punishable by imprisonment for more than one year; (B) any act which is indictable under any of the following provisions of title 18, United States Code: Section 201 (relating to bribery), section 659 (relating to theft from interstate shipment) if the act indictable under section 659 is felonious..... section 1341 (relating to mail fraud), section 1343 (relating to wire fraud), section 1344 (relating to financial institution fraud), section 1503 (relating to obstruction of justice), section 1510 (relating to obstruction of criminal investigations), section 1511 (relating to the obstruction of State or local law enforcement), section 1512 (relating to tampering with a witness, victim, or an informant), section 1513 (relating to retaliating against a witness, victim, or an informant) section 1951 (relating to interference with commerce, robbery, or extortion), section 1952 (relating to racketeering), section 1953 (relating to interstate transportation of wagering paraphernalia), section 1956 (relating to the laundering of monetary instruments), section 1957 (relating to engaging in monetary transactions in property derived from specified unlawful activity), (D) any offense involving fraud connected with a case under title 11 (except a case under section 157 of this title) punishable under any law of the United States, (G) any act that is indictable under any provision listed in section 2332b(g)(5)(B)

18 U.S.C. § 641 – Public money, property or records

Whoever embezzles, steals, purloins, or knowingly converts to his use or the use of another, or without authority, sells, conveys or disposes of any record, voucher, money, or thing of value of the United States or of any department or agency thereof, or any property made or being made under contract for the United States or any department or agency thereof; or Whoever receives, conceals, or retains the same with intent to convert it to his use or gain, knowing it to have been embezzled, stolen, purloined or converted shall be fined under this title or imprisoned not more than ten years, or both; but if the value of such property in the aggregate, combining amounts from all the counts for which the defendant is convicted in a single case, does not exceed the sum of \$1,000, he shall be fined under this title or imprisoned not more than one year, or both.

(Illegal use of Courts to steal Appellant's properties)

18 U.S.C. § 654: Officer or employee of United States converting property of another
Whoever, being an officer or employee of the United States or of any department or agency thereof, embezzles or wrongfully converts to his own use the money or property of another which comes into his possession or under his control in the execution of such office or employment, or under color or claim of authority as such officer or employee, shall be fined under this title or not more than the value of the money and property thus embezzled or converted, whichever is greater, or imprisoned not more than ten years, or both; but if the sum embezzled is \$1,000 or less, he shall be fined under this title or imprisoned not more than one year, or both.

VIII. INTRODUCTION

This case poses issues about Judges acting as owners of United States judicial system doing what they please to extent of DESTROYING Petitioners filings for personal gains. (TWO Motions below were destroyed. App Ex A, B, C)

	RECEIVED OFFICE OF THE CLERK U.S. COURT OF APPEALS PUBLIC INFORMATION UNIT
1	Ninth Circuit Case No. 18-15202 2020 NOV -3 PM 12:46
2	Originating US District Court Case No. 2:16-cv-01124-JCM-NJK FILED DOCKETED DATE 01/06/2020
3	
4	IN THE UNITED STATES COURT OF APPEALS
5	FOR THE NINTH CIRCUIT
6	
7	SALMA AGHA-KHAN, M.D., - - -
8	Plaintiff-Appellant
9	v.
10	Pacific Community Mortgage, In., et al.
11	Defendant-Respondent
12	
13	APPELLANT'S OPPOSITION TO APPELLEES MORTGAGE
14	ELECTRONIC REGISTRATION SYSTEMS, INC., THEODORE
15	SCHULTZ, AND TRISHA MCMULLIN'S RENEWED MOTION
16	FOR SUMMARY AFFIRMANCE FILED CONCURRENTLY WITH
17	THIRD MOTION FOR NINTH CIRCUIT DISQUALIFICATION
18	BASED UPON MANDATORY, SELF-EXECUTING STATUTES 28
19	U.S.C. §§ 144 and 455
20	(Oral hearing requested)

RECEIVED
OFFICE OF THE CLERK
U.S. COURT OF APPEALS
PUBLIC INFORMATION UNIT

1 Ninth Circuit Case No. 18-15202

2 Originating US District Court Case No. 2:16-cv-01124-JCM-NJK

2018 NOV -3 PM 12:46

3 FILED _____

4 DOCKETED _____

5 DATE 10/11/18

6 **IN THE UNITED STATES COURT OF APPEALS**
7 **FOR THE NINTH CIRCUIT**

10 Salma Agha-Khan

11 Appellant-Plaintiff

12 v.

13 Pacific Community Mortgage, Inc., et al.

14 Appellees-Defendants

16

17 **APPELLANT'S THIRD MOTION TO DISQUALIFY**
18 **NINTH CIRCUIT BASED UPON MANDATORY AND**
19 **SELF-EXECUTING DISQUALIFICATION STATUTES**
20 **28 U.S.C. §§ 144 and 455; AND JUDICIAL CODES OF**
21 **CONDUCT AND ETHICS AS WELL AS JUDICIAL CANONS 1,**
22 **2, 3; AFFIDAVIT/DECLARATION OF APPELLANT**

Docket does not have the Motions. No Opposition was filed by Respondents served, likely stopped from filing by Ninth Circuit in ex parte communications?

10/08/2019 53
2 pg. 106.59 KB

Filed clerk order (Deputy Clerk: MKS): The court has received Aurora Loan Services, LLC's status report (Docket Entry No. [49]) and notice of entry of order extending the automatic stay imposed by 11 U.S.C. § 362 to certain non-debtor parties to this appeal (Docket Entry No. [39]). Appellate proceedings are stayed for Aurora Loan Services, LLC; Mortgage Electronic Registration Systems, Inc.; Theodore Schultz; and Trisha McMullin only. This appeal will proceed as to the remaining parties. The opposed motions for summary affirmance (Docket Entry Nos. [25], [30]) and appellant's motion for disqualification (Docket Entry No. [42]) will be addressed by separate order. The briefing schedule remains stayed pending further order of the court. [11458390] (AF) [Entered: 10/08/2019 03:35 PM]

12/17/2019 54
2 pg. 125.64 KB

Filed clerk order (Deputy Clerk: MKS): This appeal has been held in abeyance as to Aurora Loan Services, LLC ("Aurora") since April 15, 2019, and as to Mortgage Electronic Registration Systems, Inc.

The entire Appeal was adjudicated by Clerk, Molly Dwyer, issuing eighteen (18) "Orders" out of total twenty-one (21) orders in the Appeal (ECF 2, 4, 5, 6, 8, 14, 15, 16, 24, 33, 47, 53, 54, 56, 57, 58, 61, 64). The Clerk issued OSC, recalled it, dismissed Appeal for non-payment when fee was paid and deliberately logged into another case. Clerk performed legal research, quoted statutes and case law to reach fact violating State Bar Association Rules, Judges Duties and Clerk's Duties.

"Judge" and "Clerk" were used interchangeably as one and same entity.

Judge Consuelo M. Callahan was appointed to the Appeal, who with two other Ninth Circuit Judges was simultaneously defending their actions in another property case filed by Petitioner's in Nevada Bankruptcy Court (NV. Bk. Case No 19-01074-ABL/GS).

Petitioner's Mortgage Fraud began with non-existing "lender". The "loan" reported as fully paid off in SEC filings few months later. Respondents were self-proclaimed "assignees" of non-existing Lender that collected over \$5,000.00 per month mortgage from Petitioner for years, forcing her into Bankruptcy, enrolling her in fraud Loan Modification, recording forged title documents signed by well-established robo-signers to steal Petitioner's home.

Violations of United States Constitution, Statutes, Laws including case law, as well as SEC Fraud, Bankruptcy Fraud, forgery, perjury... called "insubstantial".

01/14/2020 55
2 pg, 168.65 KB

Filed order (CONSUELO M. CALLAHAN, JACQUELINE H. NGUYEN and ANDREW D. HURWITZ): Upon a review of the record and the opening brief, we conclude that the questions raised in this appeal are so insubstantial as not to require further argument. See *United States v. Hooton*, 693 F.2d 857, 858 (9th Cir. 1982) (stating standard for summary affirmance); see also *Hebbe v. Piller*, 627 F.3d 335, 341-42 (9th Cir. 2010) (although pro se pleadings are construed liberally, plaintiff must present factual allegations sufficient to state a plausible claim for relief). Accordingly, the opposed motions for summary affirmance (Docket Entry Nos. [25] and [30]) are granted. We summarily affirm the district court's judgment as to all

As mandated a "de novo" review or investigation of alleged SEC fraud was not performed. (See App. Ex B)

Ninth Circuit reversed all its prior rulings and standards it had established and also Standards established by Supreme Court.

Ninth Circuit acted as owners of the Court and Justice system. The "Wild Wild West" (See Pg 14- 16 of destroyed Third Disqualification Motion App Ex A)

23 **In the matter of Williams vs. Pennsylvania, Certiorari to**
24 **Supreme Court of Pennsylvania No. 15-5040. Argued February**
25 **29, 2016—Decided June 9, 2016. In the BRIEF OF FORMER**
26 **APPELLATE COURT JURISTS AS AMICI CURIAE IN SUPPORT OF**
27 **PETITIONER, former appellate judges wrote:**

6 **"Standard For Determining Whether Recusal Is**
7 **Required. The standard for determining whether a judge's**
8 **refusal to recuse himself or herself violates due process is**
9 **whether the circumstances of the case "would offer a**
10 **possible temptation to the average . . . judge to . . . lead**
11 **him not to hold the balance nice, dear and true."** Aetna Life
12 Ins. Co., 475 U.S. 813, 822 (1986) (quoting Ward v. Village
13 of Monroeville, 409 U.S. 57, 60 (1972)). The question is not
14 whether the judge is actually, subjectively biased—though
15 that is of course sufficient—but whether "the average judge
16 in his position is 'likely' to be neutral, or whether there is an
17 unconstitutional 'potential for bias.'" Caperton v. A.T.
18 Massey Coal Co., 556 U.S. 868, 881 (2009) (quoting
19 Mayberry v. Pennsylvania, 400 U.S. 455, 466 (1971)). This
20 objective determination involves "a realistic appraisal of
21 psychological tendencies and human weakness,' [and
22 whether] the interest 'poses such a risk of actual bias or
23 prejudgment that the practice must be forbidden if the
24 guarantee of due process is to be adequately implemented."

22 (quoting *Withrow v. Larkin*, 421 U.S. 35, 47 (1975)). Any
23 potential for bias is unacceptable because in every judicial
24 proceeding there must not be "even the probability of
25 unfairness." *In re Murchison*, 349 U.S. 133, 136 (1955).

26 "Whenever a party to any proceeding in a district court
27 makes and files a timely and sufficient affidavit that the
28 judge before whom the matter is pending has a personal
29 bias or prejudice either against him or in favor of any

30 In the matter of Williams vs. Pennsylvania, (2015) Justice
31 Kennedy said:

32 "Bias is easy to attribute to others and difficult to discern in
33 oneself." Thus, there must be an "objective standard" that
34 requires certain judges to recuse regardless of whether they
35 think they are capable of deciding a particular case
36 impartially. The Constitution's due process guarantees, the
37 Court concludes, establish that "there is an impermissible
38 risk of actual bias when a judge earlier had significant,
39 personal involvement as a prosecutor in a critical decision
40 regarding the defendant's case."

41 Many Amicus Briefs were filed in this case which detail the
42 lack of recusal when it is appropriate and the ramifications of
43 lack of it.

44 **The Brennan Center's Brief in Support of Petitioner in the**
45 **Williams Case: The Brennan Center for Justice filed an amicus**
46 **curiae brief in support of Petitioner's argument on Question One.**

1 Amici argued that the Supreme Court of Pennsylvania's lack of a
2 procedure for an independent review of recusal motions should
3 be viewed as an additional factor contributing to a violation of
4 Petitioner's right to due process.
5

6 Other Amicus briefs were filed on this issue and on the issue
7 of bias are as follows

8 Brief amici curiae of Brennan Center for Justice and Justice at
9 Stake, filed on 12/7/15; Brief amicus curiae of Constitutional
10 Accountability Center, filed on 12/7/15; Brief amici curiae of The
11 American Civil Liberties Union, and The ACLU of Pennsylvania,
12 filed on 12/7/15; Brief amicus curiae of The American Academy of
13 Appellate Lawyers, filed on 12/7/15; Brief amici curiae of Former
14 Judges with Prosecutorial Experience, filed on 12/7/15; Brief
15 amici curiae of The American Bar Association, filed on 12/7/15;
16 Brief amici curiae of The Ethics Bureau at Yale, filed on 12/7/15
17 Brief amici curiae of Former Appellate Court Jurists, filed on
18 12/7/15.

19 As show above this "Wild Wild West" attitude is not favored in our Justice
20 System. We must not turn a blind eye to "Court Rooms for Sale" as outlined by FBI
21 <https://www.fbi.gov/news/stories/public-corruption-courtroom-for-sale1>

22 This unruly and even criminal Judicial behavior leading to erosion of Public
23 Confidence does not even remotely give an "appearance of justice" or "satisfies
24 justice".

IX. STATEMENT OF CASE

This Writ arises from Petitioner's dismissed Appeal in Ninth Circuit Case No. 18-15202 filed 10/25/2018, ECF 10 entered in the Docket again on April 02, 2019 ECF 20. Supplement to 06/28/ 2019 ECF 40. Underlying complaint was filed in Nevada District Court, Case No 2:16-cv-01124-JCM-NJK on May 19, 2016.

This is a case regarding mortgage fraud and illegal foreclosure where "Lender" did not exist so loan could not exist. Also the "loan" was reported as fully paid off in SEC filings within few months of origination.

Petitioner paid cash \$964,102.00 on June 25, 2004 for her home. DOT recorded July 30, 2004; Inst No: 20040730-0001902. Physical address of home is 1967 Cherry Creek Circle Las Vegas, Nevada 89135; APN: 164-02-218-001.

On 18 August 2004, Petitioner obtained a loan for \$615,000.00 on subject property, with Respondent Pacific Community Mortgage Inc. ("PCM"), a California Corporation, listed as the lender. Recorded September 08, 2004.

DEED OF TRUST

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

(A) "Security Instrument" means this document, which is dated AUGUST 18, 2004 together with all Riders to this document.

(B) "Borrower" is SALMA H. KHAN, AN UNMARRIED WOMAN

(C) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is the mortgagee under this Security Instrument. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P. O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS.

(D) "Lender" is PACIFIC COMMUNITY MORTGAGE, INC., A CALIFORNIA CORPORATION

Lender is a CORPORATION
CALIFORNIA
600, ANAHEIM, CA 92806
Lender is the beneficiary under this Security Instrument.

Lender's address is organized and existing under the laws of
2099 S. STATE COLLEGE BLVD.

Petitioner later realized that PCM had ceased to exist ten years earlier. (Comp. ECF 1 Pg 16; Comp. Ex A, B, C).

13	Entity Name:	PACIFIC COMMUNITY MORTGAGE COMPANY
14	Entity Number:	C1670354
	Date Filed:	08/02/1990
15	Status:	FTB SUSPENDED
	Jurisdiction:	CALIFORNIA
16	Entity Address:	2608 VAN GOGH DRIVE
17	Entity City, State, Zip:	MODESTO CA 95356
	Agent for Service of Process:	DALE F. MURATORE
18	Agent Address:	2608 VAN GOGH DRIVE
19	Agent City, State, Zip:	MODESTO CA 95356

In business law a contracts is between two or more parties. Since Lender, PCM did not exist, a contract could not possibly exist. No Borrower-Lender relationship was established. The "loan" was simply an anonymous "gift".

A non-existing entity cannot have assets or interests, cannot have successors or assignees, cannot assign or transfer anything and cannot lend money. Thus the Deed of Trust executed by the Petitioner was void. Also the DOT was not legible an unsigned DOT was recorded as "clarification" by someone based on County Recorders Memo "Poor Record due to Quality of Original Document". (Comp Ex B Pg 65-71; Exc III)

Grantee:
PACIFIC COMMUNITY MORTGAGE INC. A
CALIFORNIA CORPORATION
2099 S. STATE COLLEGE BLVD 600
ANAHEIM, CA 92806

Mail Tax Statement To:

RECORDERS MEMO
POSSIBLE POOR RECORD DUE TO
QUALITY OF ORIGINAL DOCUMENT

This copy is being attached for clarification purposes only.

[Space Above This Line For Recording Data]

KHAN
LOAN #: 04080067
MLN: 100121700040800671

DEED OF TRUST

CLARIFICATION

04080067

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it.

- BORROWER - SALIMA H. KHAN - DATE -

CLARIFICATION

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Adjustable Rate Rider.

- BORROWER - SALIMA H. KHAN - DATE -

CLARIFICATION

04080067

BY SIGNING BELOW, Borrower accepts and agrees to the terms and provisions contained in this PUD Rider.

- BORROWER - SALIMA H. KHAN - DATE -

By signing below, Borrower accepts and agrees to the terms and covenants contained in this Prepayment Rider.

- BORROWER - SALIMA H. KHAN - DATE -

CLARIFICATION

04080067

BY SIGNING BELOW, Borrower accepts and agrees to the terms and provisions contained in this Second Home Rider.

- BORROWER - SALIMA H. KHAN - DATE -

CLARIFICATION

04080067

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this addendum.

- BORROWER - SAIMA H. KHAN - DATE -

Unknown to Petitioner non-existing PCM's fraud loan was transferred to Structured Adjustable Rate Mortgage Loan Trust Mortgage Pass-Through Certificates, Series 2004-16 Trust ("SARM Trust"), never recorded in Clark County, Nevada. The SARM Trust filed documents with US Securities and Exchange Commission, ("SEC") stating specifically that Petitioner's loan was paid off in full by December 2004. (Exc III, Comp. Ex 10. Pg 8 -9 and 17-21).

81. The following is an internet screen shot of the last filing of the SARM
Trust:

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM 15

**Certification and Notice of Termination of Registration under Section
12(g) of the Securities Exchange Act of 1934 or Suspension of Duty to
File Reports under Sections 13 and 15(d) of the Securities Exchange Act
of 1934.**

Commission File Number: 333-115858-26

**Structured Adjustable Rate Mortgage Loan Trust
Mortgage Pass-Through Certificates,
Series 2004-16 Trust**

18 **Approximate number of holders of record as of the certification or notice
date:**

19 **Less than 300 Holders**

20 **Pursuant to the requirements of the Securities Exchange Act of 1934,**

21 **Structured Adjustable Rate Mortgage Loan Trust
Mortgage Pass-Through Certificates,
Series 2004-16 Trust**

23 **has caused this certification/notice to be signed on its behalf by the
undersigned duly authorized person.**

25 **Date: 01/20/2005**

25 **By: /s/ Beth Belfield, Assistant Vice President**

Respondents were well aware of non-existing stat of PCM and fraudulently became self-proclaimed assignees, beneficiaries of non-existing lender to fraudulently collect over \$5,000.00 per month as mortgage from Petitioner, forcing her into Bankruptcy in 2010. Respondents then, 6 years later, started recording fraud claims on forged title documents signed by well-established robo-signers on Petitioners home. Starting with Corporate Assignment of Deed of Trust in 2010, (PCM now defunct for over 15 years). (Comp. Ex. E; Exc III Ex 10; Comp Ex A - H).

Date of Assignment: April 19th, 2010

**Assignor: MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. AS NOMINEE
FOR PACIFIC COMMUNITY MORTGAGE, INC., A CALIFORNIA CORPORATION ITS
SUCCESSORS AND ASSIGNS at 3300 S.W. 34TH AVENUE, SUITE 101, OCALA, FL 34474
Assignee: AURORA LOAN SERVICES LLC at 2617 COLLEGE PARK, SCOTTSBLUFF, NE
69361**

Other forged recordings by Respondents included (Comp Ex A-H; Exc III)

1. "Notice of Breach". Recorded on January 13, 2010;

2. "Substitution of Trustee". Recorded on January 28, 2010;
3. "Foreclosure Mediation Certificate" as to Petitioner waiving her rights to mediation when she was enrolled in their fraud Loan Modification Program during her Bankruptcy (filed May 30, 2010).
4. "Corporate Assignment of Deed of Trust". Recorded on April 19, 2010
5. "Notice of Sale". Recorded on May 10, 2010
6. "Trustee Deed Upon Sale". Recorded on September 09, 2010.

