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21-1582

IN THE UNITED STATES SUPREME COURT

PETITION FOR WRIT OF MANDAMUS

JUSTICE ELENA KAGAN

PETITION

In re JACK R. FINNEGAN, Petitioner

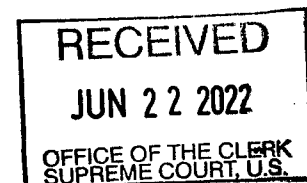
v.

Richard A. Marshack, Hon. Jacki C. Brown,
Respondents

In Superior Court, Hon. Jacki C. Brown, Probate
Court of Appeals, 4th Dist. Div. 3
California Supreme Court

The Matter does not fall into NRAP 17(a) or (b)

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CONSTITUTION QUESTIONS AND FEDERAL LAWS, RULE 22(a)

Why is the Inferior Officer who was disqualified in June, 2018, for Bias and Prejudice, allowed to be in defiance to the order of the United States Supreme Court, in, *Liteky v. United States*, 114 S. Ct. 1147, 1162 (1994), defiance to 28 USC §455, and defiance to the Ninth Circuit General Order #224(4), Bankruptcy Rule 5004(a), governed by 28 USC §455, and pursuant to 11 USC §102(1)(A), when Legislative Statements of §102, states, shall not be permitted to act on his own or to continue his Bias and Prejudice and non-judicial behavior?

If all orders by a disqualified (Inferior Officer) are void, then the order for appointment of a trustee in Chapter 11, was not only an act of Bias and Prejudice, it was also insubordinate to the Federal Bankruptcy Code, of the above quoted sections and in particular 11 USC §348(e) how is it possible for Marshack to claim that he was legally appointed without committing perjury and fraud?

If Bankruptcy Judges are Inferior Officers pursuant to 28 USC §157(b)(1), and can only hear and determine issues of core proceedings under Title 11 USC, how is it possible for an Inferior Officer to order an illegal Constitutional Taking of a property valued over \$7 million, in violation of the 5th and 14th Amendments?

Does filing for Individual Reorganization pursuant to Chapter 11 Reorganization, under the Bankruptcy Code, paying the Clerk of the Bankruptcy Court a fee of \$1,717.00, in lieu of \$335.00 for Chapter 7, complying with 11 USC §102(1)(A), Legislative

Statements of 1978, and §§102, 103(g), 1978 Acts §§103, 301(a)(b), 1978 Acts of §§301, 303(f), 348(e), 1107(a), 1978 Acts §§1107, 1112(a)(b)(1) 1112(b)(2), 1978 Acts §§1112, 1112(f), 1978 Acts, and Legislative Statements of §§1112, 1115(b), 1129(a)(1)(2)(3)(4), and Local Rules 1017-1(a)(3), 9013-1, 9014-1, 9029-1, constitute a valid Petition for Chapter 11?

If 11 USC §105(a), requires the court to obey all of 11 USC Bankruptcy Code, "The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title" why was the Inferior Officer allowed to disobey with obvious bias and Prejudice so many sections of the Code?

Why if 28 USC §157(b)(1), does not allow the Inferior Officer to make determinations on non-core or non-existing sections, when there existed no authority in 11 USC was a grant for a State court case of Conservatorship?

Where pursuant to Title 11 USC §1112(a) and local rule LBR 1017-1(a)(3) which states, "*Conversion from chapter 11 to another Chapter. A debtor must request conversion under 11 USC §1112(a) by a motion filed and served as required by FRBP 9013,*" §1112(b)(3) clearly states that, "*there must be a motion filed by a party in interest before the court can take any action regarding converting a case or dismissing a case under this section of the code,*" §1112(c) states, "The court may not convert ... (d) ..." (e) reinforces section §109 by prohibiting conversion of a chapter 11 case to a case under another chapter proceeding under which the debtor is not permitted to proceed. Senate Report No. 95-989," §1112(f) states, "Notwithstanding, any other provision of this section,

a case may not be converted to a case under another chapter of this title unless the debtor may be a debtor under such chapter?

Does Title 11 USC §558, Defenses of the Estate states, "The estate shall have the benefit of any defense available to the debtor as against any entity other than the estate, including statutes of limitation, statutes of frauds, usury, and other defenses"?

Does Title 11 USC §1107, Gives the Debtor in possession all rights and becomes the representative of the estate and may sue or be sued?

Does Bankruptcy Rule 6009 of Title 11 USC, Prosecution and Defense... state, "With or without court approval, the trustee or debtor in possession may prosecute or may enter an appearance and defend any pending action or proceeding by or against the debtor, or commence and prosecute any action or proceeding in behalf of the estate before any tribunal"?

Does Title 11 USC §1115(b), Property of the Estate state, "Except as provided in section 1104 or a confirmed plan or order confirming a plan, the Debtor shall remain in possession of all property of the estate"?

Did the California State courts choose to violate the Provisions of Article III Section 2, and other Provisions of the United States Constitution and violate Federal Law of Statute 11 USC §362(a)(1)(2)(3), a self-governing permanent injunction, and Provisions of 18 USC, 28 USC and 42 USC even though the proper presentations in each Appeal were made to the courts ?

If the mission statement of Title 11 USC states,

“that all legal obligations of the Debtor, no matter how remote or contingent will be able to be dealt with in the Bankruptcy case, and that all cases will receive expedited treatment”. Why has Case No 8:18-bk-10762-TA, lingered in the Bankruptcy Court for most of the year 2018, all of the year 2019, all of the year 2020, all of the year 2021, and with no end in sight for the year 2022?

Why is the Standards of Judicial Administration Recommended by the Judicial Council, General statement not being followed by this court?

If all of the filed claims against the estate can and will be proven fraudulent pursuant to 18 USC fraud statutes, why is relief not forthcoming?

Why are the United State Trustees allowed to violate the provisions of 28 USC §586?

Richard A. Marshack was never legally appointed as a Chapter 11 or Chapter 7 trustee in the Bankruptcy Case No. 8:18-bk-10762-TA, given the specific requirements of Federal Statutes, of 11 USC Code for conversion and a disqualified Inferior Officer?

If Marshack was not a legally appointed trustee, and filed a perjurious and fraudulent illegal Petition in the State Probate court, then he also violated the United States Constitution’s Article III, Section 1, Article III, Section 2[1], and Article III, Section 2[2], of the United States Constitution, See, *Flast v. Cohen*, 392 U.S. 83 (1968); *Baker v. Carr*, 369 U.S. 186 (1962); *Frothingham v. Mellon*, 262 U.S. 447 (1923); *Color-Vue, Inc., v Abrams* (1996) CA4th 1599,

1604, 52 CR2d 443, 446. requiring Standing and Party in Interest, pursuant to Federal Rules of Civil Procedure Rule 17(a)?

19. Was Petitioner denied his 1st and 13th Amendment Right of Freedom of Speech, Right to Petition and Slavery, abolished by both United States and California Constitutions, by the nugatory order of the Superior Court judge without authority to subvert Constitutional guarantees, that was also in violation of the above stated Federal Laws?

20. Did the State Court have Constitutional required Personal jurisdiction, Subject Matter jurisdiction, or required Venue, or ever make a determination if it had in fact jurisdiction over the Plaintiff given the self-enforcing permanent injunction of a Federal Statute, Bankruptcy Code 11 USC §362?

21. Was the action brought in an inconvenient forum, (venue) as held in *Gulf Oil Corp. v. Gilbert* (1947) 330, U.S. 501, 67 S. Ct. 839, 842, L. Ed. 1055, 1062, the case should it be dismissed pursuant to this citation and CCP 410.30?

22. In *Steel Co. Citizens for a Better Environment*, 523 U.S. 83, 118 S. Ct. 1003, 140 L.Ed.2d 210 (1998), held, "first responsibility of court is to determine jurisdiction, if jurisdiction is lacking, court should dismiss without addressing merits," and pursuant to Federal Rules of Civil Procedure, Rule 17(a), Rule 60, California Probate Code §§1301(e) 1301(g), and California Code of Civil Procedure §904.1(10)?

23. Did the California State courts have a fair opportunity to address the Federal questions presented in each of the Appeals addressed to the

California Supreme Court Case No. S271232, Appellate Case No.G058635, and California Superior Court Case No. 30-2019-01047364 by the proper presentations of these issues in each Court, see the list of Authorities, and reference throughout the briefs?

