11/26/19 MO

No. 20-1719

IN THE

SUPREME COURT OF THE UNITED STATES

Allen B. Shay – PETITIONER

vs.

Alfred H. Siegel, Chapter 7 Bankruptcy Trustee – RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATE COURT OF APPEALS OR THE 9TH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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I. QUESTIONS PRESENTED

1. Does a petitioner in pro se seeking bankruptcy have the same 14th amendment due process protection and equal rights protection guaranteed under the constitution as creditors when there are extreme economic fluctuations where there has been no 9th circuit court cases or safeguards since the holding in Haines v. Kerner 1972?

2. Whether a bankruptcy court commits Fraud on the court when the judicial machinery itself has been tainted, such as when an attorney, who is an officer of the court, is involved in the perpetration of a fraud or makes material misrepresentations to the court along with the bankruptcy's trustee and his or her retained professional agents?

3. Does a trustee or bankruptcy courts abuse its authority against debtors when it contravenes codes, specific statutory provisions or the authority provided by Congress?

4. Did the trustee commit gross negligence or an act of wanton and reckless disregard for the debtor, that such acts permit this court to grant Petitioner the right to bring any and all legal actions against Alfred H. Siegel in his capacity as a bankruptcy trustee?

5. Should a circuit split exist within the 9th circuit court of appeal where a trustee that had the intent to abandon debtor's real estate properties and returned all debtor's properties after trustee used his discretion to give notice to specific creditors of his choice, but the bankruptcy court applied Rule 6007(a) instead of Rule 2002 (a) as provided by authorized agent as directed in its last requested filed in the particular case; (h) or section 102(1) which provides that "notice and hearing" is construed to mean appropriate notice and an opportunity for a hearing. Neither §554 nor §725 specify to whom the notices are to be sent. Is this an abuse of discretion?

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IV. PETITION FOR WRIT OF CERTIORARI

Allen B. Shay, a debtor in bankruptcy, received an abandonment notice of all his real estate properties which included his primary home, the Pine Bluff Drive property of twenty-seven years. The abandonment notice was effective from 01/16/2013 to 12/08/2015 when the bankruptcy court ruled the abandonment notice was ineffective because notice was not sent to all the debtor's creditors. Alfred H. Siegel the trustee intended to abandon the properties, used his discretion to give notice under his authority and had been a bankruptcy trustee for many years to know his administrative authority and how to use his discretion to carry out giving notice to debtor's creditors of his choice.

Approximately three years after an abandonment notice was issued by the Trustee under his administrative authority granted to him by Congress pursuant to §554, the trustee may abandon property but only after notice and hearing. This section is applicable in chapter 7 cases. Section 102(1) provides that "notice and hearing" is construed to mean appropriate notice and an opportunity for a hearing and §554 does not specify to whom the notices are to be sent. Congress approved the trustees' authority and discretion to choose which creditors will be given notice.

The Trustee, his attorney as an officer of the court, his realtor and Janet Hurren committed fraud on the court, the Bankruptcy court nullified the abandonment notice for the intended purpose of harming Petitioner as a result of the allegations alleged in two oppositions filed on August 28, 2015. Petitioner respectfully prays and petitions this court for a writ of certiorari to review the judgment of the United States Court of Appeals on August 29, 2019.

V. OPINIONS BELOW

The opinion of the United States Court of Appeals appears at Appendix A to the petition and is unpublished. The opinion of the United States district court appears at Appendix B to the petition and is unpublished.

VI. JURISDICTION

The date on which the United States Court of Appeals decided Petitioner's case was February 19th, 2019 (submitted) and February 21st, 2019 (entered on docket and filed). A timely petition for rehearing was denied by the United States Court of Appeals on the following date: August 29, 2019, and a copy of the order denying rehearing appears at Appendix A. The jurisdiction of this Court is invoked under 28 U.S.C. 1254 (1) and 28 U. S. C. 1257(a).

VII. CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. United States Constitution - 14th Amendment All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. 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.

2. Rule 60(d)(3) of the Federal Rules of Civil Procedure states that nothing in Rule 60 limits a court's power to set aside a judgment for fraud on the court.

3. 11 U.S. Code § 102 - Rules of construction: In this title— **(1)** "after notice and a hearing", or a similar phrase— **(A)** means after such notice as is appropriate in the particular circumstances, and such opportunity for a hearing as is appropriate in the particular

circumstances; but **(B)** authorizes an act without an actual hearing if such notice is given properly and if— **(i)** such a hearing is not requested timely by a party in interest. Section 102(1) provides that "notice and hearing" is construed to mean appropriate notice and an opportunity for a hearing.

4. 11 U. S. C. §105(a) - In exercising those statutory and inherent powers, a bankruptcy court may not contravene specific statutory provisions. It is hornbook law that §105(a) "does not allow the bankruptcy court to override explicit mandates of other sections of the Bankruptcy Code."

5. Sections 554 of the Code permits and require abandonment and disposition of property of the estate. Congress give the trustees' authority and discretion to choose which creditors will be given notice.

6. Section 725 requires the trustee to dispose of property in which someone other than the estate has an interest, prior to final distribution. It applies only in chapter 7 cases. Notice and hearing are also required conditions. Section 102(1) provides that "notice and hearing" is construed to mean appropriate notice and an opportunity for a hearing, and §725 does not specify to whom the notices are to be sent.

7. Article I, Section 8, of the United States Constitution authorizes Congress to enact "uniform Laws on the subject of Bankruptcies." Under this grant of authority, Congress enacted the "Bankruptcy Code" in 1978. The Bankruptcy Code, which is codified as title 11 of the United States Code, has been amended several times since its enactment. It is the uniform federal law that governs all bankruptcy cases.

VIII. STATEMENT OF THE CASE

On May 7, 2012, Petitioner Allen B. Shay in pro se filed for Chapter 7, Case No. 2:12-bk-26069-RK, a simple bankruptcy case which included the Pine Bluff Property and the required creditor's mailing list consisting of sixty-six creditors. On December 11, 2015, a motion pursuant to Rule 60 (b) to void an order was entered against Petitioner by the bankruptcy court. The court misapplied §554 and the Trustee's authority under Article 1, Section 8, 11 U.S.C Rule § 102(1). On appeal in the District court, the facts and the law in the Sierra v. Westinghouse case in which the Trustee did not have the intent to abandon Sierra's personal injury case, unlike Petitioner's case where the Trustee intended to abandon all Petitioner's real properties and did so under his authority from Congress.