The above recorded documents were signed by well established robo-signers such as Theodore Schultz, Mary Jane Sarne where her signature changed from one document to another and Ronal Alonzo, who may have been serving a sentence.

13 **G. Appellee Schultz is a well recognized Robo-signer. See**
 14 **sample signatures of this "MERS VP" (ECF 41 Pg 30-31)**

15 TO HAVE AND TO HOLD the said Mortgage and Note and also the said property and the said Foreclosure Action
 16 assigned to the person designated in said Mortgage and Note
 17 MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.
 18 OR MERS ALONZO
 19 
 20 STOPForeclosureFraud...
 21 MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. AS NOMINEE FOR PINEY
 22 MAGNUS FINANCIAL CORPORATION AS AURORA LOAN SERVICES LLC SUCCESSORS AND
 23 ASSIGNEES
 24 On January 12, 2010
 25 By: 
 26 THEODORE SCHULTZ VICE PRESIDENT
 27 MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. AS NOMINEE FOR PINEY FINANCIAL
 28 CORPORATION ITS SUCCESSORS AND ASSIGNEES
 29 On January 12, 2010
 30 By: 
 31 THEODORE SCHULTZ VICE PRESIDENT
 32 AURORA LOAN SERVICES LLC
 33 STOPForeclosureFraud...
 34 http://www.stopforeclosurefraud.com/2010/10/19/theodore-schultz-a-robosigner-signs-a-new-deed-of-trust/

210



1 Categorized | STOP FORECLOSURE FRAUD

2 **THEODORE "THEO" SCHULTZ CORPORATE BANK TITLES**

3 Printed on 31 October 2010. Tags: assignment of deed of trust, assignment of mortgage, aurora loan servicing,
corporate seal, decision one mortgage company, dmfsls, fannie, financial institutions, first citizens financial,
first national bank of arizona, foreclosure fraud, household bank, lehman brothers, mers, MORTGAGE
4 ELECTRONIC REGISTRATION SYSTEMS INC., nations home funding, nebraska, pimco financial, robo
signer, satisfaction of mortgage, scott blatt, theo schultz, theodore schultz, vice president

5 **H. Appellee "Theo" Schultz is also VP of many other**
6 **corporations including Appellee Aurora.**

7 Mr. Schultz and his various Corporate Hats. These sensitive documents are part of homes being sold today
8 in a county near you.
9 Vice President of:
MORTGAGE ELECTRONIC REGISTRATION SYSTEMS INC.,
Amera Loan Servicing,
Household Bank,
Decision One Mortgage Company,
 Nations Home Funding,
First National Bank of Arizona,
Pimco Financial,
First Citizens Financial
Lehman Brothers

12 **THEODORE "THEO" SCHULTZ**

13 Thus not only was the Deed of Trust was void but these six year delayed title recordings were also void, amounting to cancelled instruments with no value or enforceability. Also the loan was fully paid off in SEC filings for over 6 years.

Respondents then perpetrated Bankruptcy Fraud becoming Creditors and without filing a Claim obtained relief by submitting same forged title documents (Exc VI, Ex 19, Bk. Claims Register). Respondent Wells Fargo's Motion to dismiss complaint attached Respondent Aurora's attorneys of record McCarthy & Holthus, LLP, JaVonne M. Phillips, Mishaela J. Graves filings in Plaintiff's Bankruptcy on June 17, 2010 asking for relief (CA Eastern District Case No. 10-16183 ECF 16 - 19 and 30 - 31) did not have a Declaration "under perjury" by any of the filing attorneys. They knew they were committing perjury (Exc VI, Ex 22).

Respondents enrolled Petitioner if a fraud Loan Modification Program during Bankruptcy and sold her home illegally clamed.

Petitioner's First Amended Complaint, alleged that these same attorneys were owners of Respondent Quality Loan Service Corp, that existed only in non-judicial foreclosure states of California, Nevada, Washington, Oregon, Arizona and New Mexico. States where they created and fraudulently enforced their one room, robo-signed, non-judicial foreclosures documents; acts, undetected and unchallenged, however they are now under investigation along with their Wells Fargo cronies. (Exc IV, Ex 11, 12, 13, 14; Exc VI, Ex 25). Petitioner discovered this new fact but was disallowed from amending complaint to include as Defendants McCarthy & Holthus, LLP, JaVonne M. Phillips, Mishaela J. Graves when their actions were criminal and deserved investigation by Attorney General. (Comp. ECF 105).

Petitioner was asked by District Court to submit for review. After review by the Court, the Amendment was denied (Comp. ECF 105 Ex1),

Petitioner was denied Due Process and her Constitutional Rights repeatedly by the District Court denying Amendment after discovery of new facts, staying discovery (Exc V, Ex 15, 16, 17, 18), failing to hold a single hearing, refusing to investigate SEC fraud, Bankruptcy fraud etc. (Exc IV, Ex 11, 12, 13, 14). Petitioner's Motion for Disqualification of District Court was also denied. (Comp ECF 98 and 128). All forged documents signed by well-established robo-signers submitted were accepted by the District court.

Petitioner had filed for Defaults pertaining to parties served in accordance with Rule 4 but had failed to appear in the District Court. The Clerk granting few of these yet in blanket dismissal the District Court Judge took the position that all Defendants including defaulting Defendants were entitled to Judgement against the Plaintiff. (Exc I; Comp. Doc #190).

District Court tried to keep the Petitioner unaware of proceedings by failing to attach Proof of Service to any of their Orders, Notices etc. with Clerk lying on record as to mail getting returned.

The Judges even refused to finalize the case for almost two years so that Ninth Circuit closed its initial appeal and started a new case. (Exc I, Ex 4, 9).

Ninth Circuit added to the District Court frauds by appointing Judge Consuelo M. Callahan, who with two more Ninth Circuit Judges, simultaneously defending their actions in Nevada Bankruptcy Court for over one year. (NV Bk, Adv. 19-01074-ABL-GS).

Ninth Circuit was desperately avoiding recusal so it ignored Motion for their recusal till dismissal of Appeal (ECF 42, June 28, 2019; ECF 55 January 14, 2019). Petitioner's repeat Motion for their recusal accepted for filing on November 03, 2019 was destroyed. Also destroyed was Petitioner's simultaneously filed "Opposition to Summary Affirmance" to Respondent MERS and its robo-signers Theodore Schultz and Trisha McMullin (See following two pages for stamped copies of these filings). Docket does not have entries on November 03, 2019.
(See below face sheet of Ninth Court stamped filings and Docket entries).

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1 Ninth Circuit Case No. 18-15202

2 Originating US District Court Case No. 2:16-cv-01124-JCM-NJK

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3 FILED _____

4 DOCKETED _____

5 DATE _____

INITIALS _____

6 **IN THE UNITED STATES COURT OF APPEALS**

7 **FOR THE NINTH CIRCUIT**

10 Salma Agha-Khan

11 Appellant-Plaintiff

12 v.

13 Pacific Community Mortgage, Inc., et al.

14 Appellees-Defendants

16

17 **APPELLANT'S THIRD MOTION TO DISQUALIFY**
18 **NINTH CIRCUIT BASED UPON MANDATORY AND**
19 **SELF-EXECUTING DISQUALIFICATION STATUTES**
20 **28 U.S.C. §§ 144 and 455; AND JUDICIAL CODES OF**
21 **CONDUCT AND ETHICS AS WELL AS JUDICIAL CANONS 1,**
22 **2, 3; AFFIDAVIT/DECLARATION OF APPELLANT**

24 SALMA AGHA-KHAN, M.D.

25 3751 Motor Ave #34727

26 Los Angeles, CA 90034

27 949-332-0330

28 salmahagha@aol.com

Appellant-Debtor in Pro Per

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1 Ninth Circuit Case No. 18-15202

2 Originating US District Court Case No. 2:16-cv-01124-1CM-NJK

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DOCKETED

DATE

INITIAL

3 **IN THE UNITED STATES COURT OF APPEALS**

4 **FOR THE NINTH CIRCUIT**

5 SALMA AGHA-KHAN, M.D., -- -- --

6 Plaintiff-Appellant

7 V.

8 Pacific Community Mortgage, In., et al.

9 Defendant-Respondent

10 **APPELLANT'S OPPOSITION TO APPELLEES MORTGAGE**
11 **ELECTRONIC REGISTRATION SYSTEMS, INC., THEODORE**
12 **SCHULTZ, AND TRISHA MCMULLIN'S RENEWED MOTION**
13 **FOR SUMMARY AFFIRMANCE FILED CONCURRENTLY WITH**
14 **THIRD MOTION FOR NINTH CIRCUIT DISQUALIFICATION**
15 **BASED UPON MANDATORY, SELF-EXECUTING STATUTES 28**

16 **U.S.C. §§ 144 and 455**

17 (Oral hearing requested)

18 SALMA AGHA-KHAN, M.D.

19 3751 Motor Ave #34727

20 Los Angeles, CA 90034

21 949-332-0330

22 salmahagha@aol.com

10/08/2019	<input type="checkbox"/> <u>53</u> 2 pg. 106.59 KB	Filed clerk order (Deputy Clerk: MKS): The court has received Aurora Loan Services, LLC's status report (Docket Entry No. [49]) and notice of entry of order extending the automatic stay imposed by 11 U.S.C. § 362 to certain non-debtor parties to this appeal (Docket Entry No. [39]). Appellate proceedings are stayed for Aurora Loan Services, LLC; Mortgage Electronic Registration Systems, Inc.; Theodore Schultz; and Trisha McMullin only. This appeal will proceed as to the remaining parties. The opposed motions for summary affirmance (Docket Entry Nos. [25], [30]) and appellant's motion for disqualification (Docket Entry No. [42]) will be addressed by separate order. The briefing schedule remains stayed pending further order of the court. [11458390] (AF) [Entered: 10/08/2019 03:35 PM]
12/17/2019	<input type="checkbox"/> <u>54</u> 2 pg. 125.64 KB	Filed clerk order (Deputy Clerk: MKS): This appeal has been held in abeyance as to Aurora Loan Services, LLC ("Aurora") since April 15, 2019, and as to Mortgage Electronic Registration Systems, Inc.

The fact that not one Respondent filed any opposition to these Motions despite being served suggests collusion between Ninth Circuit and Respondents in Ex-Parte communications, unknown to Petitioner.

This alone speaks volumes regarding Petitioners standing as to her claims and allegations and lack of standing of Respondents whose only claim was their friendship to Judges and Circuit Court.

Ninth Circuit delegated the Appeal to Clerk who issued eighteen orders eighteen (18) Orders out of total twenty-one (21) orders in the Appeal (ECF 2, 4, 5, 6, 8, 14, 15, 16, 24, 33, 47, 53, 54, 56, 57, 58, 61, 64). Only three Orders were entered in the Docket by the Clerk with Judges names entered in the Docket but not on the document which had no signatures and no names of issuing authority other than Judges last names (ECF 55, 59, 60).

Surely a Clerk cannot adjudicate the matters, providing legal findings and statutes when they lack the legal degree and experience needed for these actions.

Ninth Circuit failed to perform a De Novo Review as mandated, also failing to investigate SEC Fraud also mandated. All outlined in Complaint, Appeal and in the Supplement to Brief. (Comp. Pg 17-21; Exc III; ECF 40 Pg 13-14) (App A, B)

18
19 **II. TRANSFERENCE OF LOAN TO SARM TRUST WITH SEC**
20 **FILINGS SHOWING LOAN AS PAID OFF CONSTITUTES**
21 **SEC FRAUD KNOWN TO APPELLEE-DEFENDANTS AND**
22 **LOWER COURT**
23

24 The United States Supreme Court stated in Tellabs, Inc. v.
25 Makor Issues & Rights, Ltd., 551 322, 127 S.Ct. 2499, 168

1 L.Ed.2d 179 (2007) that, in assessing securities fraud claims,
2 "courts must consider the complaint in its entirety, as well"

Ninth Circuit also reversed rulings on standards established by themselves
denying unopposed recusal motion and even destroying repeat motion for recusal.
Ninth Circuit actively obstructed justice to deny Petitioner Due Process and other
Constitutional Rights.

United States Supreme Court in Caperton v. A. T. Massey Coal Co 556 U.S.
868 129 S.Ct. 2252 (S. Ct. 2009) 173 L.Ed.2a 1208. 77 USLW 4456. stated
"Held:due process requires recusal. Pp 2259-2267.

Ninth Circuit dismissed the Appeal as "insubstantial" quoting inapplicable
case law, perhaps as a threat to Petitioner. Petitioner's turning to Supreme Court so
that "Justice must satisfy the appearance of Justice". (emphasis added)

X. LEGAL ARGUMENTS PURSUANT TO RULE 10(a) FOR GRANTING THIS WRIT OF CERTIORARI

Ninth Circuit's deliberate destruction of Petitioners filings it received on November 03, 2019, establishes that her Claim was valid, a fact well-known to Ninth Circuit forcing its "judgement" by obstructing Justice and denying due process. Same was very obvious to District Court who tried to keep Petitioner unaware of proceedings as not one Proof of Service is attached to Orders, Notices.

It is easily apparent to any reasonable person that if a Lender does not exist then "Assets" and "Assignee" cannot exist. Also the "loan" was reported to be fully paid off in SEC filings soon after origination. Thus Respondents had no claim, "interest" or "standing" to

- a. Collect over \$5,000 per month as "mortgage"
- b. record forged title documents signed by well-established robo-signers
- c. become Creditor's in Petitioner's Bankruptcy
- d. obtain fraud "relief"
- e. sell Petitioner's home

These facts were clearly apparent to **District Court** and the **Ninth Circuit**, that forbid discovery, kept Petitioner unaware of proceedings, destroy her filings, failing to perform de novo review or investigate SEC fraud and deny recusal in face of obvious bias and prejudice. They denied Due Process, restricted access to Courts, and actively obstructed Justice to dismiss Complaint and Appeal. Judgement was issued against Petitioner favoring even the Defaulted Defendants. The Appeal was "adjudicated" by Ninth Circuit Clerk also issuing Mandates.

In face of such obvious corruption, eroding public confidence the Petitioner has no other remedy but to come to United States Supreme Court with this Writ.

**A. NINTH CIRCUIT'S DELIBERATE DESTRUCTION OF PETITIONER'S
FILINGS ESTABLISHED VALIDTY OF HER CLAIM**

Petitioner's two filings received on November 03, 2019 were destroyed by the Ninth Circuit. These included

1. "Third Motion for Ninth Circuit Disqualification"

1	Ninth Circuit Case No. 18-15202	RECEIVED OFFICE OF THE CLERK U.S. COURT OF APPEALS PUBLIC INFORMATION UNIT
2	Originating US District Court Case No. 2:16-cv-01124-JCM-NJK	2020 NOV -3 PM 12:46
3		FILED _____
4		DOCKETED _____
5		DATE _____ INITIALS _____
6	IN THE UNITED STATES COURT OF APPEALS	
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8	_____ _____ _____	
9	_____ _____ _____	
10	Salma Agha-Khan	
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14	Appellees-Defendants	
15	_____ _____ _____	
16	_____ _____ _____	
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20	28 U.S.C. §§ 144 and 455; AND JUDICIAL CODES OF	
21	CONDUCT AND ETHICS AS WELL AS JUDICIAL CANONS 1,	
22	2, 3; AFFIDAVIT/DECLARATION OF APPELLANT	

2. "Opposition to Motion for Summary Affirmance"

1 Ninth Circuit Case No. 18-15202

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2 Originating US District Court Case No. 2:16-cv-01124-JCM-NJK

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DOCKETED

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4 **FOR THE NINTH CIRCUIT**

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15 **BASED UPON MANDATORY, SELF-EXECUTING STATUTES 28**

16 **U.S.C. §§ 144 and 455**

Despite being "Received", They were never entered in the Docket.

10/08/2019 53 2 pg. 108.59 KB Filed clerk order (Deputy Clerk: MKS): The court has received Aurora Loan Services, LLC's status report (Docket Entry No. [49]) and notice of entry of order extending the automatic stay imposed by 11 U.S.C. § 362 to certain non-debtor parties to this appeal (Docket Entry No. [39]). Appellate proceedings are stayed for Aurora Loan Services, LLC; Mortgage Electronic Registration Systems, Inc.; Theodore Schultz; and Trisha McMullin only. This appeal will proceed as to the remaining parties. The opposed motions for summary affirmance (Docket Entry Nos. [25], [30]) and appellant's motion for disqualification (Docket Entry No. [42]) will be addressed by separate order. The briefing schedule remains stayed pending further order of the court. [11458390] (AF) [Entered: 10/08/2019 03:35 PM]

12/17/2019 54 2 pg. 125.64 KB Filed clerk order (Deputy Clerk: MKS): This appeal has been held in abeyance as to Aurora Loan Services, LLC ("Aurora") since April 15, 2019, and as to Mortgage Electronic Registration Systems, Inc.

Destruction of Court records is a criminal offence.

4. FEDERAL CODES

25 CFR § 11.420: Tampering with records.

A person commits a misdemeanor if, knowing that he or she has no privilege to do so, he or she falsifies, destroys, removes or conceals any writing or record, with purpose to deceive or injure anyone or to conceal any wrongdoing.

18 U.S. Code § 1519 Destruction, Alteration or Falsification of Records

Whoever knowingly alters, destroys, mutilates, conceals, covers up, falsifies, or makes a false entry in any record, document, or tangible object with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States or any case filed under title 11, or in relation to or contemplation of any such matter or case, shall be fined under this title, imprisoned not more than 20 years, or both.

California Penal Code Section 141

It is illegal to alter, modify, plant, place, conceal, manufacture, or move any physical matter with the intention of causing someone to be charged with a crime, or for the physical matter to be used as evidence in a trial, inquiry, or proceeding.

5. CALIFORNIA CODES

California Penal Code Section 132,

California Penal Code Section 134,

California Penal Code Section 135

California Title 15 Crimes

6. NEVADA CODES

NRS 199.220 prohibits purposely **destroying evidence**. Specifically, it is a crime to destroy evidence with the intent either to 1) Conceal a felony; 2) Protect a felon; 3) Obstruct the law; or 4) Prevent the production of the evidence.

There are essential elements that constitute tampering as “offence”

- a. Intent:** The evidence was willfully and purposefully interfered with and destruction was not accidental.

b. Knowledge: The person acted knowingly and were aware that their conduct will probably cause a certain result.

c. Evidence: This covers anything that can be produced in any kind of legal trial, proceeding, or investigation.

d. Awareness of a Potential or Pending Investigation: Person committing the crime was in contemplation of a current or future proceeding.

All the above elements were present in this Appeal where Petitioners filings were deliberately and knowingly destroyed by the Ninth Circuit itself to legitimize their illegal dismissal. This also established validity of Petitioners claim and lack of Respondent's standing. Also that Ninth Circuit was well aware of these facts.

Penalties for tampering include monetary fines and prison sentencing of up to 20 years. Surely Ninth Circuit was aware of these Statutes and other laws.

B. NINTH CIRCUIT DELEGATED ADJUDICATION OF APPEAL TO CLERK, VIOLATING JUDICIAL DUTIES AND CLERK'S DUTIES

This Court must grant certiorari because the Ninth Circuit failed to perform its duty by delegating the Appeal herein to a Clerk for "adjudication".

1. Clerk is not a Judge, both have specific duties that cannot be assumed.
2. Judge and Clerk are not the same entity
3. Clerk and Judge titles are not interchangeable, cannot be switched
4. Clerk lacks in education, experience and appointment to be a Judge.
5. Judicial Oath does not include Court Clerks
6. Judicial Canons apply to Judges and not their Clerks
7. Clerks cannot set OSC, issue Order, Mandates and partial mandates.
8. Clerks cancel Orders, recall Mandates etc.
9. Clerk cannot perform legal analysis, provide legal basis and come to conclusions or fact based upon them.

Appeal herein was delegated by Judges to Clerk for adjudication where all of the above actions were performed by Ninth Circuit Clerk, Molly C. Dwyer. The Clerk issued eighteen (18) Orders out of total twenty-one (21) orders in the Appeal (ECF 2, 4, 5, 6, 8, 14, 15, 16, 24, 33, 47, 53, 54, 56, 57, 58, 61, 64). Only three Orders entered in the Docket by the Clerk stated Judges full names but not on the actual Orders that were not even signed for authenticity. (ECF 55, 59, 60). Last names of Judges stated on Orders were as follow

Before: CALLAHAN, NGUYEN, and HURWITZ, Circuit Judges.