24. Should the case have been dismissed in the Superior Court on the ground that it was in violation of numerous Federal Laws, Welfare Code, Probate Code, and the provision of the United States Constitution?

25. The record does not support the trial court, because two equally separate, and timely Appeals were filed with their respective courts prior to the trial being conducted. Was it, clear error by trial court to conduct any trial without Jurisdiction?

26. Why did Aaron Heister on June 16, 2018, a temporary judge, who had no authority to conduct a hearing on a disputed matter without stipulations of all parties, pursuant to the California Constitution, Article 6, Section 21 was allowed to act in violation of the California Constitution, and why was his Order not signed?

**LIST OF ALL PARTIES ARE INCLUDED IN
CAPTION, RULE 22(b)**

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<i>United States v. Cress</i> , 243 U.S. 316, 328, 37 S. Ct. 380, 385; <i>Ferguson</i> , 852 P2d at 207	27
<i>United States v. Throckmorton</i> (1878) 98 U.S. 61, 25 L. Ed. 93,	2, 21
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<i>Yee v. Escondido</i> , 112 S. Ct. 1522 (1992)	25
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JURISDICTION, Rule 22(e)

The Supreme Court has Jurisdiction pursuant to 28 USC §1651(a), Writs 30 days, 28 USC §1251(b)(2), Original Jurisdiction, 30 days, and 28 USC 2104, Reviews of State court decisions, 30 days.

CONSTITUTIONAL PROVISIONS STATUTES, Rule 22(f)

U. S. Constitution Article III, Section 1

U. S. Constitution Article III, Section 2[1]
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U. S. Constitution Article VI,
U. S. Constitution First Amendment
U. S. Constitution Fourth Amendment
U. S. Constitution Fifth Amendment
U. S. Constitution Ninth Amendment
U. S. Constitution Tenth Amendment
U. S. Constitution Fourteenth Amendment

Please refer to the Table of Authorities, for all citations.

STATEMENT OF THE CASE, Rule 22(g)

FEDERAL QUESTIONS AND LAWS

The first Three questions are pursuant to disqualification.

Questions Four through Fifteen pursuant to Federal Statute 11 USC.

Questions Seventeen through Eighteen pursuant to the illegal appointment of Marshack.

Questions Nineteen through Twenty-Six pursuant to the California Probate Code.

SUMMARY OF ARGUMENT, Rule 22(h)

The Argument sets forth the defiance to the establishment of required disqualification, and the violations of the Bankruptcy Code by the Inferior Officer.

The illegal Probate case subject to 11 USC 8362, the case interference by the U. S. Trustee, the perjury and misrepresentations of Richard Marshack, and violations of the United States and California Constitutions, Federal and California Statutes, as

well as the violations of Decisional laws of United States and California.

ARGUMENT, Rule 22(i)

The Application is based upon Federal Rules of Civil Procedure Rule 60(b)(3), by the Inferior Officer, Marshack, the State court, and the U. S. Trustees, (Fraud, whether heretofore denominated intrinsic or extrinsic, or misrepresentation).

The Application is also based upon of defiance by the Inferior Officer (Bankruptcy court) of Seven Federal Statutes, 28 USC §455, 11 USC §§102(1)(A)(B), Rules of Construction, 103(g), Applicability of Chapters, 105(a), Power of the Court, 362(d), 1104(a)(1)(2)(A)(B), Appointment of Trustee, 11 USC 1112(b)(1), Conversion or Dismissal, and a direct Ruling by the United States Supreme Court. See, *Liteky v. United States*, 114 S. Ct. 1147, 1162 (1994).

The Inferior Officer (U. S. Government designation not appointed by the President or confirmed by the Senate), T. Albert was disqualified under 28 USC §455, the Official Court docket and documents (hereinafter Doc.), (Doc #92) on June 1, 2018, and Bankruptcy Rule 5004, and General Order #224(4). See Doc. 95, 112, 127, 143 and 151. This disqualification was based on the Inferior Officer's refusal to comply with United States laws, Title 11 USC §§102(1)(A)(B), Rules of Construction, 103(g), Applicability of Chapters, 105(a), Power of the Court, 362(d), 1104(a)(1)(2)(A)(B), Appointment of Trustee, 11 USC 1112(b)(1), Conversion or Dismissal and bias and prejudice, an Inferior Officer cannot change a Federal Statute.

The Inferior Officer has refused to recuse himself and is now in contempt of a United States Supreme Court Mandate.

Under Canon 3E of the Code of Judicial Ethics, a judge must disqualify himself where disqualification is required by law, 28 USC §455(a). Bankruptcy Rule 5004, "a bankruptcy judge shall be governed by 28 USC §455, and disqualified from presiding over the proceeding or contested matter in which the disqualifying circumstances arises or, if appropriate, shall be disqualified from presiding over the case."

Inferior Officer's do not have discretion not to disqualify themselves. Should he not disqualify himself as required by law, then he has given another example of his impartiality which further disqualifies the Inferior Officer. See, *Liljeberg v. Health Services Acquisition Corp.*, 486, U. S. 847, 108 S. Ct. 2194 (1988). It is a fundamental right of every litigant to a fair and impartial proceeding.

Should an Inferior Officer not disqualify himself, then the Inferior Officer is in violation of the Due Process Clause of the United States Constitution. See, *United States v. Seiuto*, 521 F.2d 842, 845 (7th Cir. 1996) held: "The right to a tribunal free from bias or prejudice is based, not on 28 USC (§455 and BKR 5004), but on the Due Process Clause."

Ninth Circuit General Order #224(4) of the Central District for the United States District Court, for the Ninth Circuit Assignment of Case and Duties to Judges, Motion to Disqualify a Judge, states, "If a motion is made to disqualify a judge in any civil case assigned to the judge pursuant to this General Order,

the motion shall be referred to the Clerk for assignment to another judge in the same manner as cases are assigned pursuant to this General Order. The judge to whom the motion is assigned shall promptly determine whether the motion is timely filed and is legally sufficient to require a hearing on the disqualification. If the judge determines that the motion is timely and legally sufficient, the matter will be set down for a hearing or other determination at the earliest time practicable. **The judge against whom the motion has been filed shall not proceed with the case until the motion has been heard and determined by a District Judge.**”

An Order of August 3, 2018, Denying Disqualification, is an **adversary proceeding** governed by FRBP 7001, 7003, 7004, 7005, 7007, 7008, and 7010. The non-core Order by Inferior Officer, Scott Clarkson, was in violation with 28 USC Code §157(b)(1), and §157(c)(1), was willful misconduct and made in bad faith. The Order was also in violation of 28 USC Code §455, and General Order #224(4). The Order was completely erroneous and **nugatory**.

The distinction between core and non-core adversary proceedings is that the bankruptcy court **may not enter a final judgment** in any adversary proceedings that relates to the bankruptcy case. The bankruptcy court may only hear the adversary proceedings on the merits and is obligated to submit a report and recommendation of proposed findings of fact and proposed conclusions of law. The District Court, after reviewing the report, must enter a final judgment or order, de novo.

Advisory Committee Notes 1985 Amendments

states, "Subdivision (a) was affected by the Bankruptcy Amendments and Federal Judgeship Act of 1984, Public Law 98-353, 98 Statute 333." The 1978 Bankruptcy Reform Act Public Law 95-598, included bankruptcy judges in the definition of United States judges in 28 USC §451 and they were therefore subject to the provisions of 28 USC §455. Disqualification of a bankruptcy judge is governed by 28 USC §455. That section provides that the judge shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned or under certain other circumstances.

Pursuant to 28 USC Code §157(c)(1) non-core proceedings require, "that a bankruptcy judge shall submit proposed findings of fact and conclusions of law to the District Court, and any final order or judgment shall be entered by the district judge." This requirement of 28 USC §157(c)(1) was never judicially taken to this current date, therefore all rulings of the inferior officer since June 1, 2018, were error of law, illegal, void, and nugatory, resulting in a miscarriage of justice and were in violation of the 5th and 14th Amendments of the United State Constitution.

Advisory Committee Notes 1985 Amendments states, "the distinction is consistent with the definition of proceeding in 28 USC §455. Subdivision (b) precludes a bankruptcy judge from allowing compensation from the estate to a relative or other person closely associated with the judge. The word associated in subdivision (b) has been changed to connected in order to conform with Rule 5002(b)."