There were no objections or oppositions from the creditors to the Trustee's Intent to Abandon Notice, and in January 2013, the bankruptcy Trustee Alfred H. Siegel was in compliance of rule 6007(a) and pursuant to §554 used his authority under Article 1, Section 8, 11 U.S.C Rule § 102(1), to abandon all debtor's real properties. Trustee had affirmatively administrated the completion of disposing of all Petitioner's real properties by returning the properties back to Petitioner and the bankruptcy court no longer had jurisdiction.

Petitioner continued experiencing abuse of authority, discrimination and the perpetration of fraud on the court as a result of the actions taken by the Trustee, his attorney, Trustee's new real estate agent and Petitioner's former tenant/real estate agent name Janet Hurren and the bankruptcy court since August 28, 2015. The court could not exercise impartiality after reading Ms. Hurren's two oppositions which was used to influence all the parties as well as the court with misrepresented information.

1. Amended Petitioner's schedules in June 2012

In June 2012, Petitioner brought to the Trustee's attention and Petitioner was instructed by the Trustee, since an error was made regarding the "market value" of Petitioner's home on Pine Bluff Drive in Pasadena by his attorney James King who prepared the amended schedules and changed the "market value" from the amount on the petition of $850,000 to a market value of $1,450.000. Petitioner was given instructions by the Trustee to get an independent third-party valuation of the current market value and submit the results to the Trustee in order to complete his own investigation and make a final determination of the "market value" of the Pine Bluff property.

Petitioner complied with Trustee's instructions in order to maintain his bankruptcy protection and obtain his discharge. Petitioner retained a real estate professional to render the service and provide the required information to the Trustee in the form of a Broker's Price Opinion (BPO) to show the current market value. The market value generated by the BPO was $740,000 for the Pine Bluff property in June 2012, a decline in value in the amount of $110,000.

2. Trustee's realtor's evaluation and subsequent abandonment notice

In December 2012, the Trustee used his authority and discretion by retaining his independent-third party real estate agent. She concluded her investigation and determined the "market value" of the Pine Bluff property was $670,000, a $180,000 decline in the market value from Petitioner's original amount of $850.000 shown on the bankruptcy petition filed on May 7, 2012.

After receiving information of the current market value, the Trustee used his discretion to abandon all Petitioner's real properties including the Pine Bluff property. The Intent to

Abandon Notice was issued to creditors selected by Trustee and at his discretion to affirmatively administer the debtor's estate. Each creditor was given instructions to respond within the fourteen days' time period, along with a proof of service attached to the document.

3. Trustee's motion filed in 2015 and the court's judgment

Approximately three years after the investigation concluded the "market value" in the amount of $670,000 for the Pine Bluff property, in December 2015, the court caused to be ineffective the abandonment notice issued in January 2013. The bankruptcy court deemed the abandonment notice ineffective because the bankruptcy's trustee did not serve "all creditors" with notice.

4. Motion to invalidate abandonment notice and fraud on the court By Trustee, Trustee's attorney, Trustee's new realtor and Creditor

The Trustee's motion on December 8, 2015, to make ineffective the Intent to Abandon Notice issued in 2013 was the result of one individual that filed two oppositions on August 28, 2015. Ms. Hurren was the only party of interest to file a claim to bring the motion before the bankruptcy court. The court's ruling was based on the influence of Ms. Hurren's two oppositions, her reply, the declarations of the Trustee, his attorney, his real estate agent and the proof of service attached to the Trustee's Intent to Abandon Notice. The court did not consider the authority provided to the trustee by congress and held in accordance to 11 U.S.C. Rule § 6007(a) and Rule §554(a) that the abandonment notice was deemed ineffective.

5. Due process violation

In August 2017, Petitioner discovered that a Creditor's Claim had been filed against him by Ms. Hurren and the claim was not served on Petitioner. Petitioner confirmed the filing of the Creditor's Claim with the Trustee's attorney and learned that Trustee had knowledge of the claim since August 13, 2013, but did not file a motion or render notice to Petitioner that

Ms. Hurren's Creditor's claim existed. Upon learning that a due process violation had occurred and fraud on the court had been perpetuated against Petitioner since Ms. Hurren had actually been enriched because she resided in the property for five months' rent free, Petitioner filed a motion under Rule 60 (b) in November 2017.

6. Petitioner's 60 (b) Motion

On December 5, 2017, the motion under Rule 60 (b) was heard, the bankruptcy court made its ruling by accepting the Trustee's argument that the motion should be denied based on the 9th Circuit court ruling in the case of Sierra v. Westinghouse, that all debtor's creditors are required to be served with notice. The Petitioner filed a timely appeal and the District Court affirmed the decision of the bankruptcy court. Petitioner appeal to the 9th Circuit Appeal Court and on August 29, 2019, Petitioner was denied.

IX. REASONS FOR GRANTING THE PETITION

A. TO AVIOD EGREGIOUS, ABUSIVE OR ERRONEOUS DEPRIVATIONS OF DUE PROCESS, THIS COURT SHOULD CLARIFY THE "CONSTITUTIONAL AND STATUTORY PROVISIONS" APPLIED TO PREVENT A BANKRUPTCY COURT FROM CONTRAVENING A TRUSTEE'S ADMINISTRATIVE AUTHORITY GRANTED BY CONGRESS

In accordance to the Rules of this court under Rule 10 (a), a case in which the United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter or has so far departed from the accepted and usual course of judicial proceedings call for an exercise of this Court's supervisory power.

Millions of bankruptcy petitions are filed in the United States each year. Most are filed during sever down turns in the economy, especially after the housing market crash of 2008 and the Covid-19 epidemic we are currently experiencing. A large percent of debtors file for bankruptcy protection seeking a fresh start in pro se. During the judicial process while in

bankruptcy protection seeking a fresh start in pro se. During the judicial process while in bankruptcy egregious acts that violates the per se debtors' constitutional rights by the bankruptcy courts, the trustees and their legal or professional representatives goes unreported.

