20-5876

No. _____

ORIGINAL

In The Supreme Court of the United States

PAULA IDELE KELLER

Petitioner,

v.

United States Court of Appeals for the Ninth Circuit Respondent,

Case No. 17-1756202

On Petition for A Writ of Certiorari

To The Ninth Circuit Court of Appeals

PETITION FOR ETRAORDINARY WRIT OF MADAMUS

In Re: Paula Idele Keller = Pro Se Counsel of Record

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PETITION FOR ETRAORDINARY WRIT OF MADAMUS

This Petition For Extraordinary Writ Of Mandamus will be an aid of the Court's Appellate Jurisdiction to demonstrate extraordinary exceptional circumstances to warrant the exercise the Court's discretionary powers as to why adequate relief in this matter cannot be obtained in or from or by any other form or court pursuant to Rule 20.1. Petitioner Paula Idele Keller avers that the issuance by the Court of an extraordinary writ authorized by 28 U. S. C. §1651(a) is not a matter of right, but of discretion that is sparingly exercised. To justify the granting of any such writ, the petition must show that the writ will be in aid of the Court's appellate jurisdiction, that exceptional circumstances warrant the exercise of the Court's discretionary powers, and that adequate relief cannot be obtained in any other form or from any other court. Petitioner Paula Idele Keller submits this Extraordinary Writ of Mandamus precisely for that reason that is adequately demonstrated in the body of this within pleading.

Petitioner Paula Idele Keller further avers that a petition seeking a writ authorized by 28 U. S. C. §1651(a), §2241, or §2254(a) shall be prepared in all respects as required by Rules 33 and 34. This Petition is prepared properly and meets the aforementioned requirements of Rule 33 and 34. Accordingly this petition contains the proper and required captioned "*In re* Paula Idele Keller [name of petitioner]" and it does follow, insofar as applicable, the form of a petition for a writ of certiorari prescribed by Rule 14. All contentions in support of this petition have been included in this petition. Petitioner understands that the case will be placed on the docket when 40 copies of the petition are filed with the Clerk and the docket fee is paid, however, Petitioner Paula Idele Keller in a proceeding *in forma pauperis* pursuant to Rule 39. Therefore Petitioner is filing the number of copies required for a petition pursuant to Rule 12.2, together with a motion for leave to proceed *in forma pauperis*, a copy of which shall precede and be attached to each copy of the petition. The petition will be served as required by Rule 29 (subject to subparagraph 4(b) of this Rule).

QUESTIONS PRESENTED FOR REVIEW

1. Whether a Mortgage Loan Modification from a plaintiffs loan servicer is sufficiently related to the meaning of "real estate-related transaction" under the FHA to give rise to a right of action. (The 9th Circuit Court of Appeals is Undecided on this question and No Published Opinion)

2. Whether Keller's Criteria for Mandamus to Jury Trial was met?

3. Whether Keller's Redacted Call Logs within RESPA Reports is privileged or frivolous, and should be allowed to proceed to Appeal as an indigent?

4. Whether the 9th Circuit Court's certification that appeal is not taken in good faith conflicts with a Pre Order of the 9th Circuit's Order in Keller's Appeal 17-1756202 wherein Panel Judges inferred the following: "Rather, this order is reviewable in an appeal from the final judgment, and Keller can challenge it then."

PARTIES TO THE PROCEEDINGS

The following were parties to the proceedings in the United States Court of Appeals for the Ninth Circuit:

1. Paula Idele Keller filed an appeal from the United States District Court for the Central District of California (Western Division)'s denial of her petition for a Jury Trial of her Claims – Case No. 2:16-cv-09165-TJH-(SKx).

2. Washington Mutual Bank, FA, California Reconveyance Corp., ALAW, JP Morgan Chase Bank, N.A., Bank of America, N.A., Pite Duncan, GCAT Management Systems Services, Selene Finance, LP, Quality Loan Servicing Corp., McCarthy & Holthus, LLP, CAM IX Trust, were the named respondents in the lower-court proceedings. The Honorable Terry J. Hatter, Jr., United States District Court Judge for the United States District Court for the Central District of California (Western Division) was the presiding lower court judge.

3. The following are parties to the proceeding in this Court: Paula Idele Keller is the Petitioner. The United States Court of Appeals for the Ninth Circuit is the Respondent.