No governmental authority or an **Inferior Officer** acting on behalf of a governmental authority, shall engage in a pattern or practice of conduct that

deprives any person of rights, privileges, or immunities secured or protected by the Constitution or laws of the United States or by the Constitution or laws of California. This behavior constitutes actual malice.

The Inferior Officer has violated Rule 9014(a)(b), Rule 7004(a)(1), Rule 7004(b)(1), 9006(d), LBR 7004-1(a) and FRCivP Rule 3, 4, 5, and 7, and as required by law the selection of a trustee is an adverse proceeding, inconsistent with Constitutional Due Process and Equal Protection clauses, or otherwise acted beyond the powers granted to him under the law, a clear usurpation of judicial power. See Doc. # 85, 86, 89.

The illegally appointed trustee had no legal authority to take any action and any actions taken by the illegally appointed trustee are Invalid, Void, and legal nullities. See Doc. # 97, 108, 109, 114, 116, 124, 132, 134, 143, 144, 150, 164, 202, 203, 214, 225, 226, 228, 230 – 235, 237, 238, 257, 258, 260, and 261.

When a debtor files a petition seeking relief, the debtor receives an automatic stay and ultimately the right to discharge. Under Chapter 11, §1129(a)(1)(2)(3)(4) the exclusivity period ensures that the bankruptcy case is the debtor's show. 11 USC §1104(a) requires "*on a request of a party in interest*". There was no request by a party in interest anywhere in the Official Court Record for an appointment of trustee, an adverse proceeding. 11 USC §1104(a) requires "*after notice*". The Official Court Record illustrates that there was no Notice of this requirement. 11 USC §1104 requires(a) "*after a hearing*". The Official Court Record illustrates that

there was no Hearing held for this requirement. 11 USC §1104(a)(1) requires *"for cause, including fraud, dishonesty, incompetence, or gross mismanagement of the affairs of the debtor by current management."* The Official Court Record illustrates that there was no for Cause of this requirement.

The Order authorizing converting the case of Chapter 11 to Chapter 7 is a violation of the Fifth, and Fourteenth Amendments of the United States Constitution. This action by Inferior Officer demonstrates harassment, improper purpose and retaliation by an (Inferior Officer). See Doc. 172, 173, 177, 192, 195, 198, and 199.

The case is in violation of 11 USC §1112(a) and local rule LBR 1017-1(a)(3) which states, "Conversion from chapter 11 to another Chapter. A debtor **must** request conversion under 11 USC §1112(a) by a motion filed and served as required by FRBP 9013. An Inferior Officer has no authorization to change a Federal Statute.

The case is in violation of 11 USC §1112(b)(1)(2)(A)(B)(i)(ii) which states in part, "On request of a party in interest, and after notice and a hearing, ...best interests of creditors and the estate, ... (2) The court may not convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter if the court finds and specifically identifies unusual circumstances establishing that converting or dismissing the case is not in the best interests of valid creditors and the estate, establishing that converting or dismissing the case is not in the best interests of creditors and the estate,"

11 USC 1112(b)(1) states, "Except as provided in paragraph (2) and subsection (c), on request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7, whichever is in the best interests of valid creditors and the estate, for cause."

The conditions set forth in 11 USC 1112(b)(1), are prohibiting the court from converting the case on several points of law. The first is, **there must be a request by a part in interest, there must be a notice and there must be a hearing.** The second point of law, is that the conversion **must be in the best interest of valid creditors and the estate, and the third, under 1104(a) there must be fraud, dishonesty, incompetence or gross mismanagement of the affairs of the debtor by current management.**

1978 Acts Statutory Notes, states, "Subsection (b), but only for cause. Cause may include some of the following: the inability to effectuate a plan, failure to file a plan within the appropriate time limits.

11 USC 1112(b)(2) states, "The court **may not convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter if the court finds unusual circumstances establishing that converting or dismissing the case is not in the best interest of valid creditors (there are valid creditors), and the estate, and the debtor or any other party in interest establishes that— (A) there is a reasonable likelihood that a plan will be confirmed within the timeframes established in sections 1121(e) and 1129(e) of this title.**" An Inferior Officer cannot change a Federal Statute.

The State court rulings is in violation of my

United States Constitution's First Amendment Rights, and the California Constitution's Article 1 Section 2, and my Due Process and Equal Protection of laws, of both Constitutions. The State court action is based upon Fraud and Deceit of the adverse party, who committed perjury in all filings with the State court.

The Probate case was based upon Fraud, Deceit, violations of the United States and California Constitutions, the violations of Federal and California Statutes, as well as the violations of Decisional laws of United States and California. It not only involves Fraud by the Bankruptcy court, but the Fraud by United States Trustees.

The 1978 Acts Notes, goes even to a greater extent of clarity by stating, "Subsection (e) reinforces section 109 by prohibiting conversion of a chapter 11 case to a case under another chapter proceeding under which the debtor is not permitted to proceed. Senate Report No. 95-989."

11 USC 1112(f) states, "Notwithstanding any other provision of this section, a case may not be converted to a case under another chapter of this title unless the debtor may be a debtor under such chapter."

The case is in violation of 11 USC §1112(a) and local rule LBR 1017-1(a)(3) which states, "Conversion from chapter 11 to another Chapter. A debtor must request conversion under 11 USC §1112(a) by a motion filed and served as required by FRBP 9013." An Inferior Officer has no authorization to change a Federal Statute.

It is clear that 11 USC 1112(b)(2) prohibits the court from converting the case or dismissing the case under this section for any reason except for cause as listed under subsection (4) of this section.

Numerous Orders Granting Rule 2004 Examination of Debtor was in violation of Rule 2004 in that there existed no party in interest and no mandatory form F9013-1.1 Hearing Notice was filed in the Official Record. No mandatory form F9013-1.2 Notice of Motion for Order Without Hearing LBR 9013-1(p) or (q) was ever filed in the Official Record. The Order was in violation of LBR 2004-1 there was no conference to arrange for a mutually agreeable date, time, place, and scope of an examination. LBR 2004-1(a) requires (in person or telephonically) contact, not a letter.

No evidence of fraud was provided on the record a strict requirement of 18 USC §501 was never offered. "A party must plead each of the elements of fraud with particularity. When pleading fraud, the claimant must allege more than mere conclusory allegations of fraud or the technical elements of fraud." No representation was made of fraud. In all averments of fraud, the circumstances constituting fraud shall be stated with particularity. FRCivP Rule 9 specifically states, "The party desiring to raise the issue shall do so by specific negative averment, which shall include such supporting particulars as are peculiar within the pleader's knowledge." Rule 9(b) specifically states, "In all averments of Fraud or Mistake, the circumstances constituting Fraud or Mistake shall be stated with particularity.

11 USC §102(1)(A)(B), RULES OF CONSTRUCTION, (1) states “after notice and a hearing. Or 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. The Supreme Court has ruled, “must be given an opportunity to be heard. Denial of a hearing is denial of due process.”

11 USC §105(a), “The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.

11 USC §1104 Appointment of trustee is a contested matter, for cause including fraud, dishonesty, incompetence, or gross mismanagement of the affairs of the debtor.

The inferior officer has violated the statutory provisions of 11 USC, §1112(b)(1) by granting an Order converting the case of Chapter 11 to Chapter 7 on September 14, 2018, by law only the Debtor can convert. The request was not made by a party in interest as required by §1112(b)(1). There was no notice or hearing held as required by §1112(b)(1). It was not in the best interest of the creditors and the estate because there are no valid creditors as required by §1112(b)(1). These stated facts of Debtor’s case establish the provisions of the Statute 11 USC §1112(b)(2), “unusual circumstances”, a certain standard by anyone within knowledge of the facts, substantiating an implied duty of good faith.

The inferior officer has violated the statutory provisions of 11 USC, §362(d) by granting a Motion for

Relief to movant from the Automatic Stay on August 28, 2018. Doc. #181. The request was not made by a party in interest as required by §362(d), and is in violation of §§362(a)(3), 362(c)(1), 362(c)(3)(B), 362(c)(3)(C), 362(d)(1), 362(d)(2)(A)(B), and 362(g)(1). The request was made by a disinterested person in violation of 11 USC §101(14), and in violation of 11 USC §§105(a), 105(c). See Doc. #138, Claim withdrawn, July 24, 2018, 143 – 148.