Currently, once the bankruptcy process go from the administrative stage with only the trustee, to an adversarial phase involving litigation with the debtor's creditors, there are no safeguards in place that actually protect a debtor in pro se from becoming a statistic because many of the debtors cannot afford an attorney or have the ability to endure the length process it takes to bring the matter before an impartial tribunal.

A review by the U.S. Supreme Court is necessary to improve the bankruptcy court judicial system because of the fluctuation of the economy that effects the housing market which impacts the debtors' households, especially homeowners and their largest investment, this makes the pro se debtor a target for abuse when the housing market is recovering.

Because debtors are the most vulnerable to the bankruptcy court's judicial system during an economic recovery period, it is necessary to secure uniformity of appellate decisions and prevent the present state of a circuit split throughout the 9th circuit. This can be achieved by enforcing the laws enacted by Congress that will bring about uniformity of case law and resolve the issues of abuse of authority, diminish due process violations, reduce conflicting case law and have a uniform standard to address important questions of law that effect the rights of pro se debtors.

In accordance to the authority vested in Congress, statutory codes were enacted as law to regulate bankruptcy courts as an order to be applied to each bankruptcy case in an impartial manner. Under this grant of authority, Congress enacted the "Bankruptcy Code" in 1978. The Bankruptcy Code, which is codified as title 11 of the United States Code, has been amended

several times since its enactment. It is the uniform federal law that governs all bankruptcy cases.

According to 11 U. S. C. §105(a), a bankruptcy court may not contravene specific statutory provisions. This case will provide uniformity of case law to prevent a circuit split in the 9th circuit regarding notice, abandonment of property from the debtor's estate and ensure the safeguards from abuse of authority as applied to §105(a) which "does not allow the bankruptcy court to override explicit mandates of other sections of the Bankruptcy Code" and to ensure that bankruptcy courts follows the Supreme Court case in Local Loan Co. v. Hunt, 292 U.S. 234, 244 (1934), which made this point about the purpose of the bankruptcy law in the 1934 decision: [I]t gives to the honest but unfortunate debtor...a new opportunity in life and a clear field for future effort, unhampered by the pressure and discouragement of preexisting debt.

If not addressed, it will constitute an unchecked and unprecedented abuse of constitutional authority. At present, pro se debtors as the group of persons intended to be protected by filing for bankruptcy do not have the means to seek redress when there is a violation of their constitutional rights or to initiate action to improve the bankruptcy court's judicial system, especially in the central district and appeal courts in the 9th circuit. The review by the U.S. Supreme Court will prevent pro se debtors from being stripped of their 14th amendment constitutional right of due process, it will mandate compliance of uniformity of cases and require the authority used by bankruptcy courts and trustees to comply as prescribed by Congress to the federal codes or the federal statutes.

By reviewing this case, the U.S. Supreme Court will improve the future of the bankruptcy courts' judicial system and provide for a safeguard to prevent abuse of authority or committing

fraud on the court. Without such safeguards, pro se debtors are unlikely to realize or notice what may happened to them. Moreover, pro se debtors do not have an equal playing field to adjudicate such claims and are unable to achieve the appropriate legal remedies.

The Court in keeping with Haines v. Kerner, has recognized a pro se litigant's 14th amendment due process. Petitioner's filings to the appeal court was timely. The Supreme Court's examination of the lower court dockets will confirm zero deficiencies. In contradiction to Haines v. Kerner, defendant's attorneys and Judge Manual Real consistently held plaintiff to an unreasonable standard with respect to presentation of exhibits and material facts. This condition is further aggravated by defendant's attorneys consistently misrepresenting material facts and misapplying case law. The Ninth Circuit Court of Appeals declination regarding an application for an en banc hearing and a petition for a panel rehearing leaves the aforementioned deficiency unremedied. The 2021 U.S. Supreme Court has the opportunity to expand upon the case law established through the ruling of the 1971 case of Haines v. Kerner.

Petitioner seeks judicial review in an effort to address this 9th circuit court's pattern of abuse. Petitioner's case is merit based. It is precedent setting. If this case is left unremedied the current bankruptcy court judicial system of constitutional violations, fraud on the court and abuse of authority will persist against pro se debtors. Boddie v. Connecticut (1971) supra, 401 U.S. at p. 377 [28 L.Ed.2d at pp. 118-119].) Thus, the United States Supreme Court has long recognized a constitutional right of access to the courts for all persons. Procunier v. Martinez (1974) 416 U.S. 396, 419 [40 L. Ed. 2d 224, 243, 94 S. Ct. 1800]; Cruz v. Beto (1972) 405 U.S. 319, 321 [31 L. Ed. 2d 263, 267-268, 92 S. Ct. 1079].

At Petitioner's first hearing in pro se before the bankruptcy court on September 29, 2015, Petitioner's learned for the first time during the hearing that not "all creditors" were

served with the Trustee's Intent to Abandon Notice, prepared by Trustee. There was no discussion as to why (i.e. change of addresses, creditors decline farther notification or Trustee elected to use his discretion and not include certain creditors), only twelve of Petitioner's sixty-six creditors received notice. Not once did the court make reference to the Trustee's intent to abandon the property or Trustee's authority to use his discretion as to which creditors to give notice, because their names along with Ms. Hurren's were not listed, the bankruptcy court ruled the abandonment notice was ineffective.

As a result of the missing names, the court ordered the trustee to re-notice all creditors. The Trustee gave notice of the December 8, 2015, hearing to Petitioner's creditors, there were no written objections provided to the court clerk from debtor's creditors giving their express or implied authorization to the bankruptcy court to consider the creditors' interest to the motion or to preserver the creditors' rights to object as a party of interest. No other creditors objected to Petitioner's bankruptcy filing since 2013, except Ms. Hurren as the only party of interest to respond with a reply almost three years after the abandonment notice was issued.