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CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED CASES

STATEMENT OF JURISDICTION

The United States Supreme Court Exercises Jurisdiction over Final Appeals from the 9th Circuit U.S. Court of Appeals under the All Writs Act, 28 U.S.C. § 1651. The 9th Circuit decision was January 27, 2020 and this Petition is filed July 7, 2020 as such is not within the 90 days to seek Review in the United States

Supreme Court. The COVID-19 Pandemic caused the unusual delay. Paula Idele Keller acquiesces to the wisdom of the United States Supreme Court to take exception in this matter predicated on the COVID-19 Pandemic and to thereby grant this Petition for Writ of Mandamus.

STATEMENT OF THE CASE

1. Application by the Appellant for a mandamus to require the Ninth Circuit Court of Appeals to recall its Judgment and allow Keller to proceed in Forma Pauperis and to order a Jury trial to hear Appellant's Merits and Legal Claims of dishonest Banking Practices, that sent this Country into a recession and caused thousands of Citizens to lose their home to corrupt banking practices is both regularly found and fair on its face held within the appellate jurisdiction of this Court. As long ago as 1918, the Supreme Court recognized mandamus as the appropriate vehicle to cure erroneous denials of a civil jury trial. (See *In re Simons*, 247 U.S. 231 (1918).)

2. Paula Idele Keller filed a Civil Suit in October of 2014 alleging Defendants have discriminated in the making and servicing of said mortgage loans and claims under Home Affordable Modification Program (HAMP) and Real Estate Settle Procedures Act (RESPA).

3. Washington Mutual Bank, FA and its successors then moved to dismiss the Complaint. In December of 2016, the Honorable Terry J. Hatter, Jr., United States District Court for the United States District Court for the Central District of California (Western Division) entered a Report and Recommendation finding the complaint filed by Paula Idele Keller should be dismissed with prejudice.

4. In October of 2016 Paula Idele Keller filed a motion to Reconsider the Complaint to add additional claims and defendants. In January of 2017, the District Court dismissed Keller's claim with prejudice and denying Keller's motion to amend. In August of 2016, Keller appealed to the Ninth Circuit Court of Appeals.

5. In July of 2018, the Ninth Circuit Appeals Court also found that Paula Idele Keller was qualified as a borrower and was entitled to receive RESPA information on her home loan. The Ninth Circuit Appeals Court did not

remand with instructions to the District Court to allow Keller to amend her Complaint under RESPA and to address any proposed new claims and defendants.

6. In March/April of 2018, pursuant to the failure of the Ninth Circuit Court of Appeals to render an opinion, the District Court failed to order Paula Idele Keller to file an amended complaint setting out the factual allegations supporting her claims and adding any desired new defendants.

7. In May of 2017, Plaintiff filed a motion to amend the Complaint. The Court did not grant the motion, and the Amended Complaint was never deemed filed. In the amended complaint, Quality Loan Servicing Corp., McCarthy & Holthus, LLP and Mortgage Electronic Registration Systems, Inc. were named as new defendants.

8. By September of 2017, Plaintiff identified Quality Loan Servicing Corp., McCarthy & Holthus, LLP and Mortgage Electronic Registration Systems, Inc, as DOE Defendants.

9. Defendants moved to dismiss their identification pursuant to Federal Rules of Civil Procedure Rules 8 and 12(b).

10. Paula Idele Keller filed a response in opposition to the motion to dismiss and a motion for summary judgment. On June of 2017 the Court entered an Order denying Defendants' motion to dismiss with leave to renew and denying Plaintiff's motion for summary judgement.

11. Plaintiff was referred to the Pro Se Assistance Program.

12. Paula Idele Keller filed her motion for reconsideration thereafter and the Defendants filed a motion to dismiss the motion for reconsideration.

13. The Court abused its discretion by failing to grant 42 U.S.C. § 1981, § 1982, the Real Estate Settlement Procedures Act, 12 U.S.C. § 2601 and the Fair Housing Act, 42 U.S.0 § 3605.

14. Thereafter Defendants filed a motion to dismiss and Motion for Summary Judgment along with memorandum of law.

15. Paula Idele Keller filed a Motion in Opposition for Summary Judgment along with a Motion to allow Discovery to continue.

16. Thereafter the District Court denied all of Paula Idele Keller's motions to continue the discovery.

17. The District Court Judge entered a recommendation dismissing Paula Idele Keller's claims and the case was closed.

18. Paula Idele Keller filed Two more Motions to Vacate the Judgment citing Fraud and unsettled material issues that should go to a Jury under State and Federal Law; including a motion under 7th Amendment for a Jury to decide Keller's claims.