Section 542 of 11 USC Code does not allow anyone to take possession of real property valued at over \$7 million, from the debtor. That unconscionable Order is in violation of both Constitutions. The Order dated July 16, 2021, is in violation of several Sections and Rules of the Bankruptcy Code and no Notice of a hearing was ever given. An Inferior Officer has no authorization to change a Federal Statute.

Section 101(15), of 11 USC Code, defines the term “entity,” the person filing the Motion has never been an entity, or a legally appointed Chapter 7 trustee, in this case and has repeatedly committed fraud by declaring so on numerous occasions and is a disinterested person as defined by §101(14).

The validity of all the Claims has never been adjudicated by a court to determine if they are in fact fraudulent as prohibited by 18 USC Code §§152, 157, 3571, and 11 USC Code.

Bankruptcy Rule 2003(a) specifically states that a §341(a) examination in this case must be no earlier than March 27, 2018, and no later than April 14, 2018, this specific period of time has elapsed.

On May 23, 2018, See Doc. 84, the inferior officer issued an Unconstitutional Order. An Order

that he was prohibited from making by the H.R. No. 8200 and the Senate Report No. 95-989 under Section 102(A) of 11 USC Code. That unconstitutional Order and all subsequent orders directly or indirectly associated with that Order were also unconstitutional, **invalid and void**. The inferior officer was not **an interested party** as defined by the Code of 11 USC and could not under 11 USC §§102, 1104(a), 1112, or Bankruptcy Rules 2007 and 9014 issue the Constitutionally required Notice and Hearing by those sections.

In each of the following proceedings pursuant to 28 USC Code §157(c)(1) **non-core proceeding** requires, “that a bankruptcy judge shall submit proposed findings of fact and conclusions of law to the District Court, and **any final order or judgment shall be entered by the district judge...after reviewing de novo those matters....**” This requirement of 28 USC §157(c)(1) was never judicially taken to this date, therefore all rulings of the inferior officer since **June 1, 2018**, were error of law, illegal and nugatory, resulting in a miscarriage of justice and were in violation of the 5th and 14th Amendments of the United State Constitution.

An Order of July, 11 2018, a **non-core** Order to **Revoke a Living Trust** was in violation of 28 USC Code §§157(b)(1), and (c)(1), an Adversary proceeding FRBP 7001(7)(8)(9) or a FRBP Rule 9014 Contested Matter and was in violation with LBR 9013-1(a). It was also in violation of 11 USC §§102, 105, Rule 7004, and Rule 9006(d). This proceeding like the proceeding for disqualification was unquestionably a violation of this Statute created by the Congress of the United States

and signed by the President. See Doc. 120, - 123, 131, 139, 147, 158, 163, 167, and 170.

An Order of August 22, 2018, a **non-core** Order for Conservator was in violation of 28 USC Code §§157(b)(1), and (c)(1), an adversary matter, FRBP 7001(7)(8)(9) or a FRBP Rule 9014 Contested Matter and was in violation with LBR 9013-1(a). It was also in violation of 11 USC §§102, 105, Rule 7004, and Rule 9006(d). See Doc. 174, 175, 178, 193, 194, and 196. An Inferior Officer has no authorization to change a Federal Statute.

An Order of August 30, 2018, a **non-core** Order for seeking an Order from the Superior Court was in violation of 28 USC Code §§157(b)(1), and (c)(1), an adversary FRBP 7001(7)(8)(9) or a FRBP Rule 9014 Contested Matter and was in violation with LBR 9013-1(a). It was also in violation of 11 USC §§102, 105, Rule 7004, and Rule 9006(d). See Doc. # 181, 183 -185, 191, 202, 223, and 227.

An Order of September 14, 2018, for conversion of the case from chapter 11 to chapter 7 was in violation of 11 USC §§1112(a), 1112(b), 1112(c), 1112(d), 1112(e) 1112(f), Rule 1019, LBR 1017-1. In addition, the mandatory forms F1017-1.1 or F1017-1.4 were never filed. See Doc. # 172, 173, 177, 192, 195, 198, and 190.

An Order of December 10, 2018, for clarifying previous employment order was in violation of 11 USC §348(e), **that section terminates the trustee**. The Order was also an Adversary proceeding FRBP 7001(7)(8)(9) or a FRBP Rule 9014 Contested Matter and was in violation with LBR 9013-1(a). It was also in violation of 11 USC §§102, 105, Rule 7004, and Rule

9006(d). See Doc. # 108, 109, 132, 150, 225, 226, 228, 230, 231 – 235, 237, and 238.

An Order of January 31, 2019, for Extending Time is in violation of the Federal Rules of Civil Procedure Rule 6(b), FRBP Rule 4004(b)(1), must be filed before expiration of date set by statute, and FRBP Rule 9006(b)(1). See Doc. # 239 – 241, 245, 248 – 252, 263 – 265, 268 – 270, 280, 281, 285 – 288, 295, 296, 299 – 301.

The California Probate Department violated Petitioner's United States Constitutional Rights, of Article III, Section 1, Article III, Section 2[1], and Article III, Section 2[2], Article VI the Supremacy Clause, United States Constitutional 1st, 4th, 5th, 9th, 10th, and the 14th Amendments, reaffirmed by the Federal Statute of 28 USC §1331, {Federal Question}, and Federal Statutes of 11 USC, 18 USC, 28 USC and 42 USC as addressed herein.

28 USC §1652, provides California laws as rules of decisions, pursuant to California Civil Code §22, Definition of Law, and §22.1(a) The California Constitution and California Statutes. Article 1, Section 1, Rights & Protecting Property, Article 1, Section 2, Freedom of Speech, and the 1st Amendment of the United States Constitution, Article 1, Section 3(a)(b)(3), Privacy, Article 1, Section 3(4), Due Process, Equal Protection, Article 1, Section 7(a), Due Process, Equal Protection, 14th Amendment, Article 1, Section 13, To be secure, unreasonable searches & Seizures, Article 1, Section 16, Trial by jury, Article 1, Section 19(a), Just Compensation for Private Property, Ascertained by Jury, Article 1, Section 19(e)(3), Owner occupied property, Article 1, Section 24, Rights are not Dependent on United States

xxx

Constitution, Article 1, Section 26, Provisions are Mandatory and Prohibitory, Article 1, Section 28(f)(4), Use of Prior Convictions Felony, not misdemeanors, Article 3, Section 1, United States Constitution is Supreme law of the land, Article 3, Section 3.5(a), Unconstitutional, Article 4, Section 8(b), No law, and Article 6, Section 21, Temporary Judge.

CONCLUSION, RELIEF SOUGHT Rule 22(ii)

Order disqualification of Inferior Officer, T. Albert, pursuant to 28 USC §455, due to a bias, prejudice, set aside all Orders and Judgments as void.

That Richard A. Marshack was never legally appointed as a Chapter 11 or Chapter 7 trustee in the Bankruptcy Case, 8:18-bk-10762-TA.

That the Real and Personal Property located at 871 Avenida Acapulco be returned to Finnegan its rightful owner.

That Richard A. Marshack, Marshack Hays LLP, and Laila Masud, should be held accountable for all costs incurred by Finnegan because of the illegal Taking and Finnegan be reimbursed according to and including, all Constitutional Damages, and Punitive Damages, Per Diem, Expenses, Mileage, Costs of Suits, all replacements, all Real and Personal Property Damage, all Food Spoilage, and Other costs.

This Court should find that the Probate Case No. 30-2019-01047364, should be reversed and/or dismissed for want of Jurisdiction, for violation of the provisions of the United States and California Constitutions, and Federal and California Statutes addressed in this brief and based upon the fraud, deceit and misrepresentation of the lower court.

REASONS WHY THE WRIT SHOULD BE GRANTED Rule 20.1

The bankruptcy case presents numerous **Constitutional questions**, and presents a real and live controversy. The case involves matters of important public interest and countrywide impact, it is appropriate to invoke the original jurisdiction of the Supreme Court seeking relief by appellate means as the only adequate way for relief and certitude prayed for. The case involves a routine practice or procedure by trial court where a **large number of other cases or parties will be affected** by the decision.

A trial transcript was not provided because the events were authenticated by the official records of each proceeding. There is no adequate remedy at law, because there exists no right to appeal.