Moreover, the trustee's attorney asserted under penalty of perjury that the reason for his statement that the court should cause the notice of abandonment to be ineffective was because he agreed that there was significant equity in the Pine Bluff property based on Ms. Hurren's reply. The Trustee stated under penalty of perjury that his new real estate agent's "market value" agreed with Ms. Hurren's and his former real estate agent in December 2012, made a finding of the market value for the Pine Bluff after receiving the BPO (the document included the size of the lot and square footage of the home) in June and September of 2012, was Petitioner's fault because the information provided to the Trustee did not include the square footage of the home.

See In re Consumers Realty & Dev. Co., 238 B.R. 418 (B.A.P. 8th Cir. 1999); In re Alleghany Int'l, Inc., 954 F.2d 167, 173-74 (3rd Cir. 1992) and the United State Supreme Court case of Law v. Siegel (an appeal from 9th circuit court) provides the most fundamental safeguards for debtors where the trustee or bankruptcy court abuse its authority, the U.S. Supreme court held that the bankruptcy court may not contravene specific statutory provisions.

Here, the bankruptcy court's records show that the trustee and the court was influenced by the information provided in the oppositions filed in August 28, 2015, along with the reply filed in December 2015, and could not be fair and objective toward Petitioner.

Trustee and his attorney and his real estate agent all made false statements in their declarations and or moving papers, this brought about the fraud on the court and reinforced the discriminatory practices that were used against Petitioner.

Petitioner discovered the new evidence(s) and case law(s) that supported corruption of the judicial process and the fraud committed on the court by the parties after the December 8, 2015, hearing according to the case of Toscano v. C.I.R., 441 F.2d 930, 933 (9th Cir.1971) and the court's records showed how the bankruptcy court was prevented from being impartial in Petitioner's case. The Court did not review Docket No. 14, it relied on the response of the Trustee's attorney, the declaration of the Trustee, and the declaration of Mr. Thomas Bluemel, the trustee's real estate agent.

Mr. Bluemel declared under penalty of perjury on September 21, 2015, that he had conducted valuations of the Pine Bluff Property at the requested time intervals and have determined that the valuation of the Pine Bluff Property as of the Petition was, in fact $1,500,000, the valuation as of the date of the Abandonment Notice was $1,600,000 and the current fair market value is $1,800,000. The Trustee was advised that the Property maintained

a collective "fair market valuation" of $1.8 million. Since that time, the Trustee's real estate agent conducted an in-home inspection of the Property and determined that the fair market value is currently $1.6 million. With a current fair market valuation of $1.6 million, less costs of sale of 8% ($128,000.00) and less secured creditor (1st deed of trust) debt of $277,915.14 and less secured creditor (2nd deed of trust) debt of $500,000.00, the Trustee submits there is equity in the amount of $694,084.86 in his declaration, EOR, Doc. No. 102, pages 15 and 16.

On December 4, 2015, Anthony A. Friedman as an officer of the court stated that the market value of the Pine Bluff was $1,800,000 and the Trustee submitted to the court that there was equity in the of $878,804.86 and that the foregoing was true and correct as well, EOR, Doc. No. 124, pages 2.

The Court having read and considered the Abandonment Notice [Docket No. 42], the opposition to the Abandonment Notice filed by Janet Hurren [Docket No. 96], the notice of hearing on the Abandonment Notice [Docket No. 98], the Trustee's reply to the opposition of Janet Hurren to the Abandonment Notice [Docket No. 102], the Petitioner's reply regarding the Abandonment Notice [Docket No. 121], the response of Janet Hurren to the Appellant's reply regarding the Abandonment Notice [Docket No. 123], the Trustee's supplement to the opposition of Janet Hurren to the Abandonment Notice [Docket No. 122], the Trustee's errata to the supplement to the opposition of Janet Hurren to the Abandonment Notice [Docket No. 124]; the Court having heard the case and considered the arguments presented at the Hearing; the Court having issued its findings and conclusions on the record at the Hearing; and good cause appearing, IT IS ORDERED AS FOLLOWS: 1. The Abandonment Notice is ineffective having not been served on all creditors of the estate.

As a result, the Abandonment Notice is DENIED. 2. All estate assets sought to be abandoned pursuant to the Abandonment Notice remain property of the Petitioner's bankruptcy estate subject to the sole and exclusive administration by the Trustee. The bankruptcy court ordered the Trustee to sell the property and evict the Petitioner.

There was no discussion that the court did not have authority or jurisdiction to cause the Abandonment Notice to be ineffective according to the Trustee's administrative authority to use his discretionary as vested in him by Congress. Nor did the Trustee assert or the bankruptcy court considered how the federal codes applied to prevent the bankruptcy court from regaining jurisdiction of debtor's real property once the Trustee had the intent to abandon the property and there was no crime or fraud on the party of the debtor that prevented the Trustee from making the decision to issue an Intent to Abandon Notice.

On appeal, the December 5, 2017, motion under Rule 60 (b), was decided by the district court without Petitioner being heard on the matter. The district court could have determined that the bankruptcy court ruling was in error and the trustee along with how the bankruptcy court misapplied the facts and the law in the Sierra v. Westinghouse case. The Sierra case should have demonstrated to the district court that the bankruptcy court made an error and did not have jurisdiction of the Pine Bluff property according to the facts in the case.

In October 1981, Sierra Switchboard filed for bankruptcy. Prior to filing for bankruptcy, Sierra had a civil case in state court, the entire state action was removed to bankruptcy court. Westinghouse, the trustee for the estate and others signed a stipulation dismissing the removed state court action without prejudice, with a proviso that any party could refile the action within one year.

Within one year, Sierra refiled in bankruptcy court. The bankruptcy court dismissed Sierra's claim without making any findings or conclusions. The district court remanded the action to bankruptcy court for written findings and conclusions. The bankruptcy court concluded that because the claim was the property of the bankruptcy estate and had not been abandoned by the trustee, Sierra lacked capacity to sue. Sierra objected. The district court affirmed the bankruptcy court decision on the ground that the emotional distress claim was the property of the estate based on the fact that the trustee did not have the intent to abandon the property, nor did the trustee exercise his authority to return the property to Sierra.

The district court affirmed the bankruptcy court's ruling by accepting the Trustee's argument that the motion should be denied based on the 9th Circuit court ruling in the case of Sierra v. Westinghouse because "all debtor's creditors" were required to be served with the Trustee's Intent to Abandon Notice. Petitioner made the argument in his opposition that the Sierra case did not apply to his case because the Trustee in his case had the authority, used his discretion, had the intent to return the properties to Petitioner and intended to issue notices to the twelve creditors only and not all sixty-six as listed on the creditors mailing list filed in Petitioner's schedule.