19. The District Court denied the motions to vacate and denied the motion for a Jury Trial.

FACTS UNDISPUTED AND DESERVE TO GO TO A JURY

20. The loan sold to Plaintiff was a Predatory Lending Scheme, designed to fail because of all the hidden fees and high interest rates and the Fraudulent Misrepresentation in the closing involving an Oral Promise that was made before signing of the paperwork.

21. The Defendants violated Plaintiffs equal rights to a fair closing by lying about terms and making promises it had no intention of keeping.

22. The nature of the Defendants Fraudulent misconduct against Paula Idele Keller is truly unconscionable and intolerable in a civil society, and is justly deserving of this Court's correction of the District Court decision to deny a Jury trial.

23. The Defendant concealed the truth about the Oral contract, misrepresented the facts, and outright lied to Paula Idele Keller to advance mortgages and home loan and a Balloon Payment with an adjustable rate.

24. The Oral Agreement was that if Paula Idele Keller held the loan for two years, the Defendant agreed to re-finance the loan with a fair interest rate.

The Oral Modification was to keep Keller from denying the Home Loan all together.

25. Paula Idele Keller asked why the Defendant could not finance the house with a fair interest rate as opposed to waiting two years? The Defendant's reply was because of credit rating. Nevertheless, on Defendant's Oral Promise, Keller signed the loan mortgage with the Defendant, which carried a Balloon Payment and variable interest rates.

26. Paula Idele Keller did her best to kept her end of the commitment by making payments for as long as possible in spite of the subprime mortgage meltdown and thereafter she learned that the Defendant had sold the Loan within the first year after making the Oral Promise.

27. After doing her best to make the usurious loans, Paula Idele Keller learned that she did not own her home located at 920 W 29th Street, San Pedro, California 90731 in that her home was illegally sold at an unlawful foreclosure sale.

28. Paula Idele Keller did apply with JP Morgan Chase Bank, N.A., the successor of Washington Mutual Bank, FA and told them about the Oral Contract with Washington Mutual Bank, FA Bank to no Avail.

29. Paula Idele Keller continued struggle to pay the mortgage and to seek a loan modification with the Defendant based on the Oral Contract.

30. The JP Morgan Chase Bank, N.A. customer service relations officer assisted Paula Idele Keller with a modification and told her that due to her hardship that her loan would be modified. However, during the modification stage, the Lender said no, and the Defendant initiated at least three illegal foreclosure attempts.

31. The Lender refused the modification citing that Paula Idele Keller had not signed the Promissory Note, which was a lie. Appellant raised the Operation of law, the Oral Promise and the fact that Keller was a signer on the mortgage, the Deed of Trust and the Promissory Note.

32. Paula Idele Keller was forced to file a Civil Lawsuit to stop the illegal foreclosure and ask the District Court to examine the acts of the Defendant as it concerns

Federal and State Laws; both Injunctive Relief and common law issues and suit for treble damages for Fraud and Misrepresenting the Facts in the Closing.

33. Paula Idele Keller also raised her RESPA letters requesting information about her mortgages to prove her ownership to facilitate her re-financing before the District Court along with other claims such as the Foreclosure Action contained time-barred debt. Summary judgment is not appropriate in Kellr's case because the pleadings and disclosure materials on file and affidavits show that there are several genuine issues as to material facts and that the Defendant is/are not entitled to a judgment as a matter of law. See Federal Rules of Civil Procedure Rule 56(c)(2).

34. Summary judgment is not appropriate due to newly discovered or previously unavailable evidence showing that Paula Idele Keller's income was Fraudulently inserted by the Defendant, that Defendant did in fact breach the Oral Promise, showing ambiguity in the contract between the Defendant and Keller.

35. Therefore, the entire mortgage is void due to admitted Fraud and Breached by the Defendant. Summary judgment is not appropriate due to a Rule 59(e) motion may be justified by an intervening change in controlling law. The Ninth Circuit Court of Appeals has an intervening change in controlling law of this circuit as to affidavits sufficient to defeat Summary Judgment.

36. Paula Idele Keller did establish equitable tolling to withstand summary judgment and that two of the elements of equitable tolling are reasonable and good faith conduct in her seeking the Oral Promise made by Defendant.