Before: CALLAHAN, NGUYEN, and HURWITZ, Circuit Judges.

And after switching Defendant-Judge Callahan with Silverman (ECF 60)

Before: SILVERMAN, NGUYEN, and HURWITZ, Circuit Judges.

Federal Rules of Appellate Procedure Rule 45.

(a) General Provisions.

(1) Qualifications. The circuit clerk must take the oath and post any bond required by law. **Neither the clerk nor any deputy clerk may practice as an attorney or counselor in any court while in office.** (emphasis added)

Below are Docket entries where the Ninth Circuit Clerk violated the FRAP Rule stating statutes, providing law, coming to conclusions and reaching fact.

02/28/2018 2
2 pg. 283.47 KB Filed clerk order (Deputy Clerk: MF): It appears that the district court's order challenged in this appeal may not have disposed of the action as to all claims and all parties. Within 21 days after the date of this order, appellant shall move for voluntary dismissal of this appeal or show cause why it should not be dismissed for lack of jurisdiction. See Fed. R. Civ. P. 54(b); Chacon v. Babcock, 640 F.2d 221 (9th Cir. 1981). If appellant elects to show cause, a response may be filed within 10 days after service of the memorandum. If appellant does not comply with this order, the Clerk shall dismiss this appeal pursuant to Ninth Circuit Rule 42-1. Briefing is suspended pending further order of the court. [10780676] (CKP)
[Entered: 02/28/2018 10:46 AM]

The above order by the clerk, called "Memorandum", is not signed. The clerk decided all parties were not of the judgment, applied FRCP Rule 54, and cited a case. All amounting to legal research which is not part of a Clerk's duties. Setting an OSC may be a function of a clerk only after the Order is made by a judge. Otherwise it should state clearly Order To Show Cause Clerk.

An OSC, Order to Show Cause, is a legal substantive action. If it was purely administrative then it should read so. This is violation of Clerks duty and illegal practice of law in California unless the Clerk is an active member of the Bar. See **California Business and Professions Code 6125 & 6126.** You may not practice law in California unless you are an active member of the California State Bar.

05/24/2018 3
1 pg. 183.55 KB Filed order (Deputy Clerk: CKP) Motion to dismiss case for failure to prosecute (Cir. Rule 42-1). Pursuant to Ninth Circuit Rule 42-1, this appeal is dismissed for failure to respond to order. (Order dated 02/28/2018). This order served on the district court shall, 21 days after the date of the order, act as the mandate of this court. [10884254] (CKP) [Entered: 05/24/2018 09:30 AM]

Deputy Clerk continued Clerks illegal law practice to Dismiss the Appeal, again citing Statues.

07/30/2018 5
2 pg. 255.82 KB

Filed clerk order (Deputy Clerk: MF): On May 24, 2018, the court dismissed this appeal for failure to prosecute because appellant had not responded to the February 28, 2018 order to show cause. See 9th Cir. R. 42-1. Appellant has now responded to the order to show cause. The motion to reinstate this appeal is granted (Docket Entry No. [\[4\]](#)). The May 24, 2018 order is vacated, and the appeal is reinstated. The court's February 28, 2018 order to show cause and any pending motions will be addressed by separate order. Briefing remains suspended pending further court order. [10959521] (AF) [Entered: 07/30/2018 01:52 PM]

Another unsigned clerk's order stating that the "Court dismissed the Appeal.

No it was Clerk who Dismissed the Appeal. "Court" and "Clerk" are not the same entity and should not be used interchangeably as it constitutes lies, fraud etc.

Here the Clerk vacated "Order" pursuant to 9th Circuit Rule 42-1; reinstated the appeal; vacated the OSC. All consistent with legal research which is not their duty. Also varying with ECF 6 below, where Commissioner discharged the OSC.

CIRCUIT RULE 42-1. DISMISSAL FOR FAILURE TO PROSECUTE

When an appellant fails to file a timely record, pay the docket fee, file a timely brief, or otherwise comply with rules requiring processing the appeal for hearing, an order may be entered by the clerk dismissing the appeal.

08/10/2018 6
8 pg. 387.77 KB

Filed order (Appellate Commissioner): On July 31, 2018, the district court entered a final judgment dismissing the remaining parties to the underlying action. Accordingly, the February 28, 2018 order to show cause is discharged. See *Fidelity & Deposit Co. v. City of Adelanto*, 87 F.3d 334, 336 (9th Cir. 1996) (premature appeal from district court's dismissal order cured by dismissal of remaining parties); see also *Anderson v. Allstate Ins. Co.*, 630 F.2d 677, 680-81 (9th Cir. 1980). If appellant wishes to challenge the dismissal of the remaining parties, appellant must file a new notice of appeal within the time limits prescribed by Federal Rule of Appellate Procedure 4(a)(1). A review of this court's docket reflects that the filing and docketing fees for this appeal remain due. Within 21 days after the date of this order, appellant shall pay to the district court the \$505.00 filing and docketing fees for this appeal and file in this court proof of such payment or file in this court a motion to proceed in forma pauperis. Failure to pay the fees or file a motion to proceed in forma pauperis shall result in the automatic dismissal of the appeal by the Clerk for failure to prosecute. See 9th Cir. R. 42-1. The Clerk shall serve a Form 4 financial affidavit on appellant. The opening brief is due September 10, 2018; the answering brief is due October 10, 2018; and the optional reply brief is due within 21 days after service of the answering brief. Because appellant is proceeding without counsel, the excerpts of record requirement is waived. See 9th Cir. R. 30-1.2. Appellees' supplemental excerpts of record are limited to the district court docket sheet, the notice of appeal, the judgment or order appealed from, and any specific portions of the record cited in appellees' brief. See 9th Cir. R. 30-1.7. The filing of a motion to proceed in forma pauperis will stay the briefing schedule pursuant to Ninth Circuit Rule 27-11. (Pro Se) [10972751] (CKP) [Entered: 08/10/2018 09:40 AM]

The above "Order" (ECF 6) is by Appellate Commissioner". It seems every employee of Ninth Circuit can issue Orders in Appeals, except the Judges themselves.

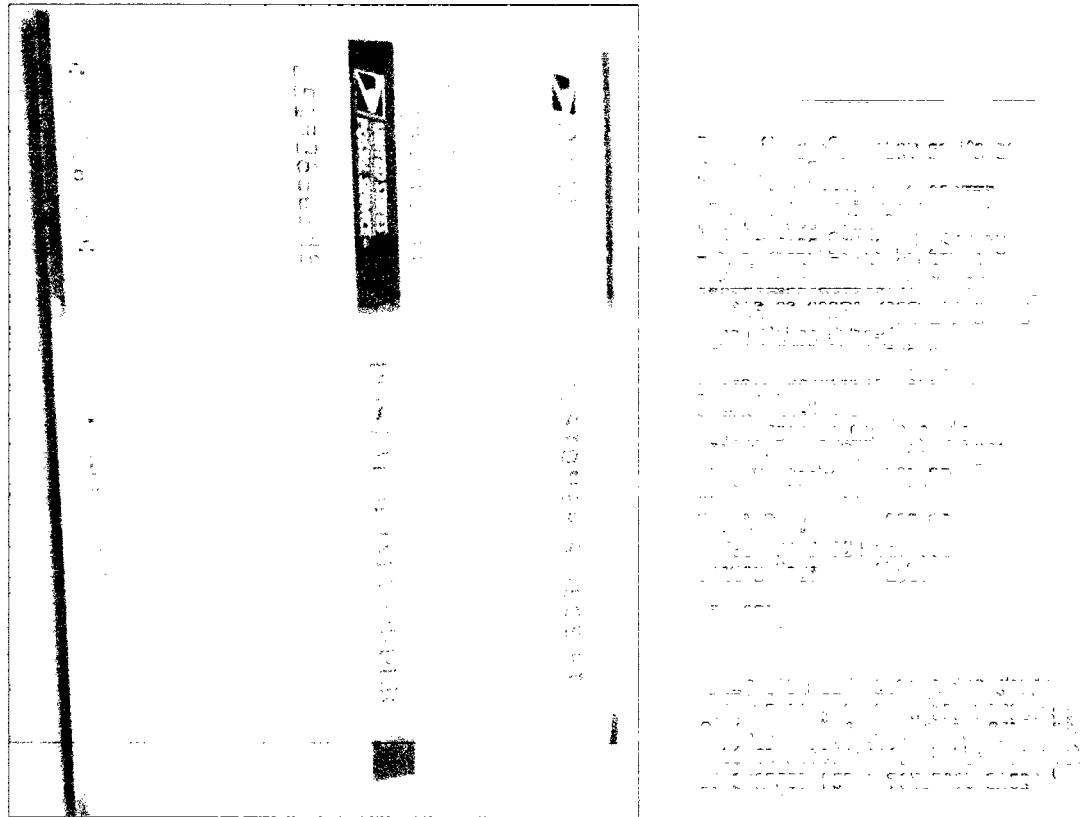
This "Order" contradicts the ECF 5 "Order above where the Clerk has reinstated the appeal and vacated the OSC while the Appellate Commissioner's Order. (Please note this varies with Docket 5).

Both the Clerk and the Commissioner lied on record as to Petitioner not paying the fee which was paid and docketed by them n the wrong case (Proof of payment, copies of cashiers checks and receipts, were provided in Petitioner's filing and in Appeal Exc. I Ex 6 Pg 105, 106).

Excerpt I Exhibit 6 in Appeal herein

Magnified copy of money order payment to District Court

Check is dated August 14, 2018.



10/31/2018	<input type="checkbox"/> <u>14</u> 9 pg. 309.85 KB	Filed clerk order (Deputy Clerk: CO): Appellant's motion for an extension of time to file the opening brief is granted [9]. The Clerk shall file the opening brief received on October 25, 2018. Appellant's motion for an extension of time to file the opening brief includes a statement that she has paid the fees for this appeal. The receipt appellant provides is for appeal No. 18-16553, not for this appeal. The fees for this appeal remain due. Within 21 days after the date of this order, appellant shall have one final opportunity to pay to the district court \$505.00 as the docketing and filing fees for this appeal and file proof of payment in this court, or file in this court a motion to proceed in forma pauperis. The filing of a motion to proceed in forma pauperis will automatically stay the briefing schedule under Ninth Circuit Rule 27-11. If appellant fails to comply with this order, the appeal will be dismissed automatically by the Clerk under Ninth Circuit Rule 42-1. The Clerk shall serve a Form 4 financial affidavit on appellant. The answering brief is due December 7, 2018; and the optional reply brief is due within 21 days after service of the answering brief. [11067485] (CKP) [Entered: 10/31/2018 01:23 PM]
11/01/2018	<input type="checkbox"/> <u>15</u> 1 pg. 109.06 KB	Filed clerk order (Deputy Clerk: MF): The portion of the October 31, 2018 order addressing the briefing schedule for this appeal is vacated. The Clerk shall not file the opening brief until the fee status for this appeal is resolved. The remainder of the briefing schedule will be set if the opening brief is filed. Appellant remains obligated to comply with the portion of the October 31, 2018 order requiring appellant to pay the fees for this appeal or file a motion to proceed in forma pauperis. [11069015] (CKP) [Entered: 11/01/2018 02:54 PM]

Petitioner did not know that the District Court Clerk applies fees paid to various cases and will deliberately apply her fee paid to another case when the Appeal No was stated on the payment. Surely the Ninth Circuit Court Clerk and the Commissioner could have verified this deliberate "mistake" when provided with Proof of Payment instead of issuing one Order after another and performing legal research to quote statutes in effort to actively restrict Petitioner's access to Courts.

12/04/2018	<input type="checkbox"/> <u>16</u> 1 pg. 188.14 KB	Filed order (Deputy Clerk: CKP) Motion to dismiss case for failure to prosecute (Cir. Rule 42-1). Pursuant to Ninth Circuit Rule 42-1, this appeal is dismissed for failure to respond to order. (Order dated 10/31/2018). This order served on the district court shall, 21 days after the date of the order, act as the mandate of this court. [11108695] (CKP) [Entered: 12/04/2018 11:05 AM]
12/21/2018	<input type="checkbox"/> <u>17</u> 32 pg. 1.46 MB	Filed Appellant Salma Agha-Khan, M.D. motion to reconsider order of the Clerk of the Court filed on 11/01/2018. Deficiencies: None. Served on 12/21/2018. [11217834] (CW) [Entered: 03/06/2019 10:37 AM]
04/02/2019	<input type="checkbox"/> <u>18</u> 2 pg. 263.14 KB	Filed clerk order (Deputy Clerk: MF): On December 4, 2018, the court dismissed this appeal for failure to prosecute because appellant had not paid the filing and docketing fees. See 9th Cir. R. 42-1. A review of the district court's records reflects that appellant has now paid the filing and docketing fees for this appeal. However, appellant erroneously paid the fees for this appeal in District of Nevada civil case No. 2:17-cv-02739-GMN-CWH, not the above-referenced district court docket. The motion to reinstate this appeal is granted (Docket Entry No. [17]). The December 4, 2018 order is vacated, and the appeal is reinstated. The Clerk shall amend the docket to reflect that the fees for this appeal have been paid. The Clerk shall file the opening brief received on October 25, 2018 (Docket Entry No. [10]). The answering brief is due May 3, 2019; and the optional reply brief is due within 21 days after service of the answering brief. The Clerk shall send a copy of this order to the district court. The district court clerk shall transfer the fee payment received on November 26, 2018 in civil case No. 2:17-cv-02739-GMN-CWH to the above-referenced district court docket. [11250217] (AF) [Entered: 04/02/2019 01:20 PM]

Where the actual title of Petitioner's filing, ECF 17, was

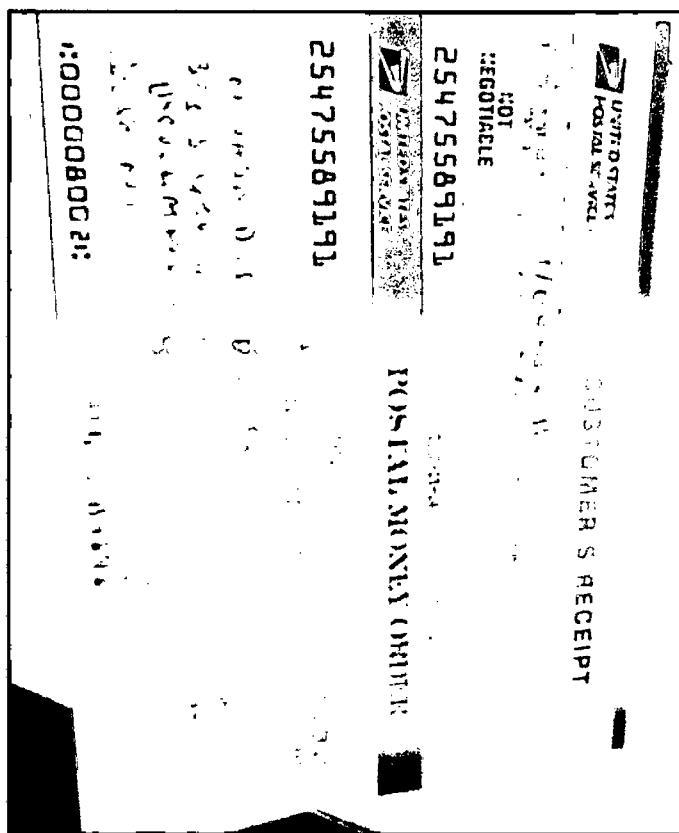
**14 APPELLANT'S MOTION FOR RELIEF FROM CLERK'S ORDER
15 DISMISSING APPEAL DESPITE APPELLANT REPEATEDLY
16 PROVIDING PROOF OF REPEAT PAYMENTS MADE TO
17 DISTRICT COURT IS VIOLATION OF APPELLANT'S CIVIL
18 RIGHTS SUGGESTING COLLUSION BETWEEN NINTH
19 CIRCUIT AND DEFENDANTS MANDATING RECUSAL**

This was also Petitioner's first Motion asking for Recusal of Ninth Circuit, ignored by Ninth Circuit Clerk, Commissioner and Judges.

Ninth Circuit forced Petitioner to pay the filing fee TWICE for this Appeal.

Magnified copy of SECOND money order payment to District Court

Check is dated November 14, 2018.



Appeal filed on October 25, 2018 was officially "reinstated" on April 02, 2019.

10/18/2018 9 Filed Appellant Salma Agha-Khan, M.D. motion to extend time to file appellant opening brief. Also included copy of receipt of payment of fees, but the receipt is not for this DC docket or appeal. Deficiencies: None. Served on 10/18/2018. [11053424] (CW) [Entered: 10/19/2018 11:29 AM]

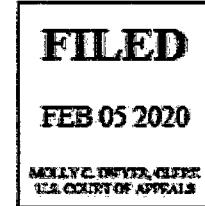
And April 02, 2019

04/02/2019 19 Fee status changed ([Case Number 18-15202: Paid]). (See 4/2/2019 order [18] of the court) [11250221] (AF) [Entered: 04/02/2019 01:21 PM]

Ninth Circuit Clerk also issued Mandate in the Appeal.

Case: 18-15202, 02/05/2020, ID: 11585750, DktEntry: 56, Page 1 of 1

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT



SALMA AGHA-KHAN, M.D., M.D.,
Plaintiff - Appellant,
v.
PACIFIC COMMUNITY
MORTGAGE, INC., a suspended
California Corporation, its successors
and assigns; et al.,
Defendants - Appellees.

No. 18-15202

D.C. No. 2:16-cv-01124-JCM-NJK
U.S. District Court for Nevada, Las
Vegas

MANDATE

The judgment of this Court, entered January 14, 2020, takes effect this date.

This constitutes the formal mandate of this Court issued pursuant to Rule
41(a) of the Federal Rules of Appellate Procedure.

FOR THE COURT:

MOLLY C. DWYER
CLERK OF COURT

WRIT OF CERTIORARI (Originating Ninth Circuit Case 18-15202)

Then Recalled it and Reissued "Partial Mandate". All similarly unsigned.

02/05/2020	<input type="checkbox"/> <u>56</u> 1 pg. 87.5 KB	MANDATE ISSUED.(CMC, JHN and ADH) [11585750] (CW) [Entered: 02/05/2020 06:39 AM]
04/24/2020	<input type="checkbox"/> <u>57</u> 1 pg. 90.33 KB	Filed clerk order (Deputy Clerk: cw): The mandate issued on 02/05/2020 is recalled as issued in error. [11670910] (CW) [Entered: 04/24/2020 11:35 AM]
04/24/2020	<input type="checkbox"/> <u>58</u> 1 pg. 98.62 KB	PARTIAL MANDATE ISSUED issued as to all parties except Aurora Loan Services, LLC, Mortgage Electronic Registration Systems, Inc., Theodore Schultz, and Trisha McMullin. (CMC, JHN and ADH) [11670921] (CW) [Entered: 04/24/2020 11:38 AM]

Reissuing the Mandates all over again.

08/10/2020	<input type="checkbox"/> <u>61</u> 1 pg. 95.47 KB	PARTIAL MANDATE ISSUED. AFFIRMED as to all parties except Aurora Loan Services, LLC, Mortgage Electronic Registration Systems, Inc., Theodore Schultz, and Trisha McMullin. (BGS, JHN and ADH) [11782293] (CW) [Entered: 08/10/2020 07:35 AM]
12/01/2020	<input type="checkbox"/> <u>64</u> 1 pg. 92.85 KB	MANDATE ISSUED.(BGS, JHN and ADH) [11910277] (CW) [Entered: 12/01/2020 07:14 AM]

Case: 18-15202, 12/01/2020, ID: 11910277, DktEntry: 64, Page 1 of 1

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED
DEC 01 2020
MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

SALMA AGHA-KHAN, M.D., M.D.,

No. 18-15202

Plaintiff - Appellant,

D.C. No. 2:16-cv-01124-JCM-NJK
U.S. District Court for Nevada, Las
Vegas

v.

PACIFIC COMMUNITY
MORTGAGE, INC., a suspended
California Corporation, its successors
and assigns; et al.,

MANDATE

Defendants - Appellees.

The judgement of this Court, entered November 09, 2020, takes effect this
date.