The case compels not only official action to enforce civil rights, but will lie to correct any arbitrary, capricious, or unreasonable act. The **public interest is so predominate an issue, that a failure of justice would occur, in the wrongful or excessive exercise of jurisdiction resulting in an issue of Constitutionality for failure of the enforcement of public duty in having laws executed and public duty enforced.**

The Petitioner was clearly solvent pursuant to 28 USC §3302(a)(e) and 28 USC 3002(4). The Petitioner purchased the property July 15, 1989, designed the home as a licensed Architect, and built the home as a Licensed General Contractor, and had a beneficial interest in the property.

Petitioner has a Fundamental Constitutional right, because the findings are not supported by the

evidence.

The abrogation of the rights of Petitioner are too important, for a fundamental Constitutional right requiring strict scrutiny, and substantial due process analysis.

The Federal statute 28 USC §455, where a legal existing body, capable of acting, but who have abused their power failed to disqualify, so fraudulent, or so palpably unreasonable, arbitrary, abuse of discretion as a matter of law under the following 28 USC §455, warrants the exercise of the Court's discretionary powers, to obey established law regarding disqualification. See, *Aetna Life Ins. Co. v. Lavoie*, (1986) 475 U. S. 813, 106S. Ct. 1580, 89 L.Ed.2d 823. See also, *Liteky v. United States*, 114 S. Ct. 1147, 1162 (1994), defiance to 28 USC §455, and defiance to the Ninth Circuit General Order #224(4), Bankruptcy Rule 5004(a), governed by 28 USC §455, and pursuant to 11 USC §102(1)(A), when Legislative Statements of §102, in part states, the bankruptcy court shall not be permitted to act on his own, requiring to show cause why the record should not be annulled or vacated and required setting-aside of all orders, judgments, and rulings and the issuing of scire facias ad rehubendum terram, a writ allowing a debtor to recover lands illegally taken.

Where it appears, judicial discretion could be exercised in only one way, but refuses to do so, or where facts support only one decision, to correct an abuse in the exercise of discretion. The trial court, to enforce a nondiscretionary duty to act on the part of a court, the trial court is under a duty to hear and determine the merits of all matters properly before it

which are within its jurisdiction and to perform ministerial acts required by law, that the error, omission, or neglect was in violation of Federal laws.

The United States Constitutions Sixth Amendment Section [2] states, "This Constitutions, and the Laws of the United States which shall be made in Pursuance thereof; ... shall be the supreme Law of the Land; and the judges in every State shall be bound thereby... ."

The United States Supreme Court's doctrine that preempts State causes of action, derived from the Supremacy Clause. State courts are not merely authorized but are compelled to adjudicate United States Constitutional issues.

The Congressional Acts of Congress, was the establishment of 11 USC §362(a)(1). It operates as an Automatic Stay, applicable to all entities, and any violation of this Federal Law renders any act by a California court void.

11 USC §362(a)(3) "any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate." Failure of the trial court to execute Federal Law as commanded by the Sixth Amendment was not only fraudulent, but Reversible. See, *Interstate Commerce Comm'n v. Holmes Transp., Inc.*, 931 F. 2d 984, 987 (1st Cir 1991). The automatic stay stops the commencement or continuation of all civil actions against the debtor. Any act in violation of the automatic stay is void because the stay is self-enforcing.

The trial court was patently wrong, statute 11 USC §362, restrains the exercise of any unauthorized power and the court lacks jurisdiction to try cause.

Any act which exceeds the defined power of Constitutional, expressed statutory, or rules are in excess of jurisdiction causing further vexation and useless expense, and an unwarranted trial would result in a failure of justice. in violations of a statutory ministerial duty, or violation of Constitution rights.

See, *Abelieira v. Dist Ct. of App.* (1941) 17 C.2d 280, 287, 109 P.2d 942

The trial court imposed an unwarranted condition on plaintiff's right to jury, constituting an abuse of discretion, an act of excess of jurisdiction, and is appropriate for review of relief of jury trial. The California Probate Code §1823(7), requires a trial by jury.

Any attempt to try action is beyond the court's jurisdiction. A Petitioner should not be forced to elect right to contest jurisdiction or defend on the merits, when clear, present ministerial duty is sharp and public need weighty. Petitioner had a beneficial right to that duty

The order was void for illegality, a legal impossibility, abuse of discretion an excess of jurisdiction and lack of subject matter jurisdiction.

11 USC §301(a)(b), constitutes an order for relief to the bankruptcy court from all false and fraudulent claims. The bankruptcy Petitioner remains, ready, willing, and able to prove each claim submitted was a false and fraudulent claim, and the validity of 28 USC §§157(b)(1)(c)(1)(d)(1)(1), 455(a)(b)(1), 1334(d)(e), 1452(a)(b), 1651(a), 1652, 1861, 2001(a)(b), 2075, 2104, 18 USC §§153(a)(b), 157(1)(2)(3), and 1519.

Pursuant to 11 USC §362(d), requires a **party in interest**, no one can ever have authority, to alter 11 USC, either actually or ostensible, to do an act which is, or is known or suspected by the person with whom he deals, to be a fraud.

The United States Constitution's guaranteed right of Article III, gives to a person uncontrolled dominion for all purposes, which establishes that the case brought before the trial court was without an individual with prescribed proper standing, constituting excess of jurisdiction. An action not founded upon an actual controversy, is collusive, and should not be entertained.

The Writ will be in aid of the Court's appellate jurisdiction and the reasoning of the principles of the United States Constitution, and will provide a determination of the violations of the protective rights of the United States Constitution pursuant to 28 USC §§157(b)(1)(c)(1), 1651, 1861, 1930, 2071, 2072, 2075, 2104, and 3302(a)(e) and 11 USC §§547(b)(1)(2)-(f)(g)(i), 551, 1978 Acts, and the Uniform Commercial Code.

That exceptional circumstances exist of issuing numerous unconstitutional orders, by the bankruptcy court and absolute refusal of disqualification pursuant to 28 USC §455.

That adequate relief cannot be obtained in any other form or from any other court, because no other court possesses the power, authority, rational, or the jurisdiction for the genesis and nucleus as does the United States Supreme Court

The the lower court, not only violated the United States Constitution (Article VI, Section [2],

and Federal Laws, as well as the California Probate Code §1051, Welfare Code, Family Code §216, and the operative Standard Codes of California, and disobeyed the Rules of Appellate Procedures by conducting an illegal trial.

The Federal questions of the United States Constitutional Rights of Article III, §1, §2[1], and §2[2], Article VI Equal protection of laws; the 1st, Amendment, Freedom of Speech; Right to Petition; 4th Seizure, 5th, Due Process; 7th right of trial by jury shall be preserved; 13th **Slavery** by granting absolute power over the life, fortune, and liberty of another; to a non-attorney, and 14th Amendment Due Process and Equal Protection; the specific provisions of the Supremacy Clause; and 11 USC §362.

The unacceptable desecration of Federal Statutes of the United States Statutes, i.e., 11 USC Codes, 12 USC, 18 USC, 28 USC, and others.

Ex parte communications is prohibited, Probate Code §1051 which states, *"In the absence of a stipulation by the between the parties to the contrary, there shall be no ex parte communications between any party, or attorney for the party,"* Courts may not grant ex parte relief that would affect the opposing party's rights. See, *McDonald v. Severy* (1936) 6 C.2d 629, 631, 59 P.2d 98, 99.

The lower court in its unconstitutional order, in oral and written statement, in a judicial proceeding, an act of furtherance to chill the valid exercise of the Constitutional Rights of Free Speech, Right of Petition, both granted by the First Amendment of the United States Constitution, the definition of an act in furtherance of a person's Constitutional Rights is not limited to oral or written statements. See *Dixon v.*

Superior Court, (1994) 30 C.A. 4th 733, 744, 36 CR.2d 687.

The requirement of Notice and an opportunity for a hearing, as essential to Constitutional Due Process, *See, Mullane v. Central Hanover Bank & Trust Co.*, (1950) 339 U. S. 306, 70 S. Ct. 652, 656, 94 L.Ed865, 872.

11 USC § 1115(b), Property of the Estate states: "the Debtor shall remain in possession of all property of the estate."

The record does not support the trial court, because two equally separate, and timely Appeals were filed with their respective courts prior to the trial being conducted.