Petitioner's real properties had been properly abandoned, unlike in the Sierra's case where the trustee did not intend to abandon debtor's (personal injury case) property. And as the Trustee, he used judicial economy at his discretion and gave notice together with the notices of the meeting of creditors so that separate notices would not be required. However, the trustee made no such arguments in his reply to overcome the influence of the two oppositions and the reply filed by the only party who asserted an interest to be heard before the bankruptcy court on December 8, 2015.

The Trustee had exercised his authority vested in him from congress, the abandonment should have been irrevocable in accordance to 11 U.S.C. Rule § 6007(a) and §554. Neither §554 nor §725 specify to whom the notices are to be sent. Section 725 requires the trustee to dispose of property in which someone other than the estate has an interest, prior to final distribution. This section is applicable in chapter 7 cases.

This type of egregious act and abuse is perhaps common in the bankruptcy system but is rarely known to exist and would not come to the attention of this court unless one out of the millions of bankruptcy cases has a pro se debtor that is prepared to assert his or her rights all the way to the U.S. Supreme Court which was demonstrated in the case of Law v. Siegel in the 9th circuit, involved the same Bankruptcy Trustee, the contravene of federal law by the Trustee and similar circumstances where a debtor in pro se has been subject to abuse of authority by the Trustee and the bankruptcy judicial system.

Moreover, how can a circuit split exist within the 9th circuit court of appeal where congress gives authority to a Trustee, at his discretion to abandon property, that specific federal codes exist that after the Trustee affirmatively administers the estate's property before the case close the abandon asset cannot be reclaimed by the Trustee for sale.

Therefore, without review by the U.S. Supreme Court, fraud on the court will continue to impact the rights of pro se debtors.

The one-year limitations period of FRCP 60(b)(3) does not limit court's power to set aside judgment under "fraud on the court" doctrine. See Outen v Baltimore County 177 FRD 346, 348 (1998, DC Md). Fraud on the court is distinguished from other types of fraud in that it is generally applied only in the most egregious cases. For example, the Ninth Circuit Court

of Appeals stated in Toscano v. Comm'r, 441 F.2d 930, 933-34 (9th Cir. 1971) that the term "fraud upon the court" must be construed narrowly in connection with Rule 60.

See Outen v Baltimore County 177 FRD supra at 349. (Citations omitted.) affirmed Outen v. Baltimore County 164 F.3d 625 (4th Cir. 1998). However, the Ninth Circuit Court of Appeals held that a lawyer's failure to disclose evidence during discovery constituted fraud upon the court. The United States Supreme Court has also noted the inherent power of courts to vacate judgments on basis of fraud upon the court. See Chambers v. NASCO, Inc., 501 U.S. 32, 44 (1991).

The above-cited acts and omissions reveal that (1) the Court committed fraud upon the court and (2) the Judgment and Order were entered in a manner inconsistent with due process of law; to wit: One of the very objects of law is the impartiality of its judges in fact and appearance .... The relevant consideration under§ 455(a) is the appearance of partiality ... not where it originated or how it was disclosed. . . Liteky v. United States, 510 U.S. 540, 558 (1994). A fair trial in a fair tribunal is a basic requirement of due process.

In In re Murchison, 349 U.S. 133, 136 (1955) and Bulloch v. United States, 763 F.2d 1115, 1121 (10th Cir. 1985), the court held that fraud upon the court is fraud which is directed to the judicial machinery itself and is not fraud between the parties or fraudulent documents, false statements or perjury. ... **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."**

Here, the Bankruptcy Court having read and considered the Abandonment Notice EOR, [Docket No. 42] (see Exhibit 2), the opposition to the Abandonment Notice filed by Jan Hurren EOR, [Docket No. 96] (see Exhibit 5), the notice of hearing on the Abandonment

Notice EOR, [Docket No. 98] (see Exhibit 6), the Trustee's reply to the opposition of Jan Hurren to the Abandonment Notice EOR, [Docket No. 102] (see Exhibit 7), the Debtor's reply regarding the Abandonment Notice EOR, [Docket No. 121] (see Exhibit 8), the response of Jan Hurren to the Debtor's reply regarding the Abandonment Notice EOR, [Docket No. 123] (see Exhibit 10), the Trustee's supplement to the opposition of Jan Hurren to the Abandonment Notice EOR, [Docket No. 122] (see Exhibit 9), the Trustee's errata to the supplement to the opposition of Jan Hurren to the Abandonment Notice EOR, [Docket No. 124] (see Exhibit 11); the Court having heard and considered the arguments presented at the Hearing; the Court having issued its findings and conclusions on the record at the Hearing; and good cause appeared to render a ruling.

Here, the court ordered that the Abandonment Notice is ineffective having not been served on all creditors of the estate. As a result, the Abandonment Notice is DENIED. All estate assets sought to be abandoned pursuant to the Abandonment Notice remain property of the Debtor's bankruptcy estate subject to the sole and exclusive administration by the Trustee.

The right to a tribunal should be free from bias or prejudice is based, not on section 144, but on the Due Process Clause .... United States v. Sciuto, 521 F.2d 842, 845 (7th Cir., 1976). The Court is authorized and required to vacate judgments and orders entered in a manner inconsistent with due process of law; to wit: A judgment is void if the court that rendered it ... acted in a manner inconsistent with due process.

The Notice of Hearing on Notice of Proposed Abandonment of property of the Estate filed by Chapter 7 trustee EOR, [Docket No. 42] served on Petitioner stated that on August 28, 2015, creditor Janet Hurren, asserting that she had never received notice of the abandonment

Notice, filed an opposition to the Abandonment Notice and requested a hearing on the Abandonment Notice EOR, [Docket No. 96].