This constitutes the formal mandate of this Court issued pursuant to Rule
41(a) of the Federal Rules of Appellate Procedure.

FOR THE COURT:

MOLLY C. DWYER
CLERK OF COURT

Page 58

WRIT OF CERTIORARI (Originating Ninth Circuit Case 18-15202)

The Clerk even "Withdrew" Order issued by Judges. An Order issued by a Judge must be vacated by a Judge and not the Clerk. Still unsigned.

07/17/2020 59
1 pg. 85.58 KB

Filed order (CONSUELO M. CALLAHAN, JACQUELINE H. NGUYEN and ANDREW D. HURWITZ): The order filed on January 14, 2020 (Docket Entry No. [55]) is hereby withdrawn. A replacement order will be filed concurrently with this order. [11757150] (AF) [Entered: 07/17/2020 02:23 PM]

FRAP Rule 45

(c) NOTICE OF AN ORDER OR JUDGMENT. Upon the entry of an order or judgment, the circuit clerk must immediately serve a notice of entry on each party, with a copy of any opinion, and must note the date of service on the docket. Service on a party represented by counsel must be made on counsel.

(d) CUSTODY OF RECORDS AND PAPERS. The circuit clerk has custody of the court's records and papers. Unless the court orders or instructs otherwise, the clerk must not permit an original record or paper to be taken from the clerk's office. Upon disposition of the case, original papers constituting the record on appeal or review must be returned to the court or agency from which they were received. The clerk must preserve a copy of any brief, appendix, or other paper that has been filed.

Clerk can only provide notices and keep records according to their duties in FRAP Rule 45. Yet incredibly they failed to adhere to their duties in full knowledge of supervising Judges and other

The Clerk without any formal legal education, degree was citing statutes, circuit rules, case law was producing one "Order" after another. "Court" and "Clerk" were used interchangeably, treated as one to represent the same entity/authority in this Appeal. Clerk even recalled Judges Orders and Issued Mandates, recalled them and reissued Partial Mandates and Mandates.

Surely any reasonable person and this Supreme Court will see these actions constitute deliberate and knowing fraud to actively prevent Petitioner from accessing Courts, receiving Justice and recovering her stolen home and monies by Respondents. Once again these Ninth Circuit actions validate Petitioner's Claims.

C. NINTH CIRCUIT FAILED TO PERFORM DE NOVO REVIEW EVEN
WITH SEC FRAUD ALLEGATION

The Ninth Circuit granted Summary Affirmance to District Courts ruling ignoring case law, even reversing their case law, statutes and constitution (See destroyed Opposition to Summary Affirmance Ex B Pg 21-24 in Appendix)

IV. DE NOVO STANDARD REVIEW IS MANDATED

The United States Supreme Court stated in *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 322, 127 S.Ct. 2499, 168 L.Ed.2d 179 (2007) that, in assessing securities fraud claims, "courts must consider the complaint in its entirety, as well as other sources courts ordinarily examine when ruling on Rule 12(b)(6) motions to dismiss, in particular, documents incorporated into the complaint by reference, and matters of which a court may take judicial notice."

<https://www.lexisnexis.com/lawschool/resources/p/casebrief-tellabs-inc-v-makor-issues-rights-ltd.aspx>

The appellate court must consider the matter anew, as if no decision previously had been rendered. See *Freeman v. DirecTV, Inc.*, 457 F.3d 1001, 1004 (9th Cir. 2006). Review is "independent," see *Agyeman v. INS*, 296 F.3d 871, 876 (9th Cir. 2002), or "plenary," see *Stilwell v. Smith & Nephew, Inc.*, 482 F.3d 1187, 1193 (9th Cir. 2007); *United States v. Waites*, 198 F.3d 1123, 1126 (9th Cir. 2000).

12 De novo review means that this court views the case from
13 the same position as the district court. Lawrence v. Dep't of
14 Interior, 525 F.3d 916, 920 (9th Cir. 2008); see also Lewis v.
15 United States, 641 F.3d 1174, 1176 (9th Cir. 2011).

9 De novo review is well settled as it applies to Summary
10 Judgment. A district court's decision to grant partially grant or
11 deny summary judgment or a summary adjudication motion is
12 reviewed de novo. Branch Banking & Tr. Co. v. D.M.S.I., LLC,
13 871 F.3d 751, 759 (9th Cir. 2017); Mull for Mull v. Motion Picture
14 Indus. Health Plan, 865 F.3d 1207, 1209 (9th Cir. 2017); Szajer
15 v. City of Los Angeles, 632 F.3d 607, 610 (9th Cir. 2011);
16 Universal Health Servs., Inc. v. Thompson, 363 F.3d 1013, 1019
17 (9th Cir. 2004).

20 On review, the appellate court must determine, viewing the
21 evidence in the light most favorable to the nonmoving party,
22 whether there are any genuine issues of material fact and whether
23 the district court correctly applied the relevant substantive law.

21 On review, the appellate court must determine, viewing the
22 evidence in the light most favorable to the nonmoving party,
23 whether there are any genuine issues of material fact and whether
24 the district court correctly applied the relevant substantive law.

1 Frudden v. Pilling, 877 F.3d 821, 828 (9th Cir. 2017); Olsen v.
2 Idaho State Bd. of Medicine, 363 F.3d 916, 922 (9th Cir.
3 2004).[123]

4 The court must not weigh the evidence or determine the truth
5 of the matter but only determine whether there is a genuine issue
6 for trial. Balint v. Carson City, 180 F.3d 1047, 1054 (9th Cir.
7 1999). Summary judgment is not proper if material factual issues
8 exist for trial. Simo v. Union of Needle trades, 322 F.3d 602, 610
9 (9th Cir. 2003).

1 No deference is given to the district court. See Bamientos v.
2 Wells Fargo Bank, N.A., 633 F.3d 1186, 1188 (9th Cir. 2011); Ditto
3 v. McCurdy, 510 F.3d 1070, 1075 (9th Cir. 2007); Rabkin v.
4 Oregon Health Sciences Univ., 350 F.3d 967, 971 (9th Cir. 2003)

5 **"When de novo review is compelled, no form of**
6 **appellate deference is acceptable."**

7 Perhaps it was this reminder of Ninth Circuits own case law established that
led them to destroy this particular filing. Petitioner hopes that Supreme Court will
Order to include these destroyed failing into Appeal Record.

D. NINTH CIRCUIT JUDGES VIOLATED JUDICIAL OATH, JUDICIAL CANONS, CODES OF CONDUCT AND ETHICS

Ninth Circuit Judges by delegating the case to Clerk for "Adjudication", violated their Oath, Judicial Canons, Codes of Conduct and Ethics. The Judges had the Clerk performing legal analysis, Issuing OSC, Recalling OSC, Issuing Orders, Withdrawing Orders, Issuing Mandates, Recalling Mandates, Issuing Partial Mandates and Dismissing Appeals.

Judges Oath does not include Clerks and contains mandatory language.

28 U.S. Code § 453 - Oaths of justices and judges

"Each justice or judge of the United States shall take the following oath or affirmation before performing the duties of his office: "I, _____, do solemnly swear (or affirm) that I will administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent upon me as ____ under the Constitution and laws of the United States. So help me God."

According to Judicial Canons 1, 2 and 3 "A Judge Should Perform the Duties of the Office Fairly, Impartially and Diligently..... Should Uphold the Integrity and Independence of the Judiciary..... Should Avoid Impropriety and the Appearance of Impropriety in all Activities".

Judicial Canon 3 set the standards for Judges to adhere to. These include

(A) Adjudicative Responsibilities: This responsibility was deliberately and knowingly violated by the Ninth Circuit Judges when they delegated the case to their Clerk for Adjudication. Instead of the Judges judging the case on its merits the Clerk did. The Clerk performed legal analysis, quoted statutes, law and reached fact, when the Clerk had not spent one day in law college and did not have a law degree to provide basis for such actions.

The Clerk issued eighteen (18) Orders out of total twenty-one (21) orders in the Appeal (ECF 2, 4, 5, 6, 8, 14, 15, 16, 24, 33, 47, 53, 54, 56, 57, 58, 61, 64). Only three Orders entered in the Docket by the Clerk stated Judges full names but not on the actual Orders. The actual "Order" lacked names of issuing authority and were not even signed so that authenticity could not be established. (ECF 55, 59, 60). Last names of Judges stated on Orders were as follow

Before: CALLAHAN, NGUYEN, and HURWITZ, Circuit Judges.

Before: CALLAHAN, NGUYEN, and HURWITZ, Circuit Judges.

And after switching Defendant-Judge Callahan with Silverman (ECF 60)

Before: SILVERMAN, NGUYEN, and HURWITZ, Circuit Judges.

Judges unsigned Order was even withdrawn by the Clerk.

The Judiciary Act of 1789 authorized the Supreme Court and the judge of each district court to appoint a clerk to assist with the administration of federal judicial business in those courts. Nothing in this act permits the determination of legal issues. In 1870 the Department of Justice was established and assumed responsibility for supervising the clerks and their accounts. Nothing in the policies of USDOJ permits determination of legal issues by a Clerk of Court..

Yet, the Clerk here acted as a Judge as directed by the Judges shamelessly.

(B). Administrative Responsibilities: See Canon 3

(2) A judge should not direct court personnel to engage in conduct on the judge's behalf or as the judge's representative when that conduct would contravene the Code if undertaken by the judge.

Ninth Circuit Judges discharged their duty of administering other Judges and Court personnel when the Appeal was delegated to the Clerk for adjudication. Clerk issued OSC, which is a legal substantive action. If purely administrative then it should have read so. The Clerk also dismissed the same OSC. The Clerk performed legal research to provide cite statutes, case law to reach fact. The Clerk also recalled Judges Order in unsigned Order which only a Judge can recall. The Clerk issued Mandates, recalled them and reissued Partial Mandates and Mandates.

It is illegal to practice of law in California unless the person is an active member of the Bar. Ninth Circuit Clerk illegally practiced law which is a crime.

California Business and Professions Code 6125 & 6126. You may not practice law in California unless you are an active member of the California State Bar.

These are all violations of Clerk's duties and complete failure of Ninth Circuit Judges to perform their supervisory/administrative duty.

Ninth Circuit Judges violated Judicial Canons deliberately and knowingly to deny Petitioner her constitutional rights.

(C). Disqualification:

(1) A judge **shall** disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned.....

Use of word "shall" denotes mandatory connotation and not an option.

Petitioner had filed three motions for Disqualification of Ninth Circuit where the third motion was destroyed by Ninth Circuit. The titles of Petitioners Motions were changed in the Docket.

First Motion for Disqualification, ECF 17, was not even acknowledged. The Motion was incorrectly entered in the Docket and thus not opposed or ruled upon

12/21/2018 17 Filed Appellant Salma Agha-Khan, M.D. motion to reconsider order of the Clerk of the Court filed on 11/01/2018. Deficiencies: None. Served on 12/21/2018. [11217834] (CW) [Entered: 03/06/2019 10:37 AM]

Where the actual Title of Motion was

14 **APPELLANT'S MOTION FOR RELIEF FROM CLERK'S ORDER**
15 **DISMISSING APPEAL DESPITE APPELLANT REPEATEDLY**
16 **PROVIDING PROOF OF REPEAT PAYMENTS MADE TO**
17 **DISTRICT COURT IS VIOLATION OF APPELLANT'S CIVIL**
18 **RIGHTS SUGGESTING COLLUSION BETWEEN NINTH**
19 **CIRCUIT AND DEFENDANTS MANDATING RECUSAL**

Second Motion for Disqualification, ECF 42, was not ruled upon till dismissal of Appeal on January 14, 2020, ECF 55. Again, Motion title was changed

06/28/2019 42 Filed Appellant Salma Agha-Khan, M.D. motion 2nd mtn to disqualify Ninth Circuit. Deficiencies: None.
62 pg. 1.53 MB Served on 06/27/2019. [11349740] (CW) [Entered: 07/01/2019 08:06 AM]

Where the Motion title was

18 **APPELLANT'S SECOND MOTION TO DISQUALIFY**
19 **NINTH CIRCUIT BASED UPON MANDATORY AND**
20 **SELF-EXECUTING DISQUALIFICATION STATUTES**
21 **28 U.S.C. §§ 144 and 455; DECLARATION OF APPELLANT**

Third Motion for Disqualification: received by the Clerk on November 03, 2019 was destroyed by Ninth Circuit. Title of Motion

17 **APPELLANT'S THIRD MOTION TO DISQUALIFY**
18 **NINTH CIRCUIT BASED UPON MANDATORY AND**
19 **SELF-EXECUTING DISQUALIFICATION STATUTES**
20 **28 U.S.C. §§ 144 and 455; AND JUDICIAL CODES OF**
21 **CONDUCT AND ETHICS AS WELL AS JUDICIAL CANONS 1,**
22 **2, 3; AFFIDAVIT/DECLARATION OF APPELLANT**

Surely Three Disqualification Motions with required affidavits were enough for Ninth Circuit to disqualify themselves? Surely Judges impartiality was not just “reasonably” but clearly in question. The malicious intent of Ninth Circuit fueled by personal gains blurred all statutes, laws, constitution by comparison.

(D). Remittal of Disqualification: Where Canon 3 states

The judge may participate in the proceeding if, after that disclosure, the parties and their lawyers have an opportunity to confer outside the presence of the judge, all agree in writing or on the record that the judge should not be disqualified, and the judge is then willing to participate. The agreement should be incorporated in the record of the proceeding.

Thus the three requisites based upon Judicial Canons to continue on case following recusal by mandatory, self-executing statutes 144 and 455 are

1. Disclosure by the Judge
2. Approval of parties following Judges disclosure
3. Agreement allowing the Judge to continue incorporated in Court Records

In Appeal herein there was no Judges “disclosure” or agreement between any party or any entry in the Appeals records regarding one. Petitioner’s repeat reminders as to Disqualified status of Ninth Circuit since 21 December 2018 were not acknowledged, ignored and destroyed.

Petitioner’s Constitutional rights of free unbiased access to courts, due process, equal protection etc were denied with deliberate and knowing violations of Judicial Oath and Canons. Petitioner was actively prevented from recovering her stolen property and money. These actions establish validity of her claims. Petitioner now turns to Supreme Court for restoration of law and her Constitutional Rights.

**E. NINTH CIRCUIT LACKED JURISDICTION TO CONTINUE IN APPEAL
AFTER FILING OF PETITIONER'S FIRST MOTION FOR THEIR
RECUSAL BASED UPON MANDATORY SELF-EXECUTING STATUTES**

Petitioner First Motion for Disqualification of Ninth Circuit and its Judges filed December 21, 2018. When Brief entered in the Docket on October 25, 2018. Motion was ignored. (Before Appeal "accepted" by Clerk on April 02, 2019.)

10/25/2018 10 Received original and 7 copies of Appellant Salma Agha-Khan, M.D. opening brief (Informal: No) 93 pages. 4 copies of excerpts of record in 6 volumes. Served on 10/14/2018. Major deficiencies: fee due. [11062595] (SML) [Entered: 10/26/2018 02:59 PM]

04/02/2019 19 Fee status changed ([Case Number 18-15202: Paid]). (See 4/2/2019 order [18] of the court) [11250221] (AF) [Entered: 04/02/2019 01:21 PM]

Note: The Clerk is calling "Clerical Orders" as "Court Orders". So that Clerk and Court seem to be the same entity.

02/28/2018 2 Filed clerk order (Deputy Clerk: MF): It appears that the district court's order challenged in this appeal may not have disposed of the action as to all claims and all parties. Within 21 days after the date of this order, appellant shall move for voluntary dismissal of this appeal or show cause why it should not be dismissed for lack of jurisdiction. See Fed. R. Civ. P. 54(b); Chacon v. Babcock, 640 F.2d 221 (9th Cir. 1981). If appellant elects to show cause, a response may be filed within 10 days after service of the memorandum. If appellant does not comply with this order, the Clerk shall dismiss this appeal pursuant to Ninth Circuit Rule 42-1. Briefing is suspended pending further order of the court. [10780676] (CKP) [Entered: 02/28/2018 10:46 AM]

07/30/2018 5 Filed clerk order (Deputy Clerk: MF): On May 24, 2018, the court dismissed this appeal for failure to prosecute because appellant had not responded to the February 28, 2018 order to show cause. See 9th Cir. R. 42-1. Appellant has now responded to the order to show cause. The motion to reinstate this appeal

And again

09/19/2018 8 Filed clerk order (Deputy Clerk: CO): On August 10, 2018, this court issued an order directing appellant to pay \$505.00 to the district court as the docketing and filing fees for this appeal, or file in this court a

04/02/2019 18 Filed clerk order (Deputy Clerk: MF): On December 4, 2018, the court dismissed this appeal for failure to prosecute because appellant had not paid the filing and docketing fees. See 9th Cir. R. 42-1. A review of

(Petitioner had paid the filing fee that was docketed by Clerk in a wrong case.)

Petitioner's Second Motion for Disqualification of Ninth Circuit and its Judges filed on June 28, 2019, ECF 42. Ignored till Appeal Dismissal on January 14, 2020. ECF 55.

06/28/2019 42 Filed Appellant Salma Agha-Khan, M.D. motion 2nd mtg to disqualify Ninth Circuit. Deficiencies: None.
62 ee. 1.53 MB Served on 06/27/2019. (111349740) (CW) [Entered: 07/01/2019 08:06 AM]

Petitioner's Third Motion for Disqualification of Ninth Circuit and its Judges filed on November 03, 2019 was destroyed by the Ninth Circuit.

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22
Ninth Circuit Case No. 18-15202											RECEIVED OFFICE OF THE CLERK U.S. COURT OF APPEALS PUBLIC INFORMATION UNIT										
Originating US District Court Case No. 2:16-cv-01124-JCM-NJK											2020 NOV -3 PM 12:46 FILED DOCKETED DATE INTIAL										
IN THE UNITED STATES COURT OF APPEALS																					
FOR THE NINTH CIRCUIT																					
Salma Agha-Khan Appellant-Plaintiff v. Pacific Community Mortgage, Inc., et al. Appellees-Defendants																					
APPELLANT'S THIRD MOTION TO DISQUALIFY NINTH CIRCUIT BASED UPON MANDATORY AND SELF-EXECUTING DISQUALIFICATION STATUTES 28 U.S.C. §§ 144 and 455; AND JUDICIAL CODES OF CONDUCT AND ETHICS AS WELL AS JUDICIAL CANONS 1, 2, 3; AFFIDAVIT/DECLARATION OF APPELLANT																					

This Motion is not in the Docket and was destroyed.

10/08/2019	<input type="checkbox"/> <u>53</u> 2 pg. 108.59 KB	Filed clerk order (Deputy Clerk: MKS): The court has received Aurora Loan Services, LLC's status report (Docket Entry No. [49]) and notice of entry of order extending the automatic stay imposed by 11 U.S.C. § 362 to certain non-debtor parties to this appeal (Docket Entry No. [39]). Appellate proceedings are stayed for Aurora Loan Services, LLC; Mortgage Electronic Registration Systems, Inc.; Theodore Schultz; and Trisha McMullin only. This appeal will proceed as to the remaining parties. The opposed motions for summary affirmance (Docket Entry Nos. [25], [30]) and appellant's motion for disqualification (Docket Entry No. [42]) will be addressed by separate order. The briefing schedule remains stayed pending further order of the court. [11458390] (AF) [Entered: 10/08/2019 03:35 PM]
12/17/2019	<input type="checkbox"/> <u>54</u> 2 pg. 125.64 KB	Filed clerk order (Deputy Clerk: MKS): This appeal has been held in abeyance as to Aurora Loan Services, LLC ("Aurora") since April 15, 2019, and as to Mortgage Electronic Registration Systems, Inc.

No Respondent filed opposition, perhaps because they were told not to by Ninth Circuit in ex parte communications unknown to Petitioner.

All Disqualification Motions were unopposed yet not acknowledged, ignored, destroyed and denied.

Recusal Statutes are mandatory and self-executing.

28 U.S.C § 144 – Extra Judicial Sources of Bias and Prejudice

“Whenever a party to any proceeding in a district court makes and files a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party, such judge shall proceed no further therein, but another judge shall be assigned to hear such proceeding.

