

NO. \_\_\_\_\_

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IN THE  
SUPREME COURT OF THE UNITED STATES

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ALBERT MIKLOS KUN,  
Petitioner,

v.

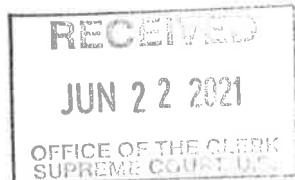
STATE BAR OF CALIFORNIA,  
FRANCHISE TAX BOARD,  
Respondents.

On Petition for Writ of Certiorari to the  
Court of Appeal for the Ninth Circuit

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**PETITION FOR STAY PENDING FILING**  
**PETITION FOR WRIT OF CERTIORARI**

Albert M. Kun  
517 Green St.  
San Francisco, CA 94133  
(415) 362-4000  
In Pro Se



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TO: THE HONORABLE ELENA KAGAN, ASSOCIATE JUSTICE OF THE  
SUPREME COURT OF THE UNITED STATES

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Petitioner, ALBERT MIKLOS KUN, respectfully requests that the Court grant him a 90-day extension pursuant to 28 U.S.C. §2191(f) to file a petition for writ of certiorari to the United States Court of Appeal for the Ninth Circuit.

THIS PETITION IS TIMELY

This Petition is filed pursuant to Supreme Court Rule 13(3), which states in pertinent part:

"But if a petition for rehearing is timely filed in the lower court by any party, or if the lower court appropriately entertains an untimely petition for rehearing or *sua sponte* considers rehearing, the time to file the petition for a writ of certiorari for all parties (whether or not they requested rehearing or joined in the petition for rehearing) runs from the date of the denial of rehearing or, if rehearing is granted, the subsequent entry of judgment."

The Order of the Ninth Circuit on the May 26, 2021 rehearing is attached as Exhibit "A".

Petitioner's Motion to Stay is attached as Exhibit "B". It was filed the same day, June 3, 2021, as the Mandate, Exhibit "C".

The Court of Appeal denied the Motion (see Exhibit "D").

## BACKGROUND

Factually, this Petition is a continuation of Petitioner's No. 17-6693 and No. 18-7911, filed in this Court previously. The only additional fact of substance is that Petitioner has been fined by the State Bar in the amount of almost \$40,000.

In November 2015 Petitioner filed for Chapter 11 Bankruptcy to prevent his eviction and those of his mates from their law offices at 381 Bush Street, Suite 200, San Francisco 94104.

Shortly thereafter the State Bar of California filed 3 (three) actions against Petitioner involving attorney-client fee disputes, of which Petitioner won 1 and lost 2 cases. On appeal, the State Bar Appellate Panel granted all the fees for Petitioner with the exception of a \$460 filing fee for the San Francisco Superior Court.

Sometime thereafter the State Bar, in addition to disbarring Petitioner, fined him nearly \$40,000. On June 30, 2018 Petitioner was discharged in Chapter 7 Bankruptcy of all debts except the aforementioned State Bar fine.

When the Franchise Tax Board, which acts as a collector of the approximately \$40,000 fine for the State Bar commenced collection proceedings, Petitioner reopened the bankruptcy case and filed an Adversary Complaint against both the State Bar and the Franchise Tax Board, which is the subject of this Petition.

Petitioner contends among other issues that the approximately \$40,000 is an excessive fine for the \$460 filing fee, and a violation of the Court's holding in *Timbs v. Indiana*, 586 U.S.\_\_(2019). The Adversary Complaint is the subject of the appeal,

first to the U.S. District Court of the Northern District of California, and then to the Court of Appeal for the Ninth Circuit.

RELIEF REQUESTED

Petitioner respectfully requests the Court to reduce the approximately \$40,000 fine to \$1,840 (or 4 X \$460) pursuant to 11 U.S.C. 105(a). The multiplier 4 comes from the late Justice Scalia in a punitive judgment case.

WHY THE STAY IS JUSTIFIED

1. The Stay is justified because the Court of Appeal ignored a recent decision of this Court on a controlling issue. The petition for a panel rehearing en banc was submitted on April 8 2021. This Court's decision in *AMG Capital Management LLC v. Federal Trade Commission* 19-508 was filed on April 22, 2021. Petitioner notified the Court of Appeal of the decision (see Exhibit "E").

The District Court did not rule on the basis of its inherent power; Respondent did not make a motion to dismiss. The District Court ruled on the basis of FRBP 8009 which clearly does not provide the remedy the District Court granted. *AMG Capital* is clearly the governing case and this Court unanimously reversed the Ninth Circuit, so even if the Appellate Court failed to receive Petitioner's reminder, the research attorneys should have picked it up.

2. Both the Court of Appeal and the District Court violated Petitioner's procedural due-process rights under the Fifth and Fourteenth Amendments to the United States Constitution. Neither court granted Petitioner a hearing over the

entire appeal period when recent case of the Supreme Court and statutory construction were involved.