28 USC Code §157(c)(1) non-core proceedings require, "that a bankruptcy judge shall submit proposed findings of fact and conclusions of law to the District Court, and any final order or judgment shall be entered by the district judge."

Fundamental Right is derived from the Constitution, and triggers strict scrutiny to determine whether the law violates the Due Process or Equal Protection Clauses, and that which is proper under law, morality, or ethics, and cannot be transferred, or taken away.

Wisconsin v. Constantineau, 400 U. S. 433, 91 S. Ct. 507, 27 L. Ed2d 515, (1971), ruled, "that a party's claim might be resolved under the due process clause of the state's constitution is not a proper ground for abstention."

11 USC §301(b), "*The commencement of a voluntary case under a chapter of this title constitutes an order for relief under such chapter.*"

MAY IT PLEASE THE COURT

STATEMENT OF ISSUES

DISQUALIFICATION BIAS & PREJUDICE

The United States Constitution guarantees the rights, power, privilege, or immunity, Due Process and Equal Protection clauses. These Rights are such as belonging to every citizen of the United States by the Constitution, and Amendments, prior to the infringement of individuals' rights and entitlements. See, *Goldberg v. Kelly*, 397 U.S. 254 (1970).

Was Petitioner (hereinafter Finnegan) denied his United States Constitutional rights under Article III, Section 1, Article III, Section 2[1], and Article III, Section 2[2], of the United States Constitution?

The simple fact is the Case violated several fundamental rights, Article III Standing, the Taking Clause, Freedom of Speech and Right of Petition, Due Process, Equal Protection, Slavery, Civil Rights, of the United States Constitution, and Federal Laws of Appellate Procedures, Title 11, 18, 28, 42 USC.

The equal protection principal is exclusively associated with the written Constitutions and embodies guarantees of equal treatment applied not only to the procedural enforcement of laws but also to the substantive content of their provisions, as stated in the 14th Amendment, of the United States Constitution.

Disqualification of a judge is to divest qualifications of a judge especially due to a bias, prejudice, or conflict of interest that prevents a judge

by reason of his interest in the case, or by reason of his or her holding a fixed preconceived opinion that prevents a judge from impartially hearing a case. The rule is commonly declared that a judgment or order rendered by a disqualified judge is void.

The, ground for equitable relief is extrinsic fraud by preventing a fair adversary hearing. See, *United States v. Throckmorton* (1878) 98 U.S. 61, 25 L. Ed. 93, "Where the unsuccessful party has been prevented from exhibiting fully his case, by fraud or deception practiced on him by his opponent.... relief has been granted on the ground that by some fraud practiced directly upon the party seeking relief against the judgment or decree, that the party has been prevented from presenting all of his case to the court." Extrinsic fraud may be found even though the party actually appears at hearing. The broad concept of extrinsic fraud tends to encompass almost any set of extrinsic circumstances which deprive a party of a fair adversary hearing.

The Order granting Conservator, Doc. 174 dated August 22, 2018, and Revoking of Living Trust Doc. 170 dated August 20, 2018, is void because the Order is in violation with the following sections of 11 USC Code and 28 USC Code and Bankruptcy Procedure Rules. There, exists no authority for the voided orders on Conservator or Revoking of Living Trust within 11 USC Code:

28 USC 1334(a), states, "*Except as provided in subsection (b) of this section, the district court shall have original and exclusive jurisdiction of all case under title 11.*"

Maxim

A judicial act before one not a judge (or without jurisdiction) is void.

One who gives a judgment outside his jurisdiction is disobeyed with impunity. There is no punishment for disobeying.

FEDERAL STATUTE 11 USC

11 USC §101(14) "The term 'disinterested person' means— (A) is not a creditor, an equity security holder, or an insider; (B) is not and was not, within 2 years before the date of the filing of the petition, a director, officer, or employee of the debtor, and (C) does not have an interest materially adverse to the interest of the estate or any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with, or interest in, the debtor, or for any other reason."

11 USC §102(1) "after notice and a hearing", or similar phrase— (A) means after such notice as is appropriate in the particular circumstance, 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; or (ii) there is insufficient time for a hearing to be commenced before such act must be done, and the court authorizes such act."

11 USC §105, POWER OF COURT, (a) "The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title..."

11 USC §106(a) Notwithstanding an assertion of sovereign immunity, sovereign immunity is abrogated as to a governmental unit to the extent set forth in this section with respect to the following Code Sections. 1978 Acts states, Section 106 provides for a limited waiver of sovereign immunity in bankruptcy cases.

The statute, 11 USC §301(a), Voluntary Cases, states, "*A voluntary case under a chapter of this title is commenced by filing with the bankruptcy court of a petition under such chapter by an entity that may be a debtor under such chapter. (b) The commencement of a voluntary case under a chapter of this title constitutes an order for relief under such chapter.*"

The statute clearly states, if you elect to select a Chapter 11 case and file for a Chapter 11 case, the case is then a case under this title a Chapter 11 case and the court cannot change the case to another chapter.

The Statutory Notes of the 1978 Acts, states, "Section 301 specifies the manner in which a voluntary bankruptcy case is commenced. The debtor files a petition under the section under the particular operative chapter of the bankruptcy code under which he wishes to proceed. The filing of the petition constitutes an order for relief in the case under that chapter."

The Order completely defied 11 USC §301(a)(b) of the statute by converting the case from Chapter 11 to Chapter 7.

Other rules of construction that are not set out in title 11, are nevertheless intended to be followed in construing the bankruptcy code. The phrase "on

request of a party in interest” or similar phrase, is used in connection with an action that the court may take in various sections of the Code. The phrase is intended to restrict the court from acting sua sponte. Rules of bankruptcy procedure or court decisions will determine who is a party in interest for the particular purposes of the provision in question, but the court will not be permitted to act on its own.”

The court is not under title 11, ever considered a party in interest. A party in interest as defined by the Bankruptcy Code, include the debtor, the trustee, creditors and creditors’ committee, and/or equity security holders. Missing from the definition are the judge and the United States Trustee.”

In reference to the 1978 Acts of Sections 362, 901, 1107, Bankruptcy Rules 9033, 1017(f)(1)(2), and Local Rule 1017-1(a)(3). A voluntary case pursuant to Chapter 11 Reorganization can only be converted by the Debtor.

The undisputed facts of this case are supported by the Official Record from March 6, 2018 to date because the Official Record authenticates that no Motion was filed or no Notice was filed by a party in interest and no Hearing was held as required by 11 USC §§301(a), 102(1), 362(a)(3), 101(14), 103(a), 322(a), 1104(a), 105(a) and Rules 9029, 9014, 7004(a)(1), FRCP Rule 5, FRCP Rule 4 and 18 USC §501.

On March 6, 2018, Debtor in Possession filed a Voluntary Petition under Chapter 11 reorganization of the Bankruptcy Code §301(a)(b). Item #1 of the Official Record.

Every, filing for a bankruptcy receives the protection of Federal Statute 11 USC §362(a)(1), permanent injunction. Automatic Stay states, "*The automatic is one of the fundamental debtor protections provided by the bankruptcy laws. It gives the debtor a breathing spell from his creditors. It stops all collection efforts, all harassment, and all foreclosure actions. It permits the debtor to attempt a repayment, or reorganization plan, or simply to be relieved of the financial pressures that drove him into bankruptcy.*"

Federal Statute 11 USC §362(a)(1), permanent injunction states, "*the commencement or continuation ... of a judicial ... or other action against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title.*" See also 28 USC §2285.

Federal Statute 11 USC §362(a)(2), permanent injunction states, "*the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this title.*"

Federal Statute 11 USC §362(a)(3), permanent injunction states, "*any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate.*"

The automatic is theoretically of infinite duration. Any act in violation of the automatic stay is void because the stay is self-enforcing. Thus, any act in violation of the stay, irrespective of the knowledge of the stay's existence is void. Moreover, any violation

of the stay may be subject to a litany of sanctions ranging from paying the attorney's fees of the debtor to punitive damages and, ultimately, to contempt of court if the stay violation was willful, §362(k).

Case No. 30-2019-1047364 was in violation of Federal Statute 11 USC §362, permanent injunction, and should be dismissed on the ground that it is a violation of Federal Law and the provision of the United States Constitution Article III Section 2.