37. Paula Idele Keller, under the Application of the 7th Amendment, has met all four criteria to be able to have a trial heard by a jury under the 7th Amendment.

38. Paula Idele Keller's claim is a civil claim seeking money to compensate loss from Defendants she is suing.

39. Paula Idele Keller's claim is based on federal law and is in a federal court.

40. The lawsuit is worth more than $20 and it is still the threshold used to decide if a trial by jury is allowed under the 7th Amendment.

41. The lawsuit is a claim for fraud in the sale of land and house of which the English common law of 1791 would have allowed it to go to trial by jury under the Constitution of the United States, Thus, any time money is involved, it is a common lawsuit and eligible to be tried by jury.
42. Respect for juries an important part of the 7th Amendment is that it prohibits judges in any court from overruling a jury's findings unless there was some violation of common law.

WHY WRIT OF MANDAMUS SHOULD ISSUE UNDER 7th AMENDMENT RIGHT TO A JURY TO DECIDE CLAIMS

43. Comes now Paula Idele Keller and serves GROUNDS FOR the following reasons: Litigants denied a civil jury trial Writ of Mandamus. Keller avers that in general, a writ of mandamus is used only in very limited circumstances, typically to order a lower court to perform a nondiscretionary act or to reverse actions that "amount... to a judicial 'usurpation of power.' "*Hahnemann Univ. Hosp. v. Edgar*, 74 F.3d 456, 461 (3d Cir. 1996). The writ of mandamus, however, has found a special niche in protecting the right to a jury trial. As long ago as 1918, the Supreme Court recognized mandamus as the appropriate vehicle to cure erroneous denials of a civil jury trial.

44. *In re Simons*, 247 U.S. 231 (1918). The court based its conclusion on judicial economy-avoiding duplicative bench and jury trials-and the convenience of prejudgment appeal to litigants. This reasoning survived over the ensuing decades, and in 1959, the Supreme Court affirmed that "[w]whatever differences of opinion there may be in other types of cases.. the right to grant mandamus to require jury trial where it [has] been improperly denied is settled." *Beacon Theatres Inc. v. Westover*, 359 U.S. 500, 511 (1959). Several years later, the court reiterated that courts of appeals have the "responsibility to grant mandamus where necessary to protect the constitutional right to trial by jury." *Dairy Queen Inc. v. Wood*, 369 U.S. 469, 472 (1962).

45. Standard for Issuance of Mandamus. The Supreme Court has not, however, resolved a disagreement over the proper standard for issuance of mandamus when a jury trial denial is challenged. In other contexts, a writ of mandamus is an extraordinary remedy, which requires a high threshold showing that the petitioner has no other adequate means to secure the

requested relief and has a "'clear and indisputable'" right to the relief. See *Mallard v. United States Dist. Ct.*, 490 U.S. 296, 309 (1989).

46. Paula Idele Keller avers that several persons and entities have taken the Supreme Court's decisions in *Dairy Queen* and *Beacon Theatres* to mean that the writ of mandamus should issue if a de novo review shows that the district court erred in denying a jury trial, without the extraordinary showing usually required for mandamus. See, e.g., *Maldonado v. Flynn*, 671 F.2d 729, 732 (2d Cir. 1982).

47. The Ninth Circuit Court of Appeals has stated the principle plainly: "The right to a jury trial has occupied an exceptional place in the history of the law of federal mandamus permitting a writ to issue although the petitioner is unable to show a 'clear and indisputable' right." *Wilmington Trust v. United States Dist. Ct.*, 934 F.2d 1026, 1028 (9th Cir. 1991).

48. The Supreme Court has instructed that "the remedy of mandamus is a drastic one, to be invoked only in extraordinary situations" and "only exceptional circumstances, amounting to a judicial usurpation of power, will justify the invocation of this extraordinary remedy." *Allied Chem. Corp. v. Daiflon, Inc.*, 449 U.S. 33, 34-35 (1980). See also *Lopez-Lukis*, 113 F.3d 1187, 14 1187-88 (9th Cir. 1997) ("[M]andamus is an extraordinary remedy, which is available only to correct a clear abuse of discretion or usurpation of judicial power.")