The affidavit shall state the facts and the reasons for the belief that bias or prejudice exists, and shall be filed not less than ten days before the beginning of the term at which the proceeding is to be heard.....”

Destroyed Third Recusal Motion detailed “pre-existing” “extra Judicial Sources of Bias and Prejudice” exhibited towards the Petitioner. (App A)

28 U.S. Code § 455: Mandatory, Self-Executing statute

Disqualification of justice, judge, or magistrate judge

(a) Any justice, judge, or magistrate judge of the United States *shall disqualify himself* in any proceeding in which his impartiality might reasonably be questioned. (emphasis added)

(b) He shall also disqualify himself in the following circumstances:

(1) Where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding; (emphasis added)

- (2) Where in private practice he served as lawyer in the matter in controversy, or a lawyer with whom he previously practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a material witness concerning it;
- (3) Where he has served in governmental employment and in such capacity participated as counsel, adviser or material witness concerning the proceeding or ***expressed an opinion concerning the merits of the particular case in controversy***; (emphasis added)

The word "shall" disqualify means that disqualification is not optional and is in effect whether the Judge and or the Circuit accept it or not. The Ninth Circuit proceeded defiantly in this Appeal following their Disqualification for personal gains.

"Jurisdiction is the power to hear and determine the subject matter in controversy between parties to a suit, to adjudicate or exercise any judicial power over them; **the question is, whether on the case before a court, their action is judicial or extrajudicial, with or without the authority of law, to render a judgment or decree upon the rights of the litigant parties.**" *Rhode Island v. Massachusetts*, 37 U.S. 657, 718, 12 Pet. 657, 726, 9 L. Ed. 1233 (1838). (emphasis added)

U.S. Supreme Court stated such a court is "without authority, its judgments and orders are regarded as nullities. They are not voidable, but simply void" *Elliot v. Piersol*, 1 Pet. 328, 340, 26 U.S. 328, 340 (1828)

Surely malicious deliberate destruction of Petitioner's filings is not a routine judicial act so that Ninth Circuit lacked the authority to continue and their judgment is void. Petitioner is now hoping that this Supreme Court will reestablish the law and grant this Writ.

F. NINTH CIRCUIT JUDGES ACTING WITHOUT JURISDICTION LOST THEIR JUDICIAL IMMUNITY

This Supreme Court has defined "qualified immunity" of Judges

"Qualified immunity shields public officials performing discretionary functions from 1983 and Fourteenth Amendment liability 'insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known' See *Harlow v. Fitzgerald*, 457 U.S. 800, 818, 102 S.Ct. 2727, 73 L.Ed.2d 396 (1982).

Destroying Petitioner's filings, failing to recuse and follow law and statutes for personal gains are not "discretionary functions".

This Supreme Court has also been very clear in stating that if the Judge proceeds further when he lacks jurisdiction and loses immunity.

"A Judge who acts in the clear and complete absence of personal jurisdiction loses his judicial immunity". *Rankin v. Howard*, 633 F.2d 84-49 (9th Cir. 1980). Cert. denied, 451 U.S. 939, 101 S.Ct. 2020, 68 L.Ed.2d 326 (1981).

"We conclude that a judge's private, prior agreement to decide in favor of one party is not a judicial act. See also *Lopez v. Vanderwater*, 620 F.2d 1229, 1235-37 (7th Cir.1980) (judge not immune for "prosecutorial" acts prior to biased decision).⁹

Added

"When the Supreme Court first formulated the "clear absence" standard, however, it stated that the principle of immunity applied when there was "jurisdiction of both subject and person." *Bradley v. Fisher*, 80 U.S. (13 Wall.)

9. In *Sparks v. Duval County Ranch Co., Inc.*, 604 F.2d 976 (5th Cir.1979) (en banc), *aff'd sub nom. Dennis v. Sparks*, ___ U.S. ___, 101 S.Ct. 183, 66 L.Ed.2d 185 (1980), the Fifth Circuit held that a judge accused of accepting a bribe to enter an injunction was "unqualifiedly immune from suit for damages occasioned by his judicial act." 604 F.2d at 978. The Supreme Court granted certiorari on the issue of derivative immunity, 445 U.S. 942, 100 S.Ct. 1336, 63 L.Ed.2d 775 (1980), but denied certiorari on the issue of judicial immunity. 445 U.S. 943, 100 S.Ct. 1339, 63 L.Ed.2d 777 (1980).

335, 352 (1872), 20 L.Ed. 646.¹¹ An absence of personal jurisdiction may be said to destroy "all jurisdiction" Both must be met before a court has authority to adjudicate the rights of parties to a dispute."

Further adding

"But when a judge knows that he lacks jurisdiction, or acts in the face of clearly valid statutes or case law expressly depriving him of jurisdiction, judicial immunity is lost. See *Bradley v. Fisher*, 80 U.S. (13 Wall.) at 351 ("when the want of jurisdiction is known to the judge, no excuse is permissible"); *Turner v. Raynes*, 611 F.2d 92, 95 (5th Cir.1980) (*Stump* is consistent with the view that "a clearly inordinate exercise of unconfessed jurisdiction by a judge one so crass as to establish that he embarked on it either knowingly or recklessly-subjects him to personal liability").¹⁴

Also 42 U.S.C. 1983 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 citizens of the United States or other persons 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".

Ninth Circuits deliberate violations of laws, statutes, US Constitution to even criminally destroy Petitioner's filings maliciously were not "discretionary actions". They were malicious and Ninth Circuit has lost their Judicial Immunity.

11. Several courts have repeated this language indicating in dicta that both subject matter and personal jurisdiction are necessary to confer judicial immunity. See, e. g., *Duba v. McIntyre*, 501 F.2d 590, 592 (8th Cir.1974), cert. denied, 424 U.S. 975, 96 S.Ct. 1480, 47 L.Ed.2d 745 (1976) ("the judge must have both jurisdiction over the person and subject matter if he is to be immune from suit"); *Ryan v. Scoggin*, 245 F.2d 54, 58 (10th Cir.1957) (judge is immune for order or judgment when "court has jurisdiction of the subject matter and of the parties").

14. In *Stump*, although Indiana law did not expressly grant subject matter jurisdiction over sterilization petitions, the Court found it "more significant that there was no Indiana statute and no case law in 1971 prohibiting a circuit court, a court of general jurisdiction, from considering a petition of the type presented to Judge Stump." 435 U.S. at 358, 98 S.Ct. at 1105.

The implication is that, had there been Indiana law expressly prohibiting the defendant judge from exercising jurisdiction, a clear absence of jurisdiction would have been established. Here the plaintiff contends that Kansas law expressly prohibited the defendant judge from exercising jurisdiction over Rankin. If this contention is correct, the judge lost his immunity.

G. NINTH CIRCUIT'S APPLICATION OF 28 USC § 455, MANDATORY JUDICIAL RECUSAL STATUTE REEKS OF ABOLISHED "DOCTRINE TO SIT", VASTLY VARYING FROM ITS APPLICATION BY SUPREME COURT AND OTHER CIRCUITS. WHY IS THERE THS SPLIT?

Petitioner brings this issue for consideration under this Court's Rule 10 (a), specifically (a) as United States Ninth Circuit court of appeals has entered a decision in conflict with the decisions of other United States courts of appeal and Supreme Court – very confusing for the public.

28 U.S. Code § 455 - Disqualification of justice, judge, or magistrate judge
“(a) Any justice, judge, or magistrate judge of the United States **shall disqualify himself** in any proceeding in which his impartiality might reasonably be questioned.....” (emphasis added).

The current section § 455 is divided into two parts. Section §455(a) states the main disqualification standard, “catch all” according to Judge Kavanaugh. This is the broader amended statute. While subsection § 455(b) enumerates specific extra judicial circumstances in which a judge must recuse himself. “(1) Where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding....”.

According to the legislative history, the general language of section § 455(a) was intended to replace the subjective standard of the pre-1974 statute with a purely ‘*objective* test.’ H.R. REP. No. 1453, supranote 52, at 6354-55. H.R. REP.No. 1453, supra note 52, at 6355. The new standard was "designed to promote public confidence in the impartiality of the judicial process by saying, in effect, if there is a reasonable factual basis for doubting the judge's impartiality, he should disqualify himself and

let another judge preside over the case." Heeding this legislative history, most courts have adopted objective standard under § 455(a).

The First Circuit states in *El Fenix de Puerto Rico v. The M/Y Johanny* 36 F.3d 136 (1st Cir. 1994) "The recusal regimen under 28 U.S.C. § 455(a) in this circuit requires the presiding judge to determine "whether the charge of lack of impartiality is grounded on facts that would create a reasonable doubt concerning the judge's impartiality.....in the mind of reasonable [person]."*United States v. Cowden*, 545 F.2d 257, 265 (1st Cir. 1976), quoted in *United States v. Arache*, 946 F.2d 129, 140 (1st Cir. 1991)

The Second Circuit in *In Re Drexel Burnham Lambert Inc.* 861 F. 2d. 1307 used the Seventh Circuit's standard "...The test to be applied is an objective one which assumes that a reasonable person knows and understands all the relevant facts. See *Pepsico, Inc. v. McMillen* 764 F.2d 458, 460 (7th Circ. 1985)". In same case Second Circuit limited bias from extrajudicial conduct to § 455(b)(1) stating "Under § 455(b)(1) what a Judge learns or comes to believe in his judicial capacity 'is a proper basis for judicial observations, and the use of such information is not the kind of matter that results in disqualification'" *United States v. Bernstein*, 533 F. 2d 775, 7785 (2d Cir.)...."A determination of bias under this section must be based on extra-judicial conduct, not conduct arising in a trial setting"

The Third Circuit in *In Re Kensington Intern Ltd.* 353 F. 3d. 211 (3rd Cir. 2003) First identified the "standard for disqualification under § 455(a). Whenever a judge's impartiality "might reasonably be questioned" in a judicial proceeding", 28 U.S.C. § 455(a) requires that the judge disqualify himself." Third Circuit further stated "It is of no consequence that the judge is not actually biased because § 455(a) "concerns not only fairness to individual litigants, but, equally important, it concerns

'the public confidence in the judiciary, which may be irreparably harmed if a case is allowed to proceed before a judge who appears to be tainted.''" *Alexander v. Primerica Holdings Inc.*, 10 F.3d 155, 162 (3rd Cir. 1993)

The **Fourth Circuit** Court of Appeals has stated that "the question is not whether the judge is impartial in fact" but whether a reasonable person might doubt the judge's impartiality on the basis of all the circumstances. This standard makes disqualification more likely than the bias-in-fact test, and therefore is consistent with one of the main purposes of the 1974 amendments-to broaden the grounds for judicial disqualification."

The **Fifth Circuit** in *Trevino v. Johnson* 168 F.3d 173 (5th Cir. 1999) stated "455(a)....the general rule adopted in this and several other circuits is that "an appellate court, in passing on questions of disqualification.....should determine the disqualification on the basis of conduct which shows bias or prejudice or lack of impartiality by focusing on a party rather than counsel" *Davis v. Board of Sch. Comm'r's*, 517 F.2d 1044, 1052 (5th Cir. 1975)".

The **Sixth Circuit** Court of Appeals explained, "the standard to be applied under section § 455(a) is an objective one: whether the reasonable person, knowing all of the surrounding circumstances, would consider the judge to be impartial." *United States v. Norton*, 700 F.2d 1072, 1075 (6th Cir.), cert denied, 461 U.S. 910 (1983). The legal standard of 455 at Sixth Circuit is a broader one, suggesting a different test that is easier to satisfy. Section § 455(a) calls for an appearance-of-bias standard, requiring only that the allegation support a reasonable suspicion of bias. Sixth Circuit stated "If the question of whether Section(s) 455(a) requires disqualification is a close one, the balance tips in favor of recusal. *United States v.*

Dandy, 998 F.2d 1344, 1349 (6th Cir. 1993), “Where the question is close, the judge must recuse himself” Roberts v. Balar, 625 F.2d 125, 129 (6th Cir. 1980).

The **Seventh Circuit** in *U.S. v. State of Ala.*, 828 F.2d 1532 (11th Cir. 1987) stated ““Legal Standard: The guarantee to the defendant of a totally fair and impartial tribunal, and the protection of the integrity and dignity of the judicial process from any hint or appearance of bias is the palladium of our judicial system”.....”In 1974 Congress rewrote 28 U.S.C. § 455 to correct problems in the disqualification statutes.....In passing the amended 28 U.S.C. § 455, Congress broadened the grounds and loosened the procedure for disqualification in the federal courts.....the statute places a judge under a self-enforcing obligation to recuse himself.....The statute also did away with the “duty to sit” so the benefit of the doubt is now to be resolved in favor of recusal. Section § 455(a) requires a judge to disqualify itself when his “impartiality might reasonably be questioned”. Thus under Section § 455(a) an actual demonstrated prejudice need not exist in order for judge to recuse himself.”

The **Eight Circuit** has a precedent as stated in *Fletcher v. Conoco Pipe Line Co* 323 F. 3d 661 (8th Cir. 1994) “where in the language of 28 U.S.C. § 455(a), district judge’s ‘impartiality might reasonably be questioned’ and “We apply an objective standard of reasonableness....”

The **Tenth Circuit** in *Nichols v. Alley* 71 F.3d. 371 (10th Cir. 1995) stated “The goal of section §455(a) is to avoid even the appearance of partiality. If it would appear to a reasonable person that a judge has knowledge of facts that would give him an interest in the litigation than an appearance of partiality is created.....”

The **Eleventh Circuit** in *Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11th Cir. 1981) (en banc) stated “We hold the decisions of the United States Court of

Appeals for the Fifth Circuit, as that court existed on September 30, 1981..... shall be binding as precedent in the Eleventh Circuit".

Judge Kavanaugh in **District of Columbia** *Baker Hostetler v. U. S. Dept of Commerce* 471 F.3d 1355 (D. C. Cir.2006) stated "Section § 455(a)'s general "catchall" provision requires recusal when a judge's "impartiality might reasonably be questioned". That section covers situations not addressed by § 455(b)"

U. S. Supreme Court in *Liljeberg v. Health Services Acquisition Corp.*, 486 U.S. 847, 858 n. 7, 108 S. Ct. 2194, 100 L. Ed.2d 855 (1988). Congress amended Section 455 in 1974 "to clarify and broaden the grounds for judicial disqualification and to conform with the recently adopted ABA Code of Judicial Conduct, Canon 3C (1974)." "Prior to 1974, both the technical and legal sufficiency requirements of § 144 had been construed strictly in favor of judges. Courts also operated under the so-called "duty to sit" doctrine which required a judge to hear a case unless a clear demonstration of extra-judicial bias or prejudice was made.....In passing the amended 28 U.S.C. § 455,.....the statute places a judge under a self-enforcing obligation to recuse himself.....The statute did away with the "duty to sit" so the benefit of the doubt is now to be resolved in favor of recusal". See *U. S. v. State of Ala.* 828 F2d. 1532 (11th Cir. 1987)

U. S. Supreme Court in *Liljeberg v. Health Services Acquisition Corp* 486 U.S. 847 108 S. Ct. 2194, 100 L. Ed.2d 855 (1988) held "Violation of § 455(a) – is established when a reasonable person, knowing the relevant facts, would expect that a judge knew of the circumstances creating an appearance of partiality..." and stated "Vacatur was a proper remedy for the § 455(a) violation". Congress aimed to promote public confidence in the judiciary. Id. 108 S. Ct. at 2202.

U. S. Supreme Court in *Liteky v. United States*, 510 U.S. 540, 555 S.Ct. 1147, 1157, 127 L.Ed.2d 474 (1994). “Subsection (a).....entirely new “catchall” recusal provision, covering both “interest or relationship” and “bias or prejudice grounds,.....but requiring them all to be evaluated on an objective basis, so that what matters is not the reality of bias or prejudice, but its appearance. Quite simply and quite universally, recusal was required whenever “impartiality might reasonably be questioned.” ”.....“§ 455(a) proscribes all partiality, not merely the “personal” sort”.

Supreme Court stated “It is wrong in theory.....to suggest.....that “extrajudicial source” is the only basis for establishing disqualifying bias and prejudice”. They established the secondary nature of extrajudicial source by adding “A similar “plain language” argument could be made, however, with regard to § 144 and § 455(b)(1): they apply whenever bias or prejudice exists, and not merely when it derives from an extrajudicial source.”

U. S. Supreme Court in *Offutt v. United States*, 348 U.S. 11 (1954) stated. “justice must satisfy the appearance of justice.” The 1972 ABA Code of Judicial Conduct mandated that the judiciary avoid impropriety and the appearance of impropriety. Supreme Court justices, including Justice John Harlan, put the appearance of justice at the core of the Due Process Clause.

Despite Supreme Court’s stance and same stance of all other Circuits stance (where 28 U.S.C. § 455(a) is the “catchall” for recusal). The Ninth Circuits uses subsection § 455(b)(1), concentrating on extrajudicial sources only. Ninth Circuit still adheres to the obsolete “duty to sit” doctrine abolished in 1974 when Congress amended Section § 455.

The Ninth Circuit in *United States v. Sibla*, 624 F.2d 864 (9th Cir. 1980) stated “The test for personal bias or prejudice in section § 144 is identical to that in section § 455(b) (1), and the decisions interpreting this language in section § 144 are controlling in the interpretation of section § 455(b) (1). *United States v. Olander*, 584 F.2d 876, 882 (9th Cir. 1978); see *United States v. Carignan*, 600 F.2d 762, 764 (9th Cir. 1979).we have ruled that section (b)(1) simply provides a specific example of a situation in which a judge's 'impartiality might reasonably be questioned' pursuant to section § 455(a) *Olander*, 584 F.2d at 882.....a matter which rests within the sound discretion of the judge..... As with section § 144, the provisions of section § 455(a) & (b) (1) require recusal only if the bias or prejudice is directed against a party and stems from an extrajudicial source.” *Carignan*, 600 F.2d at 764; Davis, 517 F.2d at 1052.

Ninth Circuit’s approach has been sharply criticized and contradicts U. S. Supreme Court and other Circuits stance narrowing the disqualification criteria instead of broadening it as intended by Congress and legislature.

Ninth Circuit’s emphasis on “extra judicial” source is unrealistic in most cases as Judges do not come bearing flags that they have bias against Petitioner or ties to defendants and are there to benefit themselves, their friends and family. In case herein, however, Judge Callahan dd come bearing the flag of personal gains, vendetta, retaliation as he was simultaneously defending his actions in Petitioners case fled in Nevada District Bankruptcy with two other fellow judges. These personal judicial gains on Defendant-Judge Callahan and Ninth Circuit established extra judicial source for disqualification, immediately apparent to any reasonable person.

In Petitioner’s Appeal, Ninth Circuit ignored all the above issues instead of enforcing 28 U.S.C. § 455, failed to recuse themselves to issue dismissal citing an

inapplicable case while three of their Judges were defending their actions in Nevada Bankruptcy Court. (NV Bk. Case No. 19-01074-ABL-GS).

Defendant-Judge Callahan and Ninth Circuits violated the statute, 28 U.S.C. § 455 and as addressed in **Canon 3 “(C) Disqualification.** (1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned.....”. A judge is also required by the same Canon “**(D) Remittal of Disqualification.** Instead of withdrawing from the proceeding, a judge disqualified by Canon 3C(1) may, except in the circumstances specifically set out in subsections (a) through (e), disclose on the record the basis of disqualification....”

No disclosure was made by the Defendant-Judge Callahan or Ninth Circuit, no permission sought to continue on the case from parties and hence no documentation in court records. Ninth Circuit even destroyed Petitioner's Third Motion for their Disqualification while ignoring the First Motion, awarding the unopposed Second Motion in Appeal Dismissal Note (ECF 4, 42, 55, 63)

Do these actions herein any kind of appearance of impartiality? Can any reasonable person even remotely believe that above actions were not malicious, biased and that such prejudice required recusal and that the judgments procured were not fraudulent? And the dismissal of Appeal by recused Judges not void?

To a reasonable person it seems these Canons do not apply to Judges at all and are just writings to fill pages of books to fill libraries. Petitioner is now turning to the US Supreme Court to enforce execution of US Statutes, Constitution and laws including their own case law.