Margo v. Johns, 660 F .2d 291 (7th Cir. 1981); In re Four Seasons Securities Laws Litigation, 502 F.2d 834 (10th Cir.1974), cert. denied, 419 U.S. 1034, 95 S.Ct. 516, 42 L.Ed.2d 309 (1975). Mere error does not render the judgment void unless the error is of constitutional dimension. Simer v. Rios, 661 F.2d 655 (7th Cir.1981), cert. denied, sub nom Simer v. United States, 456 U.S. 917, 102 S.Ct. 1773, 72 L.Ed.2d 177 {1982). **Klugh v. United States, 620 F.Supp. 892 (1985). We believe that a judgment, whether in a civil or criminal case, reached without due process of law is without jurisdiction and void ... because the United States is forbidden by the fundamental law to take either life, liberty or property without due process of law, and its courts are included in this prohibition. . . . Bass v. Hoagland, 172 F.2d 205 (5th Cir.), cert. denied, 338 U.S. 816, 70 S.Ct. 57, 94 L.Ed. 494 (1949).**

[I]f it is void; it is a per se abuse of discretion for a district court to deny a movant's motion to vacate the judgment." United States v. Indoor Cultivation Equip. from High Tech Indoor Garden Supply, 55F.3d1311, 1317 (7th Cir.1995). A judgment is void and should be vacated pursuant to Rule 60(b)(4) if "the court that rendered the judgment acted in a manner inconsistent with due process of law." Id at 1316 (citations omitted) ... Price v. Wyeth Holdings Corp., 505 F.3d 624 (7th Cir., 2007). "[D]enying a motion to vacate a void judgment is a per se abuse of discretion." Burrell v. Henderson, et al, 434 F.3d, 826, 831 (6th Cir., 2006).

Here, the following arguments took place at the December 8, 2015, hearing; MR. SHAY: Okay. So for my clarification with all due respect are you saying that the intent to abandon that was signed in January of 2013 has no effect? THE COURT: Yes, that's right

because not all creditors were served. [Page 5] THE COURT: That's required by the Federal Rules of Bankruptcy Procedure Rule 6007(a). Have to serve all creditors. He didn't do that. He just served some creditors, some parties. So, it's a denial of due process to all the creditors, so if it's -- you know, you can't abandon unless -- and also under our Local Rules you can't abandon unless proper service is made. You know, the Court didn't review that because there's no hearing on it. MR. SHAY: And who were the creditors -- THE COURT: On the mailing matrix that you filed with the Court. All the creditors you put on your mailing matrix when you filed your petition or your amended matrix. MR. SHAY: So, all of those creditors were not notified? THE COURT: That's right. So, it wasn't done right. Trustee's counsel concedes that, so he'll just do it again. (see Exhibit 12), EOR, Transcripts Motion date 12/08/15, Line 21-25, page 4, Line 1-21, page 5.

Under California Civil Code § 3294, "Fraud" means an intentional misrepresentation, deceit, or concealment of a material fact known to the defendant with the intention on the part of the defendant of thereby depriving a person of property or legal rights or otherwise causing injury.

The document stated that the Petitioner's primary residence was **grossly misrepresented in the original schedule submitted to the Trustee in May 2012 as $746,000** (see Exhibit 13) EOR, Docket 95, page 2, filed 08/28/15.

A finding of fraud on the court is justified only by the most egregious misconduct directed to the court itself, such as bribery of a judge or jury **or fabrication of evidence by counsel, and must be supported by clear, unequivocal and convincing evidence.'"** Landscape Prop., Inc. v. Vogel, 46 F.3d 1416, 1422 (8th Cir. 1995) (quoting Pfizer, Inc. v.

Int'l Rectifier Corp. (In re Coordinated Pretrial Proceedings in Antibiotic Antitrust Actions), 538 F.2d 180, 195 (8th Cir. 1976)) (emphasis added); see also Rozier v. Ford Motor Co., 573 F.2d 1332, 1338 (5th Cir. 1978).

Here, it is clear that the most egregious misconduct that the Trustee and his attorney did was too join in with the plan based on the documents filed on August 28, 2015, was used to influence the court, (the Pine Bluff Property was) "today the property is valued is somewhere between $1,700,000 and $2,200.000". The opposition stated **"where are proper valuations provided by appraisers to support the debtors grossly understated valuation? Why was this valuation changed in the notice to abandon? Was it an error on the part of a very busy Trustee?"** (see Exhibit 13) EOR, Docket 95 pages 2,3 and 4 filed on 08/28/15.

Woodcock v. U.S. Dept. of Educ. (In re Woodcock), 326 B.R. 441, 448 (B.A.P. 8th Cir. 2005). "'Less egregious misconduct, such as nondisclosure to the court of facts allegedly pertinent to the matter before it, will not ordinarily rise to the level of fraud on the court.'" Rozier, 573 F.2d at 1338 (quoting U.S. v. Int'l Tel. & Tel. Corp., 349 F. 4

Here, the Trustee stated that **Petitioner originally failed to disclose the Pine Bluff Property.** The Trustee received information from his former real estate agent advising him that the comparables to the Pine Bluff Property rendered the value of the Pine Bluff Property at $670,000, **and based on that mistaken analysis**, the Trustee caused to include the Pine Bluff Property in the Abandonment Notice. **The Trustee has learned that the valuation of the Pine Bluff Property as of the Petition Date was, in fact, $1,500,000, the valuation as of the date of the Abandonment Notice was $1,600,000 and the current fair market value is $1,800,000** (which amounts are consistent with the valuations set forth in Ms. Hurren oppositions).

Here, the Trustee stated, as a result of the misinformation provided by the Debtor regarding the value of the Pine Bluff Property, together with the Trustee's former real estate agent not properly valuing the Pine Bluff Property, the Trustee mistakenly caused to include the Pine Bluff Property in the Abandonment Notice. As stated in the Trustee's Reply, as a result of the filing of the opposition, the Trustee engaged a different, independent real estate broker, Coldwell Banker to conduct a valuation of the Pine Bluff Property as of the Petition Date (i.e. May 2012), the date of the Abandonment Notice (i.e. January 2013) and the current fair "market valuation" (i.e. September 2015). The Trustee was advised that the valuation of the Pine Bluff Property as of the Petition Date was, in fact, $1,500,000, the valuation as of the date of the Abandonment Notice was $1,600,000 and the current fair market value is $1,800,000. According to Debtor's Second Amended Schedules, the secured debt against the Pine Bluff Property was $736,830.00. With a fair market value of $1,800,000. (see Exhibit 7) EOR, Docket No. 102, pages 8-11.