49. Notice the Supreme Court Holding in *Beacon Theatres* to mean that the writ should issue if a de novo review shows that the district court erred in denying a jury trial, without the extraordinary showing usually required for mandamus. The High Court said "in anticipation of a suit by petitioner for treble damages under the *Sherman and Clayton Acts*, the prospective defendant brought suit against petitioner in a Federal District Court for a declaratory judgment which would have settled some of the key issues in such an antitrust suit and prayed that the bringing of such a suit be enjoined pending outcome of the declaratory judgment litigation." Petitioner filed a counterclaim raising the issues which would have been raised in the antitrust suit for treble damages and demanded a jury trial. Purporting to act in the exercise of its discretion under Rules 42(b) and 57 of the Federal Rules of Civil Procedure, the district court ruled that it would try in equity,

without a jury, the issues common to both proceedings before trying petitioner's counterclaim. The court of appeals held that the district ourt had acted within the proper scope of its discretion, and it denied petitioner's application for a writ of mandamus requiring the district court to set aside its ruling. Held: "the judgment of the court of appeals is reversed." Pp. 359 U. S. 501- 511.

50. The Supreme Court then outline its decisions by points notice the plain words of the Supreme Court "1. The district court's finding that the complaint for declaratory relief presented basically equitable issues draws no support from the Declaratory Judgment Act, which specifically preserves the right to a jury trial for both parties." P. 359 U. S. 504. Paula Idele Keller would claim this provision for her suit as it should proceed to a jury as requested and as is just in law.

51. The Supreme Court then continues by point 2 of its decision it said; "If petitioner would have been entitled to a jury trial in a treble damage suit, she cannot be deprived of that right merely because the prospective defendant took advantage of the availability of declaratory relief to sue petitioner first." R. 359 U. S. 504. Paula Idele Keller would claim this provision for her suit as it should also proceed to a jury as requested and as is just in law as Keller has plead fraud within her lawsuit.

52. The Supreme Court then expands the deep reasoning its decisions, notice the plain words of the Supreme Court in point it said "since the right to trial by jury applies to treble damage suits under the antitrust laws and is an essential part of the congressional plan for making competition, rather than monopoly, the rule of trade, the antitrust issues raised in the declaratory judgment suit were essentially jury questions." P. 359 U. S. 504. Paula Idele Keller would clearly claim this provision for her suit as it should also proceed to a jury as requested and as is just in law as Keller has plead fraud within her lawsuit.

53. The Supreme Court stated in point "4 – assuming that the pleadings can be construed to support a request for an injunction against threats of lawsuits, and as alleging the kind of harassment by a multiplicity of lawsuits which would traditionally have justified equity in taking jurisdiction and settling Page 359 U. S. 501 the case in one suit, nevertheless, under the Declaratory Judgment Act and the Federal Rules of Civil Procedure, neither claim can

justify denying petitioner a trial by jury of all the issues in the antitrust controversy." Pp. 359 U. S. 506-511.

54. Appellant Paula Idele Keller hereby quotes the words of the Supreme Court wherein it stated "today, the existence of irreparable harm and inadequacy of legal remedies as a basis of injunctive relief must be determined not by precedents under discarded procedures, but in the light of the remedies now made available by the Declaratory Judgment Act and the Federal Rules of Civil Procedure." Pp. 359 U. S. 506-510. This is the direction Keller seeks for her suit; may it please the court I seek the protection now available by the Declaratory Judgment Act for my injunctive relief within her civil complaint. Therefore as pointed out the Supreme Court would not allow the erroneous use of discretion by the district court under Rule 42(b) to deprive the petitioner in *Beacon Theatres Inc. v. Westover*, of a full jury trial of the issues in the antitrust controversy. See P. 359 U. S. 508. The Supreme Court in Point 5 stated that "mandamus is available under the All Writs Act, 28 U.S.C. § 1651, to require jury trial where it has been improperly denied." P. 359 U. S. 511.

55. Nevertheless, we have no doubt that the courts below will heed the command of *Beacon Theatres, Inc. v. Westover*, 359 U.S. 500, 79 S. Ct. 948, 3 L. Ed. 2d 988 (1959), and make certain that Appellants' Seventh Amendment right to jury trial of "legal" claims is not lost by a prior determination of "equitable claims."

56. Paula Idele Keller would also hope that this appeals court will send this case back to the district court and ALLOW Discovery and a Trial by Jury to move forward.