H. NINTH CIRCUIT HAS INCONSISTENT RULINGS WHERE RULING IN APPEAL HEREIN CONTRADICTS THEIR OWN PRIOR RULINGS

In case herein Ninth Circuit granted Summary Affirmance to District Courts Order flipping and contradicting their own prior rulings. Not to mention that Petitioner's Opposition to Summary Affirmance received by Ninth Circuit on November 03, 2019 was destroyed by Ninth Circuit. See

1. Kester v. Citimortgage, Ninth Circuit Memorandum decision (2017) stated

"The plaintiff must have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision."

Standard established by Ninth Circuit as to review of judgment by District Court was not followed.

Petitioner's one million dollar home was stolen by self-proclaimed Assignees of a non-existing Lender, claimed a non-existing loan to collect over \$5,000.00 er month as mortgage forcing Petitioner not Bankruptcy. Also the non-existing loan was stated to be fully paid off in SEC filings within few months of origination. Same imposters became Creditor in Petitioner's Bankruptcy, obtained relief by filing forged title documents signed by well-established robo-signers. They also fraudulently enrolled Petitioner in Loan Modification for non-existing loan during which they illegally sold her property.

Were any of these Respondent actions not able to be "redressed by a favorable judicial decision" according to above standard?

2. Also in Kester Ninth Circuit stated "In re Mortg. Elec. Registration Sys. Inc. 754 F.3d 772, 783-84 (9th Cir. 2014) (allegations that defendants recorded documents were

"invalid because they were 'robo-signed' (forged)" sufficient to state a claimwithout any analysis of materiality.)"

Standards established by Ninth Circuit as to robo-signed and forged title documents were not followed.

Petitioner alleged that self-proclaimed Assignees of non-existing Lender started recording forged title documents six years after fraud loan origination and pay-off, when she "defaulted" on fraud mortgage payments illegally getting collected from her by Respondents. All recordings were signed by well-established robo-signers such as Theodore Schultz, Mary Jane Sarne. Surely these had to be voided according to above ruling?

3. In Re MERS, that these allegation alone made the complaint plausible. Another one of Ninth Circuit's case law not followed by Ninth Circuit.

4. Also see Lucas v. Dep't of Corr., 66 F.3d 245, 248 (9th Cir. 1995); Flowers v. First Hawaiian Bank, 295 F.3d 966, 976 (9th Cir. 2002); Gerber v. Hickman, 291 F.3d 617, 623 (9th Cir. 2002) (en banc); Thinket Ink Info. Res., Inc. v. Sun Microsystems, Inc., 368 F.3d 1053, 1061 (9th Cir. 2004).

Standard established by Ninth Circuit as to court's denial of leave to amend complaint to add additional civil rights claims is reviewed by Ninth Circuit as abuse of discretion. Standards established by Ninth Circuit as to Dismissal of a Pro Se complaint without leave to amend is reviewed as abuse of discretion.

Contradicted in Appeal herein. Petitioner upon discovery of new facts asked to Amend her Complaint. Petitioner was asked by the District Court to submit the First Amended Complaint for review which she did. (Comp. Doc # 105 Ex 1)

5. *Swartz v. KPMG LLP*, 476 F.3d 756, 764 (9th Cir. 2007).

Standard established by Ninth Circuit that a complaint alleging fraud or mistake must include allegations of the time, place, and specific content of the alleged false representations and the identities of the parties involved. Not followed.

Petitioner's Complaint and Appeal alleged fraud with specificity and detail even providing of copies of legal forged documents recorded and presented to various Courts by Respondents.

6. *NL Indus., Inc. v. Kaplan*, 792 F.2d 896, 898 (9th Cir. 1986)

Standard established by Ninth Circuit in considering whether the complaint is sufficient to state a claim, the court will take all material allegations as true and construe them in the light most favorable to the Appellant.

Contradicted by Ninth Circuit.

7. *United States of America v. Nicholas Lindsey* (9th Cir. No. 14-10004). "The Panel affirmed convictions in mortgage fraud case". Where Appellee had "falsified loan documents" and perpetrated "wire fraud". Court identified a "scheme", "use of wire....." and "specific intent to defraud" *United States v. Jinian* 725 F.3d 954, 960 (9th Cr. 2013)." Ninth Circuit awarded of \$2,286,911 restitution and prison time.

8. *United States v. Dimiceli* (9th Cir. Case No. 16-10157. Aug 19, 2019 Opinion) "mail fraud" and "false statements". Ninth Circuit awarded of \$2,076,917 restitution and prison time.

In Petitioner's case no attention was paid to wire fraud, mail fraud, mortgage Fraud etc perpetrated by Respondents that enacted a scheme to become self-proclaimed assignees of non-existing lender and collect mortgage on non-existing loan collecting over \$5,000.00 per month for about 5 years mortgage. Also falsifying claims and later forged documents recorded and presented to Courts for fraud relief and illegally sell Petitioner's home was ignored. Few more contradictions.

9. Unsher v. City of Los Angeles 828 F.2d 556 (9th Cir. 1987). This Court stated

"For purposes of reviewing on Appeal the dismissal of a complaint we must accept as true the Plaintiff's allegations of fact. Western Reserve Oil Gas Co. v. New, 765 F.2d 1428, 14 30 (9th Cir. 1986)"

No review was performed as the Appeal was delegated to Clerk for "Adjudication" who lacking the authority performed legal research and reached conclusions to dismiss the Appeal using inapplicable case law.

10. Regarding De Novo Review Ninth Circuit's few cases are listed below:

a. A court's decision to dismiss a § 1983 action pursuant to Rule 12(b)(6) is reviewed de novo. See Watson v. Weeks, 436 F.3d 1152, 1157 (9th Cir. 2006);

Kirtley v. Rainey, 326 F.3d 1088, 1092 (9th Cir. 2003); Knox v. Davis, 260 F.3d 1009, 1012 (9th Cir. 2001); Zimmerman v. City of Oakland, 255 F.3d 734, 737 (9th Cir. 2001).

b. The court's decision whether a party is immune from a § 1983 action is reviewed de novo. See Bardzik v. County of Orange, 635 F.3d 1138, 1144 (9th Cir. 2011); Webb v. Sloan, 330 F.3d 1158, 1163 n.4 (9th Cir. 2003); Cortez v. County of Los Angeles, 294 F.3d 1186, 1188 (9th Cir. 2002).

c. More case law established by Ninth Circuit includes *Freeman v. DirecTV, Inc.*, 457 F.3d 1001, 1004 (9th Cir. 2006); *Agyeman v. INS*, 296 F.3d 871, 876 (9th Cir. 2002), *Stilwell v. Smith & Nephew, Inc.*, 482 F.3d 1187, 1193 (9th Cir. 2007); *United States v. Waites*, 198 F.3d 1123, 1126 (9th Cir. 2000). *Lawrence v. Dep't of Interior*, 525 F.3d 916, 920 (9th Cir. 2008); *Lewis v. United States*, 641 F.3d 1174, 1176 (9th Cir. 2011); *Barrientos v. Wells Fargo Bank, N.A.*, 633 F.3d 1186, 1188 (9th Cir. 2011); *Ditto v. McCurdy*, 510 F.3d 1070, 1075 (9th Cir. 2007); *Rabkin v. Oregon Health Sciences Univ.*, 350 F.3d 967, 971 (9th Cir. 2003); *Branch Banking & Tr. Co. v. D.M.S.I., LLC*, 871 F.3d 751, 759 (9th Cir. 2017); *Mull for Mull v. Motion Picture Indus. Health Plan*, 865 F.3d 1207, 1209 (9th Cir. 2017); *Szajer v. City of Los Angeles*, 632 F.3d 607, 610 (9th Cir. 2011); *Universal Health Servs., Inc. v. Thompson*, 363 F.3d 1013, 1019 (9th Cir. 2004); *Frudden v. Pilling*, 877 F.3d 821, 828 (9th Cir. 2017); *Olsen v. Idaho State Bd. of Medicine*, 363 F.3d 916, 922 (9th Cir. 2004). [123]; *Balint v. Carson City*, 180 F.3d 1047, 1054 (9th Cir. 1999); *Simo v. Union of Needle trades*, 322 F.3d 602, 610 (9th Cir. 2003).

As stated by Ninth Circuit “**When de novo review is compelled, no form of appellate deference is acceptable.**”

10. United States Supreme Court stated in *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 322, 127 S.Ct. 2499, 168 L.Ed.2d 179 (2007) that, in **assessing securities (SEC) fraud claims**,

“courts must consider the complaint in its entirety, as well as other sources courts ordinarily examine when ruling on Rule 12(b)(6) motions to dismiss, in particular, documents incorporated into the complaint by

reference, and matters of which a court may take judicial notice.” (emphasis added)
<https://www.lexisnexis.com/lawschool/resources/p/casebrief-tellabs-inc-v-makor-issues-rights-ltd.aspx>

11. United States v. Sibla, 624 F.2d 864 (9th Cir. 1980).

“The test for personal bias or prejudice in section § 144 is identical to that in section § 455(b) (1), and the decisions interpreting this language in section § 144 are controlling in the interpretation of section § 455(b) (1). United States v. Olander, 584 F.2d 876, 882 (9th Cir. 1978); see United States v. Carignan, 600 F.2d 762, 764 (9th Cir. 1979).we have ruled that section (b)(1) simply provides a specific example of a situation in which a judge's 'impartiality might reasonably be questioned' pursuant to section § 455(a) Olander, 584 F.2d at 882.....a matter which rests within the sound discretion of the judge..... As with section § 144, the provisions of section § 455(a) & (b) (1) require recusal only if the bias or prejudice is directed against a party and stems from an extrajudicial source.” Carignan, 600 F.2d at 764; Davis, 517 F.2d at 1052.

Appellant seeks a full review under all the above standards.

Surely Supreme Court knows there is significantly greater case law as to establishing these standards and other more intricate laws violated in this case which cannot be not cited due to word limitations. Also deliberate criminal destruction of Petitioner's filings establishes Petitioner's Claim. Petitioner hopes that this Court will establish law so that she may receive Justice denied to her.

I. NINTH CIRCUIT'S JUDICIAL PROCEEDINGS WERE DEPARTED FROM USUAL COURSE, LAWS AND STATUTES, DIRECTLY VIOLATING THEM

Petitioner is raising this issue for this Court's consideration pursuant to Rule 10 (a): United States Ninth Circuit has so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this US Supreme Court's supervisory power.

1. Ninth Circuit DESTROYED Petitioner's filings deliberately and knowingly.

A Court is where laws are upheld, order restored and justice delivered yet in Appeal herein the Ninth Circuit Court acted criminally to destroy Petitioners filings it received on November 03, 2019. These filings included

- a. Petitioner's Opposition to Appellees Motion for Summary Affirmance
- b. Petitioner's Third Motion for Ninth Circuit's Disqualification

2. Ninth Circuit Failing to Recuse GRANTED Summary Affirmance after deliberately destroying Petitioner's Opposition to Summary Affirmance.

3. Ninth Circuit IGNORED Petitioner's Unopposed Motion (ECF 4)

4. Ninth Circuit FAILED to Rule on Petitioner's Unopposed Motion for over six months, keeping it hanging till dismissal (ECF 42, 55)

5. Ninth Circuit DENIED Petitioner's Unopposed Motion (ECF 42, 55)

6. Ninth Circuit delegated the Appeal for "Adjudication" To Clerk that Issued OSC's, Mandates, Recalled Mandates and Reissued Partial Mandates. (ECF 3, 56, 57, 58, 61, 64)

05/24/2018	<input type="checkbox"/> <u>3</u> 1 pg. 183.55 KB	Filed order (Deputy Clerk: CKP) Motion to dismiss case for failure to prosecute (Cir. Rule 42-1). Pursuant to Ninth Circuit Rule 42-1, this appeal is dismissed for failure to respond to order. (Order dated 02/28/2018). This order served on the district court shall, 21 days after the date of the order, act as the mandate of this court. [10884254] (CKP) [Entered: 05/24/2018 09:30 AM]
02/05/2020	<input type="checkbox"/> <u>56</u> 1 pg. 87.5 KB	MANDATE ISSUED.(CMC, JHN and ADH) [11585750] (CW) [Entered: 02/05/2020 06:39 AM]
04/24/2020	<input type="checkbox"/> <u>57</u> 1 pg. 90.33 KB	Filed clerk order (Deputy Clerk: cw): The mandate issued on 02/05/2020 is recalled as issued in error. [11670910] (CW) [Entered: 04/24/2020 11:35 AM]
04/24/2020	<input type="checkbox"/> <u>58</u> 1 pg. 96.62 KB	PARTIAL MANDATE ISSUED issued as to all parties except Aurora Loan Services, LLC, Mortgage Electronic Registration Systems, Inc., Theodore Schultz, and Trisha McMullin. (CMC, JHN and ADH) [11670921] (CW) [Entered: 04/24/2020 11:38 AM]

And after switching of Defendant-Judge Consuelo M. Callahan with Judge Barry G.

Silverman without switching Ninth Circuit with another Circuit.

08/10/2020	<input type="checkbox"/> <u>61</u> 1 pg. 95.47 KB	PARTIAL MANDATE ISSUED. AFFIRMED as to all parties except Aurora Loan Services, LLC, Mortgage Electronic Registration Systems, Inc., Theodore Schultz, and Trisha McMullin. (BGS, JHN and ADH) [11782293] (CW) [Entered: 08/10/2020 07:35 AM]
12/01/2020	<input type="checkbox"/> <u>64</u> 1 pg. 92.65 KB	MANDATE ISSUED.(BGS, JHN and ADH) [11910277] (CW) [Entered: 12/01/2020 07:14 AM]

7. Ninth Circuit Clerk issued EIGHTEEN out of TWENTY-ONE ORDERS in Appeal herein.

8. Ninth Circuit's Clerk's Orders were stated to be from Judges.

12/04/2018	<input type="checkbox"/> <u>16</u> 1 pg. 188.14 KB	Filed order (Deputy Clerk: CKP) Motion to dismiss case for failure to prosecute (Cir. Rule 42-1). Pursuant to Ninth Circuit Rule 42-1, this appeal is dismissed for failure to respond to order. (Order dated 10/31/2018). This order served on the district court shall, 21 days after the date of the order, act as the mandate of this court. [11108695] (CKP) [Entered: 12/04/2018 11:05 AM]
04/02/2019	<input type="checkbox"/> <u>18</u> 2 pg. 263.14 KB	Filed clerk order (Deputy Clerk: MF): On December 4, 2018, the court dismissed this appeal for failure to prosecute because appellant had not paid the filing and docketing fees. See 9th Cir. R. 42-1. A review of the district court's records reflects that appellant has now paid the filing and docketing fees for this appeal. However, appellant erroneously paid the fees for this appeal in District of Nevada civil case No. 2:17-cv-02739-GMN-CWH, not the above-referenced district court docket. The motion to reinstate this appeal is granted (Docket Entry No. [17]). The December 4, 2018 order is vacated, and the appeal is reinstated. The Clerk shall amend the docket to reflect that the fees for this appeal have been paid. The Clerk shall file the opening brief received on October 25, 2018 (Docket Entry No. [10]). The answering brief is due May 3, 2019; and the optional reply brief is due within 21 days after service of the answering brief. The Clerk shall send a copy of this order to the district court. The district court clerk shall transfer the fee payment received on November 26, 2018 in civil case No. 2:17-cv-02739-GMN-CWH to the above-referenced district court docket. [11250217] (AF) [Entered: 04/02/2019 01:20 PM]
04/02/2019	<input type="checkbox"/> <u>19</u>	Fee status changed ([Case Number 18-15202: Paid]). (See 4/2/2019 order [18] of the court) [11250221] (AF) [Entered: 04/02/2019 01:21 PM]

9. Ninth Circuit treated Clerk and Judge as same entity.

10. Ninth Circuit “Orders” used Judge and Clerk interchangeably.

11. Ninth Circuit Clerk practiced law illegally in violation of local Bar Ass.

Rules where person must be an active member to practice law.

The Clerk performed legal research, quoted statutes and case law to reach fact, giving conclusions including Appeal Dismissal. This amounts to practice of law which is not included in a Clerk's duties. Also the Clerk was not academically qualified to do.

12. Ninth Circuit included Clerk in their Judicial Oath so that Judicial Canons and Codes of Conduct were applied to Clerks and Judges.

13. Ninth Circuit ignored Rule 45 detailing Clerk's Duties, instead having Clerk's assume Judges Duties.

14. Ninth Circuit Clerk's "Orders" were all unsigned.

15. Ninth Circuit Judges Order did not bear names or signatures of signees for authentication. (ECF 55, 60)

16. No "Opinion" was issued according to the usual course.

17. Defaulted Defendants were granted judgement against Petitioner by Ninth Circuit in affirming District Court's Dismissal Order.

Petitioner had fled Motions to Default Defendant Pacific Community Mortgage (ECF 99), Defaulted by Clerk (ECF 103) yet Order provided (ECF 190).

9 | Cir. 2001) (holding that when a plaintiff's claims fail as a matter of law, all defendants are entitled
10 | to a final judgment in their favor on these claims, regardless of whether they joined the motion and
11 | regardless of whether default had already been entered against them). Therefore, the court will
12 | enter judgment in favor of Pacific Community Mortgage, Inc., Gold Reverse, Inc., Bobby Irias,
13 | and American Securities Company of Nevada. *See id.*

18. Judge Callahan appointed by Ninth Circuit was simultaneously a Defendant in Petitioner's Nevada case "judging" a case where he had "an interest in the outcome"

19. Ninth Circuit's three Judges were simultaneously defending their actions in Nevada Bankruptcy Case, NV Bk, Adv. 19-01074-ABL-GS. Surely this one too many for a small number in this gang. The case is still ongoing.

20. Defaulted Defendants were included in Judgement against Petitioner.

U. S. Supreme Court in *In Re Murchison*, 349 U.S. 133, 75 S.Ct. 623, 99 L.Ed.942 stated "No man can be a judge in his own case" and "no man is permitted to try cases where he has an interest in the outcome" id, at 136, 75 S.Ct. 623.

The list of these Ninth Circuit's actions "departed from usual course" deliberately and knowingly violating United States Constitution, statutes, laws, Judicial Oath, Canons can go on but it is very obvious from the few actions listed here that Ninth Circuit was so blinded by their hate and malice for the Petitioner that they stopped at nothing to continue and add to Petitioner's harm. They deliberately prevent her from recovering her property and monies stolen from her. Perhaps thinking Pro Se will never get to US Supreme Court and their criminal actions will be hidden.

Petitioner is hoping this Supreme Court that she is now turning to for redress of her grievances will not deny her Justice.

**J. NINTH CIRCUIT DELIBERATELY AND KNOWINGLY FAILED TO ACT
ON CRITCAL ISSUES RAISED IN THE APPEAL**

Petitioner had raised critical issues in this Appeal including

1. SEC Fraud

Petitioner specifically stated in Appeal Brief (ECF 10, 20 Pg. 16 -17)

17 Plaintiff's forensic title chain analysis revealed that non-
18 existing Defendant PCMI transferred the loan to the Structured
19 Adjustable Rate Mortgage Loan Trust Mortgage Pass-Through
20 Certificates, Series 2004-16 Trust ("SARM Trust") without having
21 the right to do so. This transfer was never recorded in Clark
22 County. The SARM Trust has filed documents with the US
23 Securities and Exchange Commission, ("SEC") under penalty of
24
25

1 **perjury, stating specifically that Appellant's loan is paid off in full**
2 **by December 2004. (Exc III, Ex 10. Pg 17-21)**

And again in Brief Supplement (ECF 40 Pg. 13 - 14)

26 **The United States Supreme Court stated in Tellabs, Inc. v.**
27 **Makor Issues & Rights, Ltd., 551 322, 127 S.Ct. 2499, 168**

1 **L.Ed.2d 179 (2007) that, in assessing securities fraud claims,**
2 **"courts must consider the complaint in its entirety, as well**
3 **as other sources courts ordinarily examine when ruling on**
4 **Rule 12(b)(6) motions to dismiss, in particular,**

7 **documents incorporated into the complaint by reference,**
8 **and matters of which a court may take judicial notice."**
9 **(emphasis added)**
10 [https://www.lexisnexis.com/lawschool/resources/p/casebrief-](https://www.lexisnexis.com/lawschool/resources/p/casebrief-tellabs-inc-v-makor-issues-rights-ltd.aspx)
11 [tellabs-inc-v-makor-issues-rights-ltd.aspx](#)

Similarly alleged with specificity as to person/entity, where and when with particular documentation of the act for allegations below

2. Bankruptcy Fraud
3. Defrauding of Government, California nd Nevada States
4. Mortgage Fraud
5. Banking Fraud
6. Forgery
7. Fraud Upon the Court
8. Robo-signers, already well-established adding to their crimes.
9. Fraud identified with specificity
10. Mail Fraud
11. Wire Fraud
12. RICO, TILA, RESPA Frauds
13. Nevada Board of Real Estate Fraud
14. Attorney Fraud, forgery, perjury.