The venue must be subject to the equal protection clause of the Fourteenth Amendment *Grocers' Fruit Growing Union v. Kern County Land Co.*, (1907) 150 C. 466, 474 89 P. 120, and prohibition in the California Constitution Art. IV §16(b). Federal Statute gives a defendant a particular local venue as a matter of right, California cannot deny it, pursuant to 12 USC §94. *Citizens & Southern Nat. Bank v. Bougas*, (1977) 434 U. S. 35, 98 S. Ct. 88, 92 54 L.Ed2d 218, 222.

11 USC §558, Defenses of the Estate states, "The estate shall have the benefit of any defense available to the debtor as against any entity other than the estate, including statutes of limitation, statutes of frauds, usury, and other defenses. A waiver of any such defense by the debtor after the commencement of the case does not bind the estate?"

11 USC §1107, Gives the Debtor in possession all rights and becomes the representative of the estate and may sue or be sued?

Bankruptcy Rule 6009 of Title 11 USC, Prosecution and Defense... state, "With or without court approval, the trustee or debtor in possession may prosecute or may enter an appearance and

defend any pending action or proceeding by or against the debtor, or commence and prosecute any action or proceeding in behalf of the estate before any tribunal”?

The appointment of a trustee is forbidden by law of United States, where Constitutional Rights are at issue, such orders have been held to violate due process. The Bankruptcy court did not receive any required testimony or evidence as required by law. The appointment was done unlawfully, unreasonably and contrary to Constitutional, statutory and procedural law. A party in interest must plead “facts showing the existence of an actual controversy relating to the legal rights and duties of the parties.” *Wellenkamp v. Bank of America*, 21 C.3d 943, 947, 582 P.2d 970, 972 (1978). California Code of Civil Procedure §367 and FRCivP Rule 17(a) clearly states, “*Every action must be prosecuted in the name of the real party in interest*” that no Motion was filed or no Notice was filed by a party in interest as required by law and no Hearing was held.

The Order for Appointment of Trustee Doc. 85 dated May 24, 2018; Doc. 86, 87, 88, 89, dated May 25, 2018; Doc. 108, June 6, 2018; Doc. 150 dated August 3, 2018; and Doc. 153 dated August 5, 2018; are all void because they are in violation with the following sections of 11 USC Code:

11 USC §1104(a) states, “*At any time after the commencement of the case but before confirmation of a plan, on request of a party in interest or the United States trustee, and after notice and a hearing, the court shall order the appointment of a trustee— (1) for cause, including fraud, dishonesty, incompetence or*

gross mismanagement of the affairs of the debtor by current management."

11 USC, ILLEGAL TRUSTEE APPOINTMENT

11 USC §1104 Appointment of trustee, 1978 Acts, States, "if the appointment would serve the interest of the estate and security holders." "The court is permitted to order the appointment of one trustee at any time after the commencement of the case if a party in interest so requests." "The court may order appointment only if the protection afforded by a trustee is needed and the costs and expenses of a trustee would not be disproportionately higher than the value of the protection afforded." "The protection afforded by a trustee would be needed, for example in cases where the current management of the debtor has been fraudulent or dishonest, or has grossly mismanaged the company, or where the debtor's management has abandoned the business." "The second test, relating to the costs and expenses of a trustee, is not intended to be a strict cost/benefit analysis. It is included to require the court to have due regard for any additional costs or expenses that the appointment of a trustee would impose on the estate."

A trustee can be appointed in a chapter 11 case but the appointment requires appropriate motions by creditors or other parties in interest. The Statute 11 USC §1104, is the law and the conditions of appointing a trustee are very precise and states, "At any time after the commencement of the case but before confirmation of a plan, on request of a party of interest ...and after notice and a hearing, the court shall order the appointment of a trustee—" No

creditor or other parties in interest filed such a motion and no hearing was recorded on the official docket.

The law does not say that the court can without these specific provisos, appoint a trustee. This action by the court was unconstitutional and not a faithful execution of the law; it was an absolute showing of bias and prejudice. The Statute 11 USC §1104 has its genesis in the "Bill of Rights" and the 4th, 5th, 6th, and 14th Amendments to the United State Constitution as well as several Articles of the California Constitution.

No notice or hearing was recorded on the official docket. No evidence of fraud was provided on the record a strict requirement of 18 USC §501 was ever offered. *"A party must plead each of the elements of fraud with particularity. When pleading fraud, the claimant must allege more than mere conclusory allegations of fraud or the technical elements of fraud." No representation was made of fraud. In all averments of fraud, the circumstances constituting fraud shall be stated with particularity."*

Advisory Committee Notes of 1991 states, "This rule is added to implement the 1986 amendments to §1104 of the Code regarding the appointment of a trustee or examiner in a chapter 11 case. A motion for an order to appoint a trustee or examiner is a contested matter. Section 1104(e) of the Code requires that the appointment be made after consultation with parties in interest and that the person appointed be disinterested. This information is required, however, in the interest of full disclosure and confidence in the appointment process and to give the court all information that may be relevant to the

exercise of judicial discretion in approving the appointment of a trustee or examiner in a chapter 11 case. The Advisory Committee Notes of 1997 states, "This rule is amended to implement the 1994 amendments to §1104 of the Code regarding the election of a trustee in a chapter 11 case."

11 USC 1106 (1) - (8), does not call for the trustee to initiate **revoking a Living Trust** when there are no valid claims against the estate.

11 USC 1107(a) Rights, Powers, and Duties of Debtor in Possession states, *"Subject to any limitations on a trustee serving in a case under this chapter, and to such limitations or conditions as the court prescribes, a debtor in possession shall have all the rights, other than the right to compensation under section 330 of this title, and powers, and shall perform all functions and duties, except the duties specified in sections 1106(a)(2), (3), and (4) of this title, of a trustee serving in a case under this chapter. (b) not disqualified for employment...."*

Nothing in 11 USC §1112(a) grants the court any authority to convert a case. **Only the debtor** is so authorized and then only if all of the three provisions are complied with. This is another example where the court is restricted by law from acting arbitrarily.

11 USC §1115(b), Property of the Estate state, "Except as provided in section 1104 or a confirmed plan or order confirming a plan, the Debtor shall remain in possession of all property of the estate?

The case is in violation of 11 USC §1112(a) and local rule LBR 1017-1(a)(3) which states, *"Conversion from chapter 11 to another Chapter. A debtor must request conversion under 11 USC §1112(a) by a*

motion filed and served as required by FRBP 9013, and may be ruled on without a hearing pursuant to LBR 9013-1(p)."

11 USC §1112(b)(1) states, "Except as provided in paragraph (2) and subsection (c), on request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause unless the court determines that the appointment under section 1104(a) of a trustee or an examiner is in the best interests of creditors and the estate."

The conditions set forth in 11 USC §1112(b)(1), are prohibiting the court from converting the case on several points of law. The first is there must be a request by a party in interest, there must be a notice and there must be a hearing. The second point of law is that the conversion must be in the best interest of creditors and the estate, and the third under is §1104(a) there must be fraud, dishonesty, incompetence or gross mismanagement of the affairs of the debtor by current management.

1978 Acts Statutory Notes, states, "Subsection (b) gives wide discretion to the court, upon motion of a party in interest, or the court is permitted to convert a reorganization case to a liquidation case or to dismiss the case, whichever is in the best interest of creditors and the estate, but only for cause. Cause may include the continuing loss to or diminution of the estate of an insolvent debtor, the absence of a reasonable likelihood of rehabilitation, the inability to effectuate a plan, unreasonable delay by the debtor

that is prejudicial to creditors, failure to file a plan within the appropriate time limits. The power of the court to act sua sponte should be used sparingly and only in emergency situations.”

11 USC §1112(b)(2) states, “The court may not convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter if the court finds and specifically identifies unusual circumstances establishing that converting or dismissing the case is not in the best interest of creditors and the estate, and the debtor or any other party in interest establishes that— (A) there is a reasonable likelihood that a plan will be confirmed within the timeframes established in sections 1121(e) and 1129(e) of this title, or if such sections do not apply, within a reasonable period of time; and (B) the grounds for converting or dismissing the case include an act or omission of the debtor other than under paragraph (4)(A)—(i) for which there exists a reasonable justification for the act or omission; and (ii) that will be cured within a reasonable period of time fixed by the court.”

It is clear that 11 USC §1112(b)(2) prohibits the court from converting the case or dismissing the case under this section for any reason except for cause as listed under subsection (4) of this section.