Procedural due processes do apply in bankruptcy cases. There are pecuniary interests at stake in bankruptcy litigation, and the Eighth and Fourteenth Amendments give stakeholders the right to have an opportunity to be heard and to have their interests addressed.

3. The Court of Appeal prejudicially erred in failing to consider the excessive fine that the State Bar issued against Petitioner under the Eighth Amendment "Excessive Fines" clause as set forth in *Timbs v. Indiana*, 586 U.S.\_\_(2019). In *Timbs* this Court held for the first time that the excessive fines clause of the Eighth Amendment was applicable to state actors such as the State Bar or the Franchise Tax Board.

4. There is no prejudice to Respondents in granting the stay as neither the State Bar nor the Franchise Tax Board has argued any prejudice issue to date

Wherefore, Petitioner respectfully requests a stay to enable him to file a Petition for Writ of Certiorari.

June 18 2021



Albert M. Kun  
In Pro Se

PROOF OF PERSONAL SERVICE

I, ALBERT MIKLOS KUN, do state as follows:

On June 18 2021, I personally served true copies of the attached

**PETITION FOR STAY PENDING FILING PETITION FOR WRIT OF  
CERTIORARI**

on:

James Chang  
Assistant General Counsel  
State Bar of California  
180 Howard Street  
San Francisco, CA 94105

Cara Porter  
Deputy Attorney General  
455 Golden Gate Ave., Suite 11000  
San Francisco, CA 94102

I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 18 2021 at San Francisco, California

Albert Miklos Kun  
ALBERT MIKLOS KUN

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

MAY 26 2021

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

ALBERT M. KUN,

Appellant,

v.

STATE BAR OF CALIFORNIA;  
FRANCHISE TAX BOARD,

Appellees.

No. 20-15115

D.C. No. 3:19-cv-05783-RS  
Northern District of California,  
San Francisco

ORDER

Before: FERNANDEZ, BYBEE, and BADE, Circuit Judges.

The panel has voted to deny the petition for panel rehearing.

The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. *See* Fed. R. Civ. P. 35.

Kun's petition for panel rehearing and petition for rehearing en banc (Docket Entry No. 28) are denied.

Non-party Lukashin's request for publication (Docket Entry No. 32) is denied.

No further filings will be entertained in this closed case.

EXHIBIT "A"

20-15115

IN THE UNITED STATES COURT OF APPEAL  
FOR THE NINTH CIRCUIT

ALBERT MIKLOS KUN, )  
                          )  
Debtor.              )  
                          )  
                          )  
ALBERT MIKLOS KUN, )  
                          )  
Plaintiff and Appellant, )  
                          )  
                          )  
v.                      )  
                          )  
STATE BAR OF CALIFORNIA )  
FRANCHISE TAX BOARD, )  
Defendants and Appellees )

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**MOTION TO STAY MANDATE PENDING  
A PETITION FOR WRIT OF CERTIORARI**

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Albert M. Kun  
517 Green Street  
San Francisco, CA 94133  
(415) 362-4000  
In Pro Se

EXHIBIT "B"

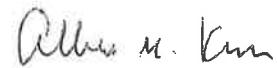
MOTION TO STAY MANDATE PENDING A PETITION FOR WRIT OF CERTIORARI

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Appellant moves this Court, pursuant to FRAP 41(d)(1) and to Circuit Rule 41-1, to stay the mandate for this Court. The motion is based on the ground that the Petition will present substantial questions and that their granting of the stay is in the interest of justice and is made in good faith and not for delay.

The Motion is based on the attached Memorandum of Points and Authorities and on the Declaration of Albert M. Kun.

June 1, 2021

  
Albert M. Kun

## MEMORANDUM OF POINTS AND AUTHORITIES

The Petition for Writ of Certiorari will be based, among other grounds, on:

1. Whether the Court abused its discretion in failing to consider the Supreme Court case *AMG Capital Management LLC v. Federal Trade Commission* 19-508 (April 22, 2021). In that case a unanimous Supreme Court reversed this Court on a controlling issue in this case, the application of FRBP 8009. While the case was submitted after the deadline of April 8, 2021, it nevertheless reversed a Ninth Circuit decision.

The District Court did not dismiss this case pursuant to its inherent powers, but rather based on FRBP 8009.

To quote from *AMG Capital* at page 14: "We must conclude, however, that §136 as currently written does not grant the Commission authority to obtain equitable monetary relief." [Emphasis added].

Similarly, FRBP 8009 as currently written does not authorize any sanction for its violation. Any local Bankruptcy Rule is contrary and is a violation of the Separation of Powers of the United States Constitution.

2. Whether this Court and the District Court violated appellant's procedural due process rights under the Fifth Amendment to the United States Constitution by failing to grant any hearing to appellant during the course of this appeal.