Therefore, fraud on the court occurs only in the most egregious cases where the judicial machinery itself has been tainted, such as when an attorney, who is an officer of the court, is involved in the perpetration of a fraud or makes material misrepresentations to the court as evidenced by the court records' in this case. Fraud upon the court makes void the orders and judgments of that court and is supported by the facts stated above.

"To prove a conspiracy the agreement need not be explicit; **it is sufficient if the conspirators knew or had reason to know of the scope of the conspiracy and that their own benefits depended on the success of the venture."** United States v. Montgomery, 384 F.3d 1050, 1062 (9th Cir. 2004) (citing United States v. Romero, 282 F.3d 683, 687 (9th Cir. 2002)). A conspiracy may exist even if some members of the conspiracy cannot complete the

offense, so long as the object of the conspiracy is that at least one conspirator complete the offense. Ocasio v. United States, 136 S.Ct. 1423, 1429-32 (2016).

Here, the court records established that the conspirators knew or had reason to know of the scope of the conspiracy and that their own benefits depended on the success of the venture. The Trustee's attorney filed a Reply of Chapter 7 Trustee to Oppositions filed by Creditor Hurren which provided "The oppositions filed by Hurren raise a significant issue with regard to the Pine Bluff Property and the potential viability of that real property for the benefit of creditors. **The Debtor's Original Schedules fail to schedule the Pine Bluff Property. He stated that Trustee was provided an analysis with a value of $670,00 that did not take into account the actual square footage of the Pine Bluff Property compared to the other sales.**

In the declaration of Alfred H. Siegel, he declared that as a result of the filing of the oppositions by Hurren, I engaged Thomas Bluemel to conduct a valuation of the Pine Bluff Property, **he agreed with the values determined by Mr. Bluemel.**

In the declaration of Thomas Bluemel, he declared that as a licensed real estate agent since 1982 and specialize in the Pasadena area. He conducted valuations of the Pine Bluff Property at the times requested and determined on the Petition Date the value was $1,500,000, on the date of the Abandonment Notice it was $1,600,000 and the current fair market value was $1,800,000 as of September 21, 2015. (see Exhibit 7) EOR, Docket No. 102, filed 09/22/15, pages 7,14,15,16 and 17. These facts show that a conspiracy existed.

However, after his inspection of the Pine Bluff property, Mr. Blumel determined the fair market value was $1,600,000 and after six months on the market and three price reductions, the trustee accepted the only offer with the fair "market value" of $ 1, 200,000.

Therefore, the egregious conduct continued by the Trustee's influence to ensure that the court would acquiescence to the plan to cause harm to Petitioner. (see Exhibit 5) EOR, Docket 96, page 1 and 2 filed 08/28/15.

Under the laws of most states where aiding and abetting are recognized, a claim for aiding and abetting the breach of a fiduciary duty requires a showing that there (1) existed a fiduciary relationship, (2) was a breach of the fiduciary's duty, (3) was a knowing participation in the breach by a defendant who is not a fiduciary and (4) that damages are proximately caused by the breach. Furthermore, to the extent the underlying breaches of fiduciary duty are based on fraudulent conduct, the complaint must meet the requirement of Rule 9(b) of the Federal Rules of Civil Procedure, which mandates that all allegations of fraud must be pled with particularity.

However, Rule 9(b)'s particularity requirement does not apply to "conditions of the mind"—including knowledge—that may be averred generally. Accordingly, they are owed the common law fiduciary duties applicable to trustees as well as the statutory duties set forth in 11 U.S.C. §§ 704, 1106, 1202, or 1302. As the trustee, Alfred H. Seigel had a fiduciary relationship to aid in carrying out his fiduciary obligations to the bankruptcy estate. A trustee's duty of obedience is defined and measured by the scope of his or her authority which subsumes that any actions taken are lawful.

After the filing of the opposition (see Exhibit 13) EOR, Docket No. 95, filed 08/28/15, page 2 and 3, Ms. Hurren stated **"The true and correct valuation of this luxury 4500sf home that backs up to a green belt, with views and pool is indeed $1.45M and may in fact have been more. Today the property is valued somewhere between $1,700,000 and $2,200,000."**

William Friedman and Thomas Bluemel had an interest, the listing of the Pine Bluff Property. Mr. Bluemel corroborated Ms. Hurren's information, this was done to influence the court by making false statements as to the current market value for the Pine Bluff Property.

Petitioner's opposed the Application to employ Trustee's realtor Mr. Bluemel for this very reason, EOR, Docket No. 145, pages 1 of 49 (see Exhibit 14). The court records are clear that Trustee breached his fiduciary duty because it was unreasonable to think that there was a $500,000 ($2,200,000 -$1,700,000 = **$500,000** or $2,200,000 – 1,200,000 = **$1,000,000**) or a $1,000,000 in equity, this was after the property was on the market over six months with the Trustee authorizing Mr. Bluemel another six-month listing period.

Case law clearly provides for 60 days as a reasonable listing period, EOR, Docket No. 133 pages 1-29 and Docket No. 149, pages 1 of 2 (see Exhibit 4). The property was originally listed 04/13/2016 for $1,600.000, the price was reduced to $1,399,000 on 05/12/2016, down to $1,299,000 on 09/08/2016 and the third price was reduced to $1,200,005 (twenty-five thousand more than Petitioner testified too on December 8, 2015, having a "market value" of $1,180,000) with only one offer with the buyer's offer of $1,200.000 Docket No. 161, pages 31-38 (see Exhibit 19). The Trustee accepted the offer with the "market price" of $1,200,000 on or about October 18, 2016, the Trustee extended the listing agreement with Mr. Bluemel until April 20, 2017, and opened escrow with the buyer, EOR, Docket No. 163, pages 8-16 (see Exhibit 20).

Petitioner had filed a motion to abandon the property, Petitioner's value was $1,180.000 in December 2015, and the market price of the accepted offer of $1, 200,000. The Petitioner made the argument that based on the accepted offer, after considering the mortgages, back

taxes and exemption credit the property had inconsequential value to the estate and the court rejected Petitioner's argument and denied Petitioner's motion.