This list of allegations that were ignored by Ninth can go on.

As stated before these allegations resulted in millions of dollars in settlement and prison time for perpetrators but in Appeal herein and in the underlying case they were all ignored. Fraud documents were admitted without even a comment. Discovery was forbidden to further safe guard judicial interests and protect their Defendant-friends. These were frauds that destroyed our country's economy and yet Ninth Circuit deliberately refused to hold accountable criminal for such treasonous acts and in fact colluding with the criminals.

Ninth Circuit even went further to criminally destroy Petitioner's filings asking for their recusal third time around and Opposition to Summary Affirmance which was awarded. Judgement was even awarded to Defaulted Appellee-Defendants against Petitioner.

Deliberate Frauds by Ninth Circuit itself establishes Petitioner's Claim and she is hoping that her Constitutional Rights denied to her thus far will be protected by this Supreme Court.

**K. NINTH CIRCUIT ACTIVELY OBSTRUCTED JUSTICE AND
DELIBERATELY RESTRICTED PETITIONER'S ACCESS TO COURTS**

18 U.S.C. § 1503 defines "obstruction of justice" as an act that

"corruptly or by threats or force, or by any threatening letter or communication, influences, obstructs, or impedes, or endeavors to influence, obstruct, or impede, the due administration of justice."

18 USC § 1503 applies only to federal judicial proceedings. Obstruction of justice involves specific intent and knowledge (1) that a proceeding was pending at the time and (2) a connection between the endeavor to obstruct justice and the proceeding, and the person must have knowledge of this connection.

Ninth Circuit's destruction of Petitioner's two filings it received on November 03, 2019 in Appeal herein was commission of the above act(s).

Listed below are few instances of deliberate Circuit's Obstruction of Justice

1. Destruction of Petitioner's Third Motion for Ninth Circuit Disqualification while the First Motion was never acknowledged and Second Unopposed Motion was kept hanging for over six months and then denied in blanket dismissal.
2. Destruction of Petitioner's Opposition to Summary Affirmance to grant Summary Affirmance.
3. Compelling Petitioner to pay the filing fee twice to dismiss Appeal
4. Failing to perform De Novo Review of Appeal
5. Failing to investigate serious issues such as SEC Fraud, Bankruptcy Fraud, Banking Fraud, Mail Fraud, Wire Fraud, Defrauding of Government, County Recorder Defrauding by Recording forged and fraudulent title documents signed by robo-signers, Negligence, Perjury, Attorney Frauds including perjury etc.

6. Delegation of Appeal to Clerk for Adjudication
7. Deliberate violations of United States Constitution, laws and statutes.
8. Deliberate violations of Judicial Oath, Canons and Codes of Conduct as well as Clerks Duties.
9. Dismissal of Appeal based upon “failure to prosecute” without holding the required hearing.

These are but only a few examples of deliberate acts to obstruct justice in all fours way, but is also fraud upon the court committed by the court itself.

Obstruction of justice is deliberate denial of justice and all Constitutional rights including due process, equal protection, free unrestricted access to courts, government's support of fraudulent takings without notice and opportunity to be heard. Nothing could be more serious in civil court than Obstruction of Justice

Justice Harlan said,

“Litigation is often the desirable and orderly way of obtaining vindication of fundamental rights.”. United Transp. Union, 401 U.S. at 585. Even Prisoners have a right to redress. “Inmate access to the courts [must be] adequate, effective, and meaningful” and conceptualized meaningful access as something broader than mere forum access, observing that judges might “overlook meritorious cases” without effective litigation, and emphasizing the remedial dynamic of legal petitions, judicial relief, and protection of individual rights.” Bounds v. Smith, 430 U.S. 817 (1977).

Ninth Circuit agreed stating

“Restricting access to the courts is, however, a serious matter”. “The right of access to the courts is a fundamental right protected by the Constitution.” Delew v. Wagner, 143 F.3d 1219, 1222 (9th Cir. 1998).

Yet Ninth Circuit did the exact opposite by Obstructing Justice itself.

The right to petition the government for redress of grievances is sacrosanct. *Borough of Duryea v. Guarnieri*, 564 U.S. 379, 403 (2011). *District of Columbia v. Heller*, 554 U.S. 570, 577 (2008). The Court has repeatedly affirmed this principle. *Dep’t of Revenue v. Ass’n of Wash. Stevedoring Cos.*, 435 U.S. 734, 759 (1978); *Rhode Island v. Palmer*, 253 U.S. 350, 407 (1920); *Knowlton v. Moore*, 178 U.S. 41, 87 (1900); see also *Marbury v. Madison*, 5 U.S. 137, 174 (1803).

This Court has emphasized that

“interpretation of the Petition Clause must be guided by the objectives and aspirations that underlie the right.” *Guarnieri*, 564 U.S. at 388. “The Court distinguished petitioning from speech on the ground that “a petition conveys the special concerns of its author to the government and, in its usual form, requests action by the government to address those concerns.” Id. at 388-89.

Petitioners Appeal established her first right, according to this Court. Thus when a lawsuit is filed, both the words written on physical piece of paper (the complaint), and the expressive act of filing it at the clerk’s office, are already protected by the Speech Clause. *Holder v. Humanitarian Law Project*, 561 U.S. 1, 4 (2010).

The Court also distinguished legal petitioning from speech on the ground that “unlike speech of other sorts, a lawsuit demands a response.” Id. at 390. The Court was likely referring to the duty of the court, to respond to the lawsuit and if the court simply ignores a lawsuit, there is no need for the defendants to respond. “*The First Amendment Right to a Remedy*: Benjamin Plener Cover University of California, Davis [Vol. 50:1741].”

This is exactly what happened in the underlying Appeal where Respondent-Appellees were notified in ex parte communications of destruction of Petitioner’s filings so they never responded despite being served pursuant to Rule 4. The Appeal

was dismissed by Recused Ninth Circuit Denying Unopposed Recusal Motions and Affirming Summary Affirmance of District Court after destroying Petitioner's Opposition. Unsigned Judgement even favored Defaulted-Defendants.

In Rhodes v. Chapman, 452 U.S. 337 (1981), this court also said that federal courts will discharge their duty to protect constitutional rights. This Court emphasized that the federal courts have a duty to remedy constitutional violations. And more recently in Bill Johnson's Rests., Inc. v. NLRB, 461 U.S. 731(1983) this Court said:

"The first amendment interests involved in private litigation [include] compensation for violated rights and interests and the psychological benefits of vindication"

This duty was abrogated by both the District Court and the Ninth Circuit by actively obstructing justice to the extent of criminally destroying Petitioner's filings for "predetermined outcomes". This behavior established Petitioner's Claim.

These types of acts including criminal acts must be investigated, and the party guilty of the obstruction of justice should be penalized. If this US Supreme Court accepts these acts, after complaint is made, and is complicit than it has ratified and condoned these acts. This will be an awful failure of justice.

L. PETITIONER WAS DENIED DUE PROCESS BOTH SUBATANTIVE AND PROCEDURAL BY NINTH CIRCUIT AND DSTRICT COURT – NO DISCOVERY WAS ALLOWED, NO HEARNG HELD.

United States Supreme Court in *Caperton v. A. T. Massey Coal Co* 556 U.S. 868 129 S.Ct. 2252 (S. Ct. 2009) 173 L.Ed.2a 1208. 77 USLW 4456. stated

“Held:due process requires recusal. Pp 2259-2267.

- (a) The Due Process Clause incorporated the common-law rule requiring recusal when a judge has “a direct, personal, substantial, pecuniary interest” in a case, *Tumey v. Ohio*, 273 U.S. 510, 523, 47 S.Ct. 437, 71 L.Ed. 749, but this Court has also identified additional instance which, as an objective matter, require recusal where “the probability of actual bias on the part of the judge or decision maker is too high to be constitutionally tolerable” *Withrow v. Larkin* 421 U.S. 35, 47, 95 S. Ct. 1456, 43 L.Ed.2d 712.....
- (b) Because the objective standards implementing the Due Process Clause do not require proof of actual bias.....”

In *Caperton*, Supreme Court also cited other cases where “recusal was required” based on “temptation” so as to ”lead him not to hold the balance nice, clear and true”. *Ward v. Monroeville*, 409 U.S. 57, 93 S.Ct. 80, 34 L.Ed.2d 267. *Aetna Life Ins. Co. v. Lavole*, 475 U.S. 813, 106 S.Ct. 1580, 89 L.Ed.2d 823.

What can be more “direct, personal, substantial, pecuniary interest” than a Circuit whose three Judges have been simultaneously defending their actions in Petitioners other property case in Nevada Bankruptcy Court including Judge Callahan on the case? How can they “hold the balance nice, clear and true” How is this “constitutionally tolerable”?

US Supreme Court in *Mathews v. Eldridge* 424 U.S. 319 96 S.Ct. 893 stated “Procedural due process imposes on government decisions which deprive individuals of “.....property” interests within the meaning of the Due Process Clause of the Fifth or the Fourteenth Amendment.”.....

....."This Court consistently has held that some form of hearing is required before an individual is finally deprived of a property interest. *Wolfe v. McDonnell*, 418 U.S. 539, 557-558 (1974). See e.g. *Phillips v. Commissioner*, 283 U.S. 589, 596-558 (1974). See also *Dent v. West Virginia*, 129 U.S. 114, 124-125 (1889)."....."requiring some type of pretermination hearing as a matter of constitutional right"....."The right to be heard before being condemned to suffer grievous loss of any kind, even though it may not involve stigma and hardships of a criminal conviction, is a principle basic to our society." *Joint Anti-Fascist Comm. V. McGrath*, 341 U.S. 123, 168 (1951)". Also see *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965); *Grannis v. Ordean*, 234 U.S. 385, 394 (1914).

No hearing was held in District Court or Ninth Circuit and discovery forbidden.

In Mathews Supreme Court stated Due Process

"requires consideration of three distinct factors: First, the private interest that will be affected by the official action; Second, the risk of an erroneous deprivation of such interest through the procedures used.....and finally the Government's interest....." See e.g. *Goldberg v. Kelly* *supra*, at 263-271." Further adding "As we recognized last term in *Fusari v. Steinberg*, 419 U.S. 379, 369 (1975) "the possible length of wrongful deprivation of.....benefits [also] is an important factor in assessing the impact of official action on the private interests"."

Supreme Court in *Daniels v. Williams*, 474 U.S. 327 (S.Ct. 1986).

"By requiring the government to follow appropriate procedures when its agents decide to "deprive any person of life, liberty, or property," Due Process Clause promotes fairness in such decisions. And by barring certain government actions regardless of the fairness of the procedures used to implement them, e.g., *Rochin*, *supra*, it serves to prevent governmental power from being "used for purposes of oppression," *Murray's Lessee* 332*332 *v. Hoboken Land & Improvement Co.*, 18 How 272, 277 (1856)

In County of Sacramento v. Lewis Supreme Court stated

"The principal and true meaning of the phrase has never been more tersely or accurately stated than by Mr. Justice Johnson, in *Bank of Columbia v. Okely*, 4 *Wheat.* 235—244 [(1819)]: '..... that they were intended to secure the individual from the arbitrary exercise of the powers of government, unrestrained by the established principles of private right and distributive justice.' " *Hurtado v. California*, 110 U.S. 516, 527 (1884).

We have emphasized time and again that “the touchstone of due process is protection of the individual against arbitrary action of government, ” Wolff v. McDonnell, 418 U.S. 539, 558 (1974), whether the fault lies in a denial of fundamental procedural fairness, see, e.g., Fuentes v. Shevin, 407 U.S. 67, 82 (1972) (the procedural due process guarantee protects against “arbitrary takings”), or in the exercise of power without any reasonable justification in the service of a legitimate governmental objective, see, e.g., Daniels v. Williams, 474 U.S., at 331 (the substantive due process guarantee protects against government power arbitrarily and oppressively exercised). ”

Petitioner’s case exemplifies deliberate denial of procedural Due process and substantive Due Process through exercise of government power arbitrarily and oppressively by the Ninth Circuit and the District Court. They deliberately and knowingly put hurdles in her way starting from District Court deliberately keeping her unaware of proceedings as not one proof of service s attached to any of their Orders, Notices etc. Discovery was forbidden, and not one allegation including SEC Fraud investigated. Judgment even favored Defaulted defendants.

Ninth Circuit began by logging of Appeal fee pad to another case, delegating the case to Clerk for adjudication, deliberately destroying Petitioner’s filings, denying recusal even though three of their Judges including Defendant-Judge Callahan appointed to the case, were simultaneously defending their actions in another case filed by Petitioner in Nevada. No disclosure was made or consent of parties sought. They affirmed District Courts Summary Affirmance also favoring Defaulted Defendants.

U. S. Supreme Court in In Re Murchison, 349 U.S. 133, 75 S.Ct. 623, 99 L.Ed.942 stated “No man can be a judge in his own case”. Yet Ninth Circuit did.

US Supreme Court in Gromley v. Wood El, (S.Ct. 2014)

“Test for satisfying the state-created-danger doctrine (1) the harm ultimately caused was foreseeable and fairly direct (2) the state actor acted in willful disregard for the safety of the plaintiff (3) there existed some relationship between the state and the plaintiff and (4) the state actors used their authority to create an opportunity that otherwise would not have existed for the third party’s crime to occur”

In case herein all above factors existed and Petitioner was harmed deliberately and knowingly by the state actors. Both Courts deprived Petitioner from recovering her home and monies illegally taken from her by Respondents.

U.S. Supreme Court stated in Price v. Vincent 538 U.S. 634 (2003) that a party is

“entitled to relief” if they can demonstrate that lower “court’s adjudication of his claim was “contrary to” or an “unreasonable application of” this Court’s clearly established precedents. 28 U. S. C. §2254(d)(1)..... or if “it confronts a set of facts that are materially indistinguishable from a decision of this Court and nevertheless arrives at” a different result. Williams v. Taylor, 529 U.S. 362, 405-406.”

Petitioner was deliberately and knowingly denied both procedural and substantive Due process and her free unbiased access to Courts restricted by Ninth Circuit and District Court for personal gains to procure the desired outcome of continuing Petitioners harm.

Ninth Circuit’s criminal destruction of Petitioner’s filing established her claim. by Petitioner now turns to this Court for remedy of her Civil Rights repeated violations and with hope that law will finally be upheld and her illegally stolen property and monies will be returned to her as a matter of right.

M. PETITIONER WAS TREATED DIFFERENTLY PERHAPS BECAUSE SHE WAS A WOMAN, A MINORITY AND A PRO PER

Petitioner is a minority woman of color, single mother of two who was defrauded by the Respondents of hundreds and thousands of dollars and her property worth about two million dollars. A simple “peek” at Deed of Trust including unsigned copy and Secretary of State Record provided in complaint and appeal establish that Lender did not exist and Petitioner is the only legal claimant of her home.

Also SEC Records provided showing the “loan” was paid off in full in few months of origination further establishes that Respondents had no claim whatsoever. Yet Justice was denied to her by District Court and Ninth Circuit that even destroyed Petitioner’s filings to favor Respondents and continue her harm.

All actions detailed in this Appeal even give an “appearance of justice”?

Also three Ninth Circuit Judges with appointed Defendant-Judge Callahan were simultaneously defending their action in another case filed by Petitioner in Nevada (NV Bk. Adv. 18-01074-ABL-GS). (Caperton v. A. T. Massey Coal Co 556 U.S. 868 129 S.Ct. 2252 (S. Ct. 2009) 173 L.Ed.2a 1208. 77 USLW 4456.) Added “recusal was required” based on “temptation” and that “**due process requires recusal**”.

U. S. Supreme Court in In Re Murchison, 349 U.S. 133, 75 S.Ct. 623, 99 L.Ed.942 stated “No man can be a judge in his own case” and “no man is permitted to try cases where he has an interest in the outcome” id, at 136, 75 S.Ct. 623.

Was any case law or Recusal Statutes 144 and 455 followed? Of course not.

Petitioner's was denied Due Process, equal protection, free unbased access to Courts by Ninth Circuit that even deliberate obstruction of justice.

At Ninth Circuit Judges behest her filings were destroyed. Filings that reminded them of their duty to recuse – unopposed motions denied. Also destroyed was Petitioner's Opposition Summary Affirmance which was then fraudulently Affirmed.

Different treatment of Petitioner is also made quite clear in the Appeal "adjudication" that was delegated to Clerk that did legal analysis, research and came to conclusion/fact stating her orders to be Court Orders.

12/04/2018	<input type="checkbox"/> <u>16</u> 1 pg, 188.14 KB	Filed order (Deputy Clerk: CKP) Motion to dismiss case for failure to prosecute (Cir. Rule 42-1). Pursuant to Ninth Circuit Rule 42-1, this appeal is dismissed for failure to respond to order. (Order dated 10/31/2018). This order served on the district court shall, 21 days after the date of the order, act as the mandate of this court. [11108695] (CKP) [Entered: 12/04/2018 11:05 AM]
12/21/2018	<input type="checkbox"/> <u>17</u> 32 pg, 1.46 MB	Filed Appellant Salma Agha-Khan, M.D. motion to reconsider order of the Clerk of the Court filed on 11/01/2018. Deficiencies: None. Served on 12/21/2018. [11217834] (CW) [Entered: 03/06/2019 10:37 AM]
04/02/2019	<input type="checkbox"/> <u>18</u> 2 pg, 283.14 KB	Filed clerk order (Deputy Clerk: MF): On December 4, 2018, the court dismissed this appeal for failure to prosecute because appellant had not paid the filing and docketing fees. See 9th Cir. R. 42-1. A review of the district court's records reflects that appellant has now paid the filing and docketing fees for this appeal. However, appellant erroneously paid the fees for this appeal in District of Nevada civil case No. 2:17-cv-02739-GMN-CWH, not the above-referenced district court docket. The motion to reinstate this appeal is granted (Docket Entry No. [17]). The December 4, 2018 order is vacated, and the appeal is reinstated. The Clerk shall amend the docket to reflect that the fees for this appeal have been paid. The Clerk shall file the opening brief received on October 25, 2018 (Docket Entry No. [10]). The answering brief is due May 3, 2019; and the optional reply brief is due within 21 days after service of the answering brief. The Clerk shall send a copy of this order to the district court. The district court clerk shall transfer the fee payment received on November 26, 2018 in civil case No. 2:17-cv-02739-GMN-CWH to the above-referenced district court docket. [11250217] (AF) [Entered: 04/02/2019 01:20 PM]
04/02/2019	<input type="checkbox"/> <u>19</u>	Fee status changed ([Case Number 18-15202: Paid]). (See 4/2/2019 order [18] of the court) [11250221] (AF) [Entered: 04/02/2019 01:21 PM]

Eighteen out of total twenty-one Orders in Appeal were from the Clerk. Clerk issued OSC, recalled OSC and Orders, issued Mandates, Recalled them, reissued Partial Mandates etc. All unsigned. Even dismissal "Order" was unsigned and did not identify anyone.