Procedural due process requirements do apply in bankruptcy cases. There are pecuniary interests at stake in bankruptcy litigation, and the Fifth Amendment gives stakeholders the right to have an opportunity to be heard and to have their interests addressed.

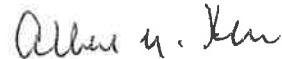
3. Whether this Court abused its discretion in failing to consider appellant's rights under the Eighth Amendment's Excessive Fines clause as set forth in *Timbs v. Indiana* 586 U.S.—(2019).

In *Timbs* the Supreme Court for the first time applied the excessive fines clause to state actors such as the State Bar or the Franchise Tax Board.

4. There is no prejudice to Respondents in granting the stay, and neither the State Bar or the Franchise Tax Board has argued any prejudice issue to this date.

Wherefore appellant respectfully requests a 90-day stay of the mandate.

June 1, 2021



Respectfully submitted

Albert M. Kun

In Pro Se

DECLARATION

I, ALBERT M. KUN state as follows:

1. I make this declaration based on my own knowledge.
2. As a pro se party I am entitled to receive my pleadings in hard copy under the rule.
3. In the past I have had a hard time receiving my hard copies, and that has resulted in my having to make repeated phone calls and attempt to receive my hard copies by coming to the Clerk's office, but being unable to retrieve them because of the Covid-19 pandemic.
4. I respectfully request the Court to count the exact number of days in determining whether this motion is timely filed.
5. I declare under penalty of perjury that the foregoing is true and correct.

January 1, 2021  
San Francisco, California

*Albert M. Kun*  
Albert M. Kun

PROOF OF PERSONAL SERVICE

I, Albert M. Kun, state as follows:

On June 22, 2021, I personally served true copies of the attached

**MOTION TO STAY MANDATE PENDING A PETITION FOR WRIT OF  
CERTIORARI**

**MEMORANDUM OF POINTS AND AUTHORITIES**

**DECLARATION OF ALBERT M. KUN**

on:

James Chang  
Assistant General Counsel  
State Bar of California  
180 Howard Street  
San Francisco, CA 94105-1639

Cara M. Porter  
Deputy Attorney General, State of California  
455 Golden Gate Avenue, Suite 11000  
San Francisco, CA 94102

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on June 22, 2021 at San Francisco, California

*Albert M. Kun*

Albert M. Kun

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

**FILED**

JUN 03 2021

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

ALBERT M KUN,

Appellant,

v.

STATE BAR OF CALIFORNIA and  
FRANCHISE TAX BOARD,

Appellees.

No. 20-15115

D.C. No. 3:19-cv-05783-RS  
U.S. District Court for Northern  
California, San Francisco

**MANDATE**

The judgment of this Court, entered February 23, 2021, 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.

Costs are taxed against the appellant in the amount of \$30.20.

FOR THE COURT:

MOLLY C. DWYER  
CLERK OF COURT

By: David J. Vignol  
Deputy Clerk  
Ninth Circuit Rule 27-7

EXHIBIT "C"

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JUN 10 2021

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

ALBERT M. KUN,

Appellant,

v.

STATE BAR OF CALIFORNIA;  
FRANCHISE TAX BOARD,

Appellees.

No. 20-15115

D.C. No. 3:19-cv-05783-RS  
Northern District of California,  
San Francisco

ORDER

Before: FERNANDEZ, BYBEE, and BADE, Circuit Judges.

We treat Kun's motion to stay the mandate (Docket Entry No. 35) as a motion to recall the mandate, and deny the motion.

No further filings will be entertained in this closed case.

EXHIBIT 'D'

Molly Dwyer, Clerk of the Court  
Office of the Clerk  
U.S. Court of Appeals for the Ninth Circuit  
P.O. Box 193939  
San Francisco, CA 94119-3939

April 29, 2021

Re: *Albert M. Kun v. State Bar of California and  
Franchise Tax Board*  
Case No. 20-15115

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Dear Ms. Dwyer:

Appellant joins *Amici* Igor Lukashin's request for publication under Circuit Rule 36-2(a) and (d). In addition, Appellant requests publication under Circuit Rule 36-2(b).

Appellant further wishes to bring to this court's attention a Supreme Court case filed on April 22, 2021, *AMG Capital Management LLC v. FTC* 19-508, where the Court unanimously held that Section 13(b) of the Federal Trade Commission Act does not authorize Federal courts to award equitable relief such as disgorgement or restitution. Similarly, in the case at bar, FRBP 8009 does not authorize for any sanction such dismissal; therefore, the District Court erred to dismiss on that ground.

Very truly yours,

*Albert M. Kun*

Albert M. Kun  
(415) 362-4000

Cc:

Cara M. Porter  
Deputy Attorney General  
455 Golden Gate Ave., Suite 11000  
San Francisco, CA 94102-700

James J. Chang  
Office of the General Counsel  
State Bar of California  
180 Howard Street  
San Francisco, CA 94105

" " "  
EXHIBIT E