57. Paula Idele Keller's threat to her 7th Amendment rights have becomes concrete and seeks appropriate remedies currently to preserve her suit and right to proceed to the jury phase there is no justification as to the complaint not being clear. The multiple complaints and answers all show that the Defendants know exactly what this lawsuit is all about. Furthermore, the Supreme Court has stated in *Beacon* that "we recognize that in appropriate cases common issues impacting upon general liability or causation may be tried standing alone. However, when such a common issue trial is presented through or along with selected individuals' cases, concerns arise that are founded upon considerations of due process." This understanding

was buttressed in *Lytle v. Household Manufacturing, Inc.*, U.S. _110 S. Ct. 1331, 108 L. Ed. 2d 504 (1990).

58. Due process concerns and fundamental fairness contained in a system that permits the extinguishment of claims or the imposition of liability. Such a procedure is inherently unfair when the substantive rights of both plaintiff and the defendant are resolved in a manner that lacks the requisite level of confidence in the reliability of its result. The Supreme Court recognize that due process concerns seem to blur distinctions between procedural and substantive due process. Notice the plain language of the court. "However, our difficulty in compartmentalization does not detract from the validity of our concern that is ultimately based on fundamental fairness." The elements of basic fairness contained in our historical understanding of both procedural and substantive due process therefore dictate that when a unitary trial is conducted where common issues, issues of general liability, or issues of causation are coupled with a sample of individual claims or cases, the sample must be one that is a randomly selected, statistically significant sample. See *Hilao*, 103 F.3d at 782-84, 786.

STATE OF CALIFORNIA RIGHT TO A JURY

59. Paula Idele Keller's claims also raise State Law and the Constitution of California provides a right to jury trials in cases involving purely legal claims, and equitable claims. See law and equity in *Wooten v. Ivey*, 877 So.2d 585, 588 (Ala. 2003) merged with the adoption of the California Rules of Civil Procedure, after which jury trials were a constitutional right if the issue was the sort that would have been tried to a jury before the adoption of those rules. Following *Beacon Theatres* and *Dairy Queen*, the Supreme Court of California holds that when both legal and equitable claims are joined in one action, the trial judge must arrange the order of trial.

60. "This Court has long recognized that Article I, § 11, Constitution of California, provides the right to a jury trial in those cases that involve purely legal claims." [l] See Ex parte *Thorn*, 788 So. 2d 140, 142 (Ala. 2000) (quoting *W & H Mach. & Tool Co. v. National Distillers & Chem. Corp.*, 291 Ala. 517, 520, 283 So. 2d 173, 175-76 (1973)(citing in turn *Tillery v. Commercial Nat'l Bank*, 241 Ala. 653, 4 So. 2d 125 (1941); *Alford v. State*,

170 Ala. 178, 188, 54 So. 213, 215 (1911); *Montgomery & Florida Ry. v. McKenzie*, 85 Ala. 546, 549, 5 So. 322 (1888). It is equally well settled that the constitution does not provide a right to a jury trial for the resolution of factual issues for parties alleging equitable claims. See Ex parte *Thorn*, 788 So. 2d at 143 (citing *Finance, Inv. & Rediscount Co. v. Wells*, 409 So. 2d 1341, 1343 (Ala. 1981) (citing in turn *Pugh v. Calloway*, 295 Ala. 139, 325 So. 2d 135 (1976).

61. However, since the merger of law and equity with the adoption of the California Rules of Civil Procedure, courts have been presented with cases that contain both issues to be tried by a jury and issues to be tried by the court. In those cases, the test for determining whether a party has a right to a trial by jury is: "'[I]f an issue is of a sort which [before the adoption of the California Rules of Civil Procedure] would have been tried to a jury, then the party has a constitutional right to have it tried to a jury under the merged procedure.'" Ex parte *Thorn*, 788 So. 2d at 143.