02/05/2020	<input type="checkbox"/> <u>56</u> 1 pg. 87.5 KB	MANDATE ISSUED.(CMC, JHN and ADH) [11585750] (CW) [Entered: 02/05/2020 06:39 AM]
04/24/2020	<input type="checkbox"/> <u>57</u> 1 pg. 90.33 KB	Filed clerk order (Deputy Clerk: cw): The mandate issued on 02/05/2020 is recalled as issued in error. [11670910] (CW) [Entered: 04/24/2020 11:35 AM]
04/24/2020	<input type="checkbox"/> <u>58</u> 1 pg. 98.82 KB	PARTIAL MANDATE ISSUED issued as to all parties except Aurora Loan Services, LLC, Mortgage Electronic Registration Systems, Inc., Theodore Schultz, and Trisha McMullin. (CMC, JHN and ADH) [11670921] (CW) [Entered: 04/24/2020 11:38 AM]

Another Clerk Mandate

12/01/2020	<input type="checkbox"/> <u>64</u> 1 pg. 62.85 KB	MANDATE ISSUED.(BGS, JHN and ADH) [11910277] (CW) [Entered: 12/01/2020 07:14 AM]
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Case: 18-15202, 12/01/2020, ID: 11910277, DktEntry: 64, Page 1 of 1

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

DEC 01 2020

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

SALMA AGHA-KHAN, MD., MD.,

No. 18-15202

Plaintiff - Appellant,

D.C. No. 2:16-cv-01124-JCM-NJK
U.S. District Court for Nevada, Las
Vegas

v.
PACIFIC COMMUNITY
MORTGAGE, INC., a suspended
California Corporation, its successors
and assigns; et al.,

MANDATE

Defendants - Appellees.

The judgment of this Court, entered November 09, 2020, takes effect this
date.

This constitutes the formal mandate of this Court issued pursuant to Rule
41(a) of the Federal Rules of Appellate Procedure.

FOR THE COURT:

MOLLY C. DWYER
CLERK OF COURT

WRIT OF CERTIORARI (Originating Ninth Circuit Case 18-15202)

This defies basic rules of even letter writing. No filing is admitted in any Court unless it identifies the filer and bears the signature of the person. These Judges know that their pay check will not get cashed if it does not have their full name or signature of the authority.

Petitioner was most certainly treated differently and her claims were established by deliberate knowing actions of malice, bias and prejudice directed at her by the Ninth Circuit and the District Court.

This case highlights the fact that laws are for public to follow and do not apply to Judges while Judicial Codes of Conduct and Ethics etc. are to adorn books.

**N. NINTH CIRCUIT'S USE OF THE WORD "INSUBSTANTIAL" IS WITHOUT
LEGAL DIGNITY AND THIS COURT SHOULD GRANT CERTIORARI TO
PROHIBIT SUCH ARBITRARINESS**

Ninth Circuit used the word "insubstantial" in their dismissal of Appeal as follows while failing to recuse denying unopposed Second Disqualification Motion, ignoring the first motion and deliberately destroying the third motion. Also destroyed was Petitioner's Opposition to Summary Affirmance which was affirmed.

01/14/2020 55
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Filed order (CONSUENO M. CALLAHAN, JACQUELINE H. NGUYEN and ANDREW D. HURWITZ): Upon a review of the record and the opening brief, we conclude that the questions raised in this appeal are so insubstantial as not to require further argument. See *United States v. Hooton*, 693 F.2d 857, 858 (9th Cir. 1982) (stating standard for summary affirmance); see also *Hebbe v. Plier*, 627 F.3d 338, 341-42 (9th Cir. 2010) (although pro se pleadings are construed liberally, plaintiff must present factual allegations sufficient to state a plausible claim for relief). Accordingly, the opposed motions for summary affirmance (Docket Entry Nos. [28] and [30]) are granted. We summarily affirm the district court's judgment as to all parties except Aurora Loan Services, LLC, Mortgage Electronic Registration Systems, Inc., Theodore Schultz, and Trisha McMullin. This appeal has been administratively closed as to Aurora Loan Services, LLC, Mortgage Electronic Registration Systems, Inc., Theodore Schultz, and Trisha McMullin. See Docket Entry No. [54]. Appellant's motions for recusal of all Ninth Circuit judges and transfer of this appeal to another circuit court (Docket Entry Nos. [17] and [42]) is denied. Appellant's request for oral argument, set forth in the opening brief, is denied. AFFIRMED as to all parties except Aurora Loan Services, LLC, Mortgage Electronic Registration Systems, Inc., Theodore Schultz, and Trisha McMullin. [11561075] (AF) [Entered: 01/14/2020 09:13 AM]

Opinion of Ninth Circuit in *Hooten* was issued as clarification

".....motions for summary disposition are ordinarily granted or denied without opinion, see *Page v. United States*, 356 F.2d 337, 339 n. 1 (9th Cir. 1966), we issue this opinion to clarify our position on such matters." *United States v. Hooton*, 693 F.2d 857, 858 (9th Cir. 1982)

"Where the outcome of a case is beyond dispute, a motion for summary disposition is of obvious benefit to all concerned"

Other case Judgment cited, *Hebbe v. Plier* 627 F.3d 388, 341-42 (9th Cir.), which was remanded and cited to show that Ninth Circuit construed Pro Se proceedings liberally.

Certainly not followed in Appeal herein.

To state a claim on which relief may be granted, the plaintiff must allege "enough facts to state a claim to relief that is plausible on its face." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007). In considering whether a complaint states a cognizable claim, the court accepts as true the material allegations in the complaint and construes the allegations in the light most favorable to the plaintiff. *Hishon v. King & Spalding*, 467 U.S. 69, 73 (1984); *Hosp. Bldg. Co. v. Trustees of Rex Hosp.*, 425 U.S. 738, 740 (1976); *Love v. United States*, 915 F.2d 1242, 1245 (9th Cir. 1989).

Pro se pleadings are held to a less stringent standard than those drafted by lawyers. *Haines v. Kerner*, 404 U.S. 519, 520 (1972). However, the court need not accept as true conclusory allegations, unreasonable inferences, or unwarranted deductions of fact. *Western Mining Council v. Watt*, 643 F.2d 618, 624 (9th Cir. 1981)."

This Court's most recent decision regarding substantial federal question is very different from judgment in Appeal herein. The most recent dismissal of an appeal for want of a substantial federal question. In *Department of Commerce v. United States House of Representatives*, 525 U.S. 316 (1999), where two sets of plaintiffs challenged the Census Bureau's plan to use statistical adjustment to correct for undercount in determining the population used for apportioning congressional seats among the states. After upholding one set of plaintiffs' statutory challenge to the plan, the Court turned to the claims asserted by the House. Concluding that the legal issues raised by the House had been resolved in the companion case. The Court determined that the House's case "no longer presented a substantial federal question" and dismissed the appeal. Thus Federal Question becomes insubstantial following its resolution.

Petitioner's Appeal adhered to standards established by the Ninth Circuit itself as to alleging fraud with specificity, forgery, robo-signers, establishing her

standing and lack of Respondents standing, existence of “distinct palpable injury” directly related to conduct of Petitioners and much more. Petitioner based her allegations and claims by providing Proof including copies of State Records, County Recorders records, Court filings. Also alleged was SEC Fraud, Bankruptcy Fraud, Mortgage Fraud, Attorney Fraud, Perjury, etc. How are any of these “insubstantial”? How is the ”outcome.....beyond dispute”?

Also how were the issues so “insubstantial” and “beyond dispute” that these same issues drove Ninth Circuit to perform criminal acts of destroying Petitioner’s filings and violating US Constitution, statutes and laws?

Why were two criminal cases cited in a civil matter? Were they cited to send a particular threatening message to the Petitioner?

O. WRIT MUST BE GRANTED AS ALL FEDERAL EMPLOYEES VIOLATED THEIR DUTY TO REPORT MISCONDUCT FOR INVESTIGATION

Federal government has a paramount interest in public good thus the right to know about white collar crimes specially misconduct. Thus the government expects disclosure as revelation can prevent or remedy wrongs and prevent further harm. Non-disclosure amounts to active concealment.

There are statutes supporting ‘revelation’

- a. 28 U.S. 535(b)** requires that any information, allegation, matter, or complaint witnessed, discovered, or received in a department or agency of the executive branch of the Government relating to violations of Federal Criminal Law involving Government Officers and employees to be expeditiously reported to the Attorney General by the head of the department or agency, or the witness, discoverer, or recipient, as appropriate.
- b. Federal Whistle Blower Protection Act of 1989 5 U.S.C. 2302(b)(8)-(9),** Pub.L. 101-12 encourages and protects revelation of a wide range of criminal and non-criminal wrongdoings.
- c. 5 C.F.R. § 2635.101** Basic obligation of public service. (a) *Public service is a public trust.* Each employee has a responsibility to the United States Government and its citizens to place loyalty to the Constitution, laws and ethical principles above private gain. To ensure that every citizen can have complete confidence in the integrity of the Federal Government.....

See James E. Moliterno, *Federal Government Lawyers Duty to Breach Confidentiality*; Roger C. Cramton, *The Lawyer as Whistleblower*; Robert P. Lawry.

Who is the Client of the Federal Government Lawyer: An Analysis of the Wrong Question, 37 Fed. B.Ass'n J. 61, 62 (1978).

Also see <https://www.justice.gov/jmd/ethics-handbook>

In Petitioners case not one Federal employee including Ninth Circuit and its employees (Clerks etc), reported misconduct to Attorney General or FBI, violating their duty owed to the Government. Petitioner now turns to U. S. Supreme Court in the hope that this Court will certainly abide by its duty to report misconduct.

P. WRIT MUST BE GRANTED AS “FRAUD UPON THE COURT VITIATES ALL PROCEEDINGS” AND JUDGMENTS ARE “VOID”

Whenever any officer of the court commits fraud during a proceeding in the court, he/she is engaged in "fraud upon the court". In *Bullock v. United States*, 763 F.2d 1115, 1121 (10th Cir. 1985), the court stated

"Fraud upon the court is fraud which is directed to the judicial machinery itself. ... It is where the court or a member is corrupted or influenced or influence is attempted or where the judge has not performed his judicial function..... thus where the impartial functions of the court have been directly corrupted."

"The maxim that fraud vitiates every transaction into which it enters applies to judgments as well as to contracts and other transactions"; See *In re Village of Willowbrook*, 37 Ill.App.2d 393 (1962); *Allen F. Moore v. Stanley F. Sievers*, 336 Ill. 316; 168 N.E. 259 (1929); *Dunham v. Dunham*, 57 Ill.App. 475 (1894), affirmed 162 Ill. 589 (1896); *Skelly Oil Co. v. Universal Oil Products Co.*, 338 Ill.App. 79, 86 N.E.2d 875, 883-4 (1949); *Thomas Stasel v. The American Home Security Corporation*, 362 Ill. 350; 199 N.E. 798 (1935).

FRCP Rule 60(b)(3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct.....and (4) judgment is void.

However, "an independent action alleging fraud upon the court is completely distinct from a motion under FRCP 60(b)". See *United States v. Burke*, No. 05-5277, 2006 WL 2135044, *1 (3d Cir. 2006); *Herring v. United States*, 424 F.3d 384, 389 (3d Cir. 2005)); see also *United States v. Barbosa*, No. 07-1292, 2007 WL 2050881, *1 (3d Cir. 2007).

Demjanjuk v. Petrovsky, 10 F.3d 338, 348 (6th Cir. 1993), established that fraud upon the court, unlike perjury, need not be based on affirmative misstatements

or proof of subjective knowledge of falsity, but based on nondisclosures and founded on showing of willful blindness or reckless disregard for the truth.

What can be more fraudulent than criminal destruction of Petitioner's filings by Ninth Circuit?

The concept of "fraud on the court" embraces "only that species of fraud which does, or attempts to, defile the court itself, or is a fraud perpetrated by officers of the court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases." *Kupferman v. Consol. Research & Mfg. Corp.*, 459 F.2d 1072; *Hadges v. Yonkers Racing Corp.*, 48 F.3d 1320.

The Ninth Circuit holds that "to set aside a judgment or order because of fraud upon the court, ... it is necessary to show an unconscionable plan or scheme which is designed to improperly influence the court in its decision." *Bailey v. Internal Revenue Service*, No. 98-CV-123-TUC-RTT (JMR), 1998 U.S. Dist. Lexis 21517 at *26 (D. Ariz. 1998) (citing *Wright, Miller & Kane* at 2870 (quoting *England v. Doyle*, 21 F.2d 304, 309 (9th Cir. 1960)).

The Appeal and underlying case detailed Respondents "scheme" to defraud her of over \$5,000.00 per month as mortgage in absence of a valid lender so that assets and assignees could not exist. Also the fraud "loan" was fully paid off few months after origination in SEC filings. Respondents then recorded forged title document signed by robo-signers, presented the same to Bankruptcy Court to obtain fraud relief and illegally sell Petitioner's home worth millions of dollars.

District Court's part in this "scheme" was to prohibit discovery and dismiss the case without hearing even though SEC Fraud was alleged.

Ninth Circuit furthered the concealment by refusing recusal, denying unopposed motions for their recusal and destroying Petitioner's Filings to dismiss the Appeal by affirming the Summary Affirmance to call issues "insubstantial".

Surely these Judgements were procured by Fraud Upon the Court?

The U.S. Supreme Court stated such a court is "without authority, its judgments and orders are regarded as nullities. They are not voidable, but simply void" *Elliot v. Piersol*, 1 Pet. 328, 340, 26 U.S. 328, 340 (1828)

Petitioner seeks this Writ of Certiorari ordering the Ninth Circuit to include her destroyed filings into the docket and transfer of Appeal from Ninth Circuit. Unless this Court decides to return Petitioner's property to her, cancelling forged recordings and awarding her damages.

XI. CONCLUSION

Petitioner's property and money stolen from her by Respondents who could not possibly have any claim as the loan was provided by non-existing lender and fully paid off almost immediately in SEC filings. These facts were known to Respondents, District Court and Ninth Circuit that tried everything to stop Petitioner from claiming her home and monies stolen.

Complaint had the following allegations

COMPLAINT FOR

- 1. FRAUD**
- 2. VIOLATION OF THE NEVADA UNIFORM FRAUDULENT TRANSFER ACT NRS 112.180; NRS 112.190 ET SEQ**
- 3. UNJUST ENRICHMENT**
- 4. BREACH OF CONTRACT**
- 5. VIOLATION OF NEVADA REV. STATUTES 645 ET SEQ AND 675 ET SEQ**
- 6. VIOLATION OF US STATUTE 15 US 1601; 26 USC 860g; 18 USC 1341; 18USC 1342; 18USC 1343; 18USC 1344**
- 7. VIOLATION OF 42 USC 1982 AND 42 USC 1983**
- 8. VIOLATION OF DUE PROCESS CLAUSE OF US CONSTITUTION, NEVADA STATE CONSTITUTION, CALIFORNIA STATE CONSTITUTION, LACK OF NOTICE AND TAKINGS CLAUSE**
- 9. NEGLIGENCE**
- 10. VIOLATION OF US AND NEVADA RACKETEERING STATUTES**
- 11. INTENTIONAL BAD FAITH / VIOLATIONS OF FEDERAL DEBT COLLECTION PRACTICES ACT 15 USC 1692**
- 12. PUNITIVE DAMAGES ALLEGATION PURSUANT TO NRS 42.001. ET SEQ**

Amended Complaint attached to Motion for Leave had following allegation (ECF 105, 105.1). This was denied.

**[PROPOSED] FIRST AMENDMENT
COMPLAINT FOR**

- 1. INTENTIONAL MISREPRESENTATION**
- 2. FRAUD**
- 3. VIOLATION OF THE NEVADA UNIFORM FRAUDULENT TRANSFER ACT NRS 112.180; NRS 112.190 ET SEQ**
- 4. VIOLATION OF NRS645, NRS645F.420, NRS645F.300 to NRS645F.450, INCLUSIVE**
- 5. BREACH OF CONTRACT**
- 6. VIOLATION OF NEVADA REV. STATUTES 675 ET SEQ**
- 7. VIOLATION OF US STATUTE 15 US 1601; 26 USC 860g; 18 USC 1341; 18USC 1342; 18USC 1343; 18USC 1344**
- 8. VIOLATION OF 42 USC 1982 AND 42 USC 1983**
- 9. NEGLIGENCE**
- 10. VIOLATION OF US AND NEVADA RACKETEERING STATUTES**
- 11. WIRE FRAUD**
- 12. VIOLATION OF DUE PROCESS CLAUSE OF US CONSTITUTION, NEVADA STATE CONSTITUTION, CALIFORNIA STATE CONSTITUTION, LACK OF NOTICE AND TAKINGS CLAUSE**
- 13. INTENTIONAL BAD FAITH VIOLATIONS OF FEDERAL DEBT COLLECTION PRACTICES ACT 15 USC 1692**
- 14. PUNITIVE DAMAGES ALLEGATION PURSUANT TO NRS 42.001 ET SEQ**
- 15. CONVERSION**
- 16. TRESPASS TO CHATTEL**
- 17. FRAUD UPON THE BANKRPTCY COURT**
- 18. UNJUST ENRICHMENT**
- 19. RICO**

Issues raised in Appeal were similar to those raised in this Writ with the exception of

1. Petitioner's filings deliberately destroyed by Ninth Circuit
2. Delegation of Appeal to Clerk for "Adjudication".

De Novo Review was asked for based upon District Court's decision being

1. Clearly erroneous
2. Abuse of Discretion
3. Denial of Leave to Amend Complaint to a Pro Se Litigant
4. Constitutionality
5. Dismissal of §1983 Claim

Legal Argument n the Appeal included

- A. Deed of Trust was executed by non-existing entity, thus void and unenforceable where Appellees had no legal claim on Petitioner's home
- B. Foreclosing Defendant-Appellees cold not be "beneficiaries" of non-existing entity and their recordings were fraudulent, void
- C. Defendant-Appellees avoided Foreclosure Mediation and recorded forged certificate as to mediation waived by Petitioner
- D. Appellee MERS was not the original Lender and lacked standing
- E. Appellee MERS was not registered to do business n Nevada on said dates as required by Nevada law
- F. Complaint had met the plausible standard for fraud, recording of forged title documents Ninth Circuit had established in *In re MERS* (9th Cir. 2014)
- G. Appellant had plead clouded title, slander, RICO, Bank Fraud, Wire Fraud that constitute continuous harm
- H. Appellant had plead that forged title documents were signed by established robo-signers and thus void
- I. Bankruptcy Fraud by Appellees presenting forged documents to obtain fraud relief without any legal claim and Attorneys committing perjury

- J. FDCPA, TILA, RESPA violations
- K. Cloud on Title precluded Transfer/Sales etc (UFTA)
- L. Plaintiff had demonstrated standing to bring the action
- M. Recent cases with judgments up to 45 million US dollars
- N. Wrongful foreclosure
- O. Appellant had demonstrated “distinct palpable injury” from Appellant’s acts
- P. District Court Judges ruling was disparate from other judges in same district
- Q. Recent cases where Nevada Court had disparate ruling from other Courts, Ninth Circuit and Supreme Court
- R. Complaint dismissal amounted to denial of Due Process, violations of Rule 9, 9(b), 12(b)(6) that were clearly erroneous, indicating Abuse of Discretion
- S. Equitable Estoppel Applied to Appellees-Defendants actions
- T. Cancellation of Instruments recorded by Appellee-Defendants

Ninth Circuit like the District Court failed to consider anything, violated US constitution, statutes, laws (including their own laws and standards they established) and violating “limitations which the Due Process Clause of the Fourteenth Amendment imposes on the conduct.....”.

This Judicial conduct “shocks the conscience”, offends “a sense of justice”runs counter to the “decencies of civilized conduct.” Ninth Circuit also ignored Justice Black, U.S. Supreme Court statement in *Rochin v. California* 342 U.S. 165 (1952) “our judgment must be grounded on “considerations deeply rooted in reason and in the compelling traditions of the legal profession.”

Chief Justice Marshall stated “it is *a constitution* we are expounding,” Daniels v. Williams, *supra*, at 332 (quoting McCulloch v. Maryland, 4 Wheat. 316, 407 (1819)).

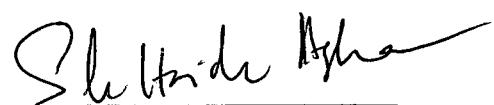
Appellant is turning to United States Supreme Court for Justice. Petitioner hopes that

1. Destroyed filings will be entered into the Appeal case record
2. All proceedings will be deemed “void”
3. Her property and money stolen from her will be returned to her.
4. Damages awarded.
5. All fraud instruments recorded on her property cancelled
6. Frauds alleged will be forwarded to appropriate authorities for investigation
7. Order that all Judicial Orders bear signatures of issuing authority.

If this Court is otherwise disposed, then transfer the Appeal out of Ninth Circuit.

Respectfully awaiting intervention.

Sated: February 18, 2021



Salma Agha-Khan, MD.

Petitioner-Appellant-Plaintiff

Pro Se