Here, the oppositions filed on August 28, 2015, were used to ensure that it would influence the judicial process. It stated **"Mr. Shay takes advantage of the court by filing unfounded and false statements intended to delay or defeat the proceedings in the already three years plus bankruptcy**. Including his current suit against the County of Los Angles and the Sherriff's department over May 2014 arrest for alleged Mortgage fraud.

While he files his motions in Pro Per, one should not afford Mr. Shay the leeway of an average laymen. **As a law school dropout, Mr. Shay has found a far more lucrative avocation suing individuals and corporations.** He has to date more than 80 civil lawsuits in Los Angeles and San Bernardino County's alone, to his credit. Spending arguably more time in the State court rooms than in his Real Estate business, **Mr. Shay shamelessly utilize the State's courts and resources (paying no court fees in over three years for example), shaking down his victims with predatory filings against clients, tenants, vendors, servicers, the city and county governments and any one unfortunate enough to be in his path.** During his three plus years bankruptcy, Mr. Shay re-rented the defaulted property taking yet another security deposit which he failed to return when that property was finally foreclosed in June 2015 and prompting his amendment."

The oppositions filed in 2015 was used to attack Petitioner's character and influenced the court by statements i.e., "Although there is no compensation for the distress and wrongful actions Mr. Shay has brought, **it is my hope that this court will exact some measure of justice in spite of his manipulations, and innocent creditors be finally repaid."** (see Exhibit 10) EOR, Docket No. 123 Filed 12/01/15 pages 1-4.

In December 2017, Petitioner filed an appeal after the court denied Petitioner's motion and Petitioner learned of the fraud on the court. Petitioner served the Trustee and Ms. Hurren with notice of the Rule 60 (b) motion heard on December 5, 2017 as the parties with interest involved in the motion heard on December 8, 2015, which caused the Abandonment Notice granted in January 2013, to be ineffective.

Rule 60(b)(4) allows a party to seek relief from a final judgment that "is void," but only in the rare instance where a judgment is premised either on a certain type of jurisdictional error or on a violation of due process that deprives a party of notice or the opportunity to be heard and was deprived of a protected interest.

The Ninth Circuit has defined fraud on the court as a species of fraud that "defiles the court itself . . . so that the judicial machinery cannot perform in the usual manner". The court goes on to say that fraud, without more, should have redress under a motion pursuant to Rule 60(b)(3). Toscano v. C.I.R., 441 F.2d 930, 933 (9th Cir.1971). Rule 60(b)(6) allows a court, upon a motion, to "relieve a party from a final judgement, order or proceeding . . . [for] any other reason justifying relief from the operation of the judgment." There is no time limitation on requests for relief brought under this subsection. Fed.R.Civ.P. 60(b)(6) that is still pending in Petitioner's case along with the fact that the court ruled that Petitioner was entitled to recover.

Therefore, the court records presented above support a finding that the parties committed fraud on the court.

The Supreme Court made this point about the purpose of the bankruptcy law in a 1934 decision: [I]t gives to the honest but unfortunate debtor...a new opportunity in life and a clear field for future effort, unhampered by the pressure and discouragement of preexisting

debt. Local Loan Co. v. Hunt, 292 U.S. 234, 244 (1934). Williams v. U.S. Fidelity & Guaranty Co., 236 U.S. 549, 554, 555, 35 S.Ct. 289, 290, 59 L.Ed. 713. See In re Consumers Realty & Dev. Co., 238 B.R. 418 (B.A.P. 8th Cir. 1999); In re Alleghany Int'l, Inc., 954 F.2d 167, 173-74 (3rd Cir. 1992) and the United State Supreme Court case of Law v. Siegel (appealed from 9th circuit court) provides the most fundamental safeguards for debtors where the trustee or bankruptcy court abuse its authority, that is that it may not contravene specific statutory provisions.

A bankruptcy court has statutory authority to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of" the Bankruptcy Code. 11 U. S. C. §105(a). In exercising those statutory and inherent powers, a bankruptcy court may not contravene specific statutory provisions. Thus, the Bankruptcy Court's "surcharge" was unauthorized if it contravened a specific provision of the Code. We conclude that it did.

Based on the facts as stated above, the court's records and the legal authority from Article 1, Section 8, 11 U.S.C Rule § 102(1), "after notice, a hearing" or 11 USC § 102(6) "order for relief" means entry of an order for relief and 11 U. S. C. §105(a), a bankruptcy court may not contravene specific statutory provisions, According to 11 U.S.C, Rule§554 subdivision (a), the recent precedent of Law v. Siegel with the other authority from the 9th Circuit Court established that Petitioner's case has merit.

Under 11 U.S.C Code 102 (B) (2) and according to the case of Law v. Siegel, the case set forth the precedent to prevent abuse of authority of bankruptcy courts and the trustees are not to act in contravene of the law. In the Law v. Siegel case, the debtor in pro se argued where Congress clearly expressed exceptions to exemptions and provides penalties for wrongful conduct, the Court should not circumvent these provisions. That it is contrary to the text of the

Code as well as Congress' clearly expressed intent to use the court's equity authority to deprive a creditor of a homestead exemption.

According to Law, this means that debtors should emerge from bankruptcy with enough property that the public will not need to support them. Law notes that Congress intended to provide this fresh start even if it meant that creditors' claims are sometimes unsatisfied and the trustee is left responsible for the costs of administering the estate. Accordingly, a court cannot deny that exemption without a clearly expressed intention from Congress.

Petitioner humbly request that this case which deals with issues of public and social interest and impacts the future of debtors in pro se. Only this court can provide the protection that is needed for debtors in pro se to get their "fresh start" according to the holding in the Supreme Court case in Local Loan Co. v. Hunt, 292 U.S. 234, 244 (1934), as well as the protections under 14th amendment with the inalienable rights guaranteed under the U.S. Constitution.

X. CONCLUSION

Therefore, Petitioner respectfully ask the U.S. Supreme Court to grant this petition as requested.

Dated: March 19, 2021

Respectfully submitted,

Allen Shay, Petitioner in Pro Se