62. When legal and equitable claims are presented in one action, the trial court must resolve the equitable claims in a way that does not impinge on a party's right to a jury trial as to the legal claims. See Ex parte *Taylor,* 828 So. 2d 883 (AIa.2001); Ex parte *Thorn*, 788 So. 2d at 140. Purely legal claims, as well as factual issues common to the legal and equitable claims, must be determined by a jury; the remaining issues are then to be decided by the trial court. See Ex parte *Taylor*, 828 So. 2d at 883; Ex parte *Thorn*, 788 So. 2d at 140 decision on the equitable issues does not operate to deny a jury trial of the legal issues. Factual issues common to the legal and equitable issues must first be decided by the jury. We express no opinion on whether the mix of claims that collectively make up the consolidated case lend themselves to the sampling techniques required to conduct a bellwether trial or whether this is an appropriate case for a stand-alone, common-issue trial. "Accordingly, when both legal and equitable claims are joined in one action, then, the trial judge must arrange the order of trial so that the Judge's decision on the equitable issues does not operate to deny a trial by the jury of the legal issues. See *Beacon Theatres, Inc. v. Westover*, 359 U.S. 500, 510-11, 79 S. Ct. 948, 3 L. Ed. 2d 988 (1959) (stating that 'only under the most imperative circumstances, can the right to a jury trial of legal issues be lost through prior determination of equitable claims');

accord *Crommelin v. Fain*, 403 So. 2d 177, 185 (Ala. 1981). Thomason is entitled to this provision under Trial by Jury in California.

63. A jury first must decide any factual issues that are purely legal in nature, along with any factual issues common to the legal and equitable claims. See *Dairy Queen, Inc. v. Wood*, 369 U.S. 469, 479, 82 S. Ct. 894, 8 L. Ed. 2d 44 (1962) ("holding that because the factual issues relating to the petitioner's breach of contract claim [were] common with those upon which [the] respondents' claim to equitable relief [was] based, the legal claims involved in the action [had to] be determined prior to any final court determination of respondents' equitable claims"); see also *9 Charles Alan Wright & Arthur R. Miller*, Federal Practice and Procedure § 2302. 1, at 29 (2d ed.1995); ("[*Beacon Theatres*] held that the questions of fact common to the legal and equitable [claims] must be decided first by the jury, for to permit the court to make findings on these common issues of fact would deprive the litigant of his right to [a] jury trial.") Therefore, Paula Idele Keller's rights and claims must proceed to the Jury so that findings can be made. Once those factual findings are made, the trial judge must determine the remaining equitable issues. See *Dairy Queen*, 369 U.S. at 470, 82 S. Ct. 894. In addition, those factual questions that are purely legal in nature, as well as those common to the legal and equitable issues, must first be decided by the jury. *Dairy Queen, Inc., supra.* Keller avers as did the High Court wherein it stated in *Beacon* "we are sympathetic to the efforts of the district court to control its docket and to move this case along. We also are not without appreciation for the concerns a district court might have when it concludes that some of the issues raised may be motivated by delay tactics. However, our sympathies and our appreciation for the efforts of the district court in this case do not outweigh our due process concerns." Keller filed this lawsuit in 2016 no one is more eager to get this matter resolved not dispose of as common trash but to be decided by a Jury of her peers. The Civil Rights Act of 199142 U.S.C. § 1981 Keller's claim also fall under 42 U.S.C. 1981 of which was amended in 1991, therefore, to buttress her right to a Jury trial Thomason shows the following: The Civil Rights Act of 1991 now permits Title VIII cases to be tried by jury. 42 U.S.C. § 1981a(c). ("Put simply, the plaintiff in any Title VII case may establish a violation through a preponderance of evidence (whether direct or circumstantial) that a protected characteristic played 'a motivating factor.'"); see also *E.E.O.C. v. Abercrombie & Fitch Stores, Inc.*, 135 S. Ct. 2028, 2032 (2015).

CONCLUSION

Wherefore Paula Idele Keller would ask the United States Supreme Court to issue this Writ under its *Holding in Beacon Theatres, Inc. v. Westover*, wherein this High Court Stated that "Mandamus is available under the All Writs Act, 28 U.S.C. § 1651, to require jury trial where it has been improperly denied." P. 359 U. S. 511. Therefore, make certain that Thomason's Seventh Amendment right to jury trial of "legal" claims is not lost. Keller suit has been dismissed and there is no other remedy as to enforce Keller's right to a Jury Trial as Motions to Vacate and Set Aside and Motion for New Trial have all been denied by the District Court "therefore denying Keller's right to a Jury of his claims is judicial usurpation of power." See *Coffman*, 766 F.3d 1246, 1248 (11th Cir. 2014). Keller has no other adequate means to attain the relief he desires and that his right to the issuance of the writ is clear and indisputable.

Wherefore, Paula Idele Keller prays that this Judicial Body is satisfied, and that the writ is appropriate under the circumstances.

Respectfully Submitted By: Date: September 25, 2020

Paula Idele Keller