11 USC §1112(b)(3) clearly states that “there must be a motion filed by a party in interest before the court can take any action regarding converting a case or dismissing a case under this section of the code.”

11 USC §1112(c) states, “The court may not convert ... (d) ... (1) if the debtor request such conversion, Subsection (e) reinforces section 109 by

prohibiting conversion of a chapter 11 case to a case under another chapter proceeding under which the debtor is not permitted to proceed. Senate Report No. 95-989."

11 USC §1112(f) states, "Notwithstanding, any other provision of this section, a case may not be converted to a case under another chapter of this title unless the debtor may be a debtor under such chapter."

Under Chapter 11, §1129(a)(1)(2)(3)(4) the exclusivity period ensures that the bankruptcy case is the debtor's show. A violation of this provision by the improvident appointment of a trustee was unconstitutional and violation of the due process and equal protection clauses of the United States Constitution and the Statute 11 USC §1104.

Bankruptcy Rule 2007(a) states, "In a chapter 11 reorganization case, a MOTION for an order to appoint a trustee ... pursuant to §1104(a) of the Code shall be made in accordance with Rule 9014."

Rule 9014(a), Contested Matters states, "Motion. In a contested matter not otherwise governed by these rules, relief shall be requested by motion, and reasonable notice and opportunity for hearing shall be afforded the party against whom relief is sought. No response is required under this rule unless the court directs otherwise. (b) Service. The motion shall be served in the manner provided for service of a summons and complaint by Rule 7004 and within the time determined under Rule 9005(d). Any written response to the motion shall be served within the time determined under Rule 9006(d)."

The Local Bankruptcy Rules are adopted pursuant to 28 USC §2075, Federal Rules of Civil

Procedure Rule 83, and Federal Rules of Bankruptcy Procedure Rule 9029, and apply to all bankruptcy cases and proceedings pursuant to 28 USC §1452 in the United States Bankruptcy Court for the Central District of California. These Rules apply in the United States District Court for the Central District of California in lieu of the Central District of California Local Civil Rules when the district court is exercising its original bankruptcy jurisdiction pursuant to 28 USC §1334.

CALIFORNIA PROBATE CODE

The issue of Probate in California is not a legal issue in the **Bankruptcy Code**, 11 USC, as a matter of law Probate is not even mentioned in the Bankruptcy Code. Probate is a non-core issue that must be determined by a District Court Judge pursuant to 28 USC §157.

The request for an Order for Motion for Dismissal in Probate Court, was Refused for the First time on April 9, 2019, Doc. #10 on the docket, in violation of the **California Constitution Article 6 Section 21**, and **Article 6 Section 22**, which limits temporary judges and Court Commissioners to determine non-contested issues only. This issue was subject to Appeal in the following case *Badgley v. Van Upp* (1963) 20 C.A. 4th 218, 24 CR 2d 406.

The request to Order a Motion for Dismissal was Refused for the Second time on May 14, 2019, Doc. #9 on the docket, in violation of the **California Constitution Article 6 Section 21**, and **Article 6 Section 22**, which limits Court Commissioners to subordinate judicial issues. This issue is governed by California Code of Civil Procedure §259(b), See, *Linsk*

v. Linsk (1969) 70 4th C.2d 272, 74 CR 544, 449 P.2d 760.

The refusal of a valid order or judgment is based on the lack of legal requirements at the onset of litigation of the concepts of jurisdiction and venue. Issue Number One, the State Court must have Constitutional required personal jurisdiction over the person, this was impossible because of 11 USC §362 permanent injunction rendering all decisions void.

The first requirement of the court is it **must determine** the plaintiff's status as a litigant, the court did not make this required determination.

Defendant's Case No. 8:18-bk-10762-TA, Federal Statute 11 USC §362(a)(1), permanent injunction operates as a stay of the commencement or continuance of any action against the Debtor. The period is tolled during the time the bankruptcy proceedings are pending against the defendant. *Hughes v. Portsmouth Square* (1982) 135 C.A. 3d 170, 173, 184 CR 926.

Issue Number Two, the State Court must have Constitutional required subject matter jurisdiction, this was impossible because of 11 USC §362 permanent injunction rendering all decisions void.

Subject matter jurisdiction is an additional requirement, separate from jurisdiction over persons that must be satisfied before a court can hear a case. There are no time limits to objection to subject matter jurisdiction, objection to subject matter jurisdiction can be raised at any time and the court can act on motion of either party or on its own motion, but is required to act under Probate Code §§1301(e) 1301 (g),

and CCP 8904.1(10). See, *Steel Co. Citizens for a Better Environment*, 523 U.S. 83, 118 S.Ct. 1003, 140 L.Ed.2d 210 (1998). "first responsibility of court is to determine jurisdiction; if jurisdiction is lacking, court should dismiss without addressing merits". See, *Stevenson v. Superior Court* (1970) 9 C.A.3d 904, 88 CR 462, probate court without subject matter jurisdiction of issue.

Issue Number Three, the State Court must have Constitutional required venue, this was impossible because of 11 USC §362 permanent injunction rendering all decisions void. An act in excess of jurisdiction applies the term "void" to any order or judgment rendered by any kind of jurisdictional departure, and freely allows collateral attack. See, *Tonningsen v. Odd Fellows' Cemetery Assn.* (1923) 60C.A. 568, 213 P. 710, stating, "Proceedings outside the authority of the court, or in violation of statutory prohibitions, are, whether the court have jurisdiction of the parties and subject matter of the action or proceedings, or not, utterly void . . . it is clear that every final act, in the form of a judgement or decree, granting relief the law declares shall not be granted, is void, even when collaterally called in question."

If the court, at any stage of a proceeding, determines that it has no jurisdiction of either the subject matter or the parties, it has no power to proceed and should dismiss on its own motion. *Rowland v. Sonoma* (1990) 220 C.A.3d 331, 269, CR 426.

If the action is brought in an inconvenient forum it should be dismissed CCP 410.30, 418.10

and See, *Gulf Oil Corp. v. Gilbert* (1947) 330, U.S. 501, 67 S.Ct. 839, 842, L.Ed. 1055, 1062.

If there is justiciable controversy a proceeding that does not present a controversy suitable for legal determination should be dismissed.

Under the California Court Doctrine an action not founded upon an actual controversy between the parties to it, and brought for the purpose of securing a determination of a point of law, is collusive, and will not be entertained.

The Nature of ripeness Doctrine fully supports that the judiciary does not extend to the resolution of abstract differences of legal opinion. The ripeness doctrine is primarily bottomed on the recognition that judicial decision making is best conducted in the context of an actual set of facts so that the issues will be framed with sufficient definiteness to enable the court to make a decree finally disposing of the controversy.

Even if a plaintiff satisfies both kinds of jurisdiction, the case must still be dismissed if venue is lacking. The cause would be more conveniently, efficiently and fairly tried in the location in which it arose, and it would be oppressive or inconvenient, or an unwarranted extra burden on the courts of the forum, to try it there. Jurisdiction must be declined in such situations on the ground that the plaintiff has unfairly or unreasonably invoked the jurisdiction of an inconvenient forum. A plaintiff sometimes resorts to a strategy of forcing the litigation at a most inconvenient location for an adversary. See, *Gulf Oil Corp. v. Gilbert supra*.

The Case is in violation of California Constitution Article 6, Section 21, *Ruled by a temporary judge without any stipulations.*

Probate Code §1970(a) states, *"The Legislature finds that unwarranted petitions, applications, or motions other than discovery motions after a conservatorship has been established create an environment that can be harmful to the conservatee and are inconsistent with the goal of protecting the conservatee."*

The Case is in violation of Probate Code §§1051(a)(b)(d), 1220(a)(1), 1310(a), and §1827, Hearing Conducted According to Rules of Civil Actions states, *"The court shall hear and determine the matter of the establishment of the conservatorship according to the law and procedure relating to the trial of civil actions, including trial by jury if demanded by the proposed conservatee."*

The Case is in violation of Probate Code §1828(a) states, *"Court to inform Conservatee of Nature and Effect of Proceeding – Court to Consult with Conservatee states, "Except as provided in subdivision (c), prior to the establishment of a conservatorship of the person or estate or both, the court shall inform the proposed conservatee of all of the following: (1) The nature and purpose of the proceeding; (2) The establishment of a conservatorship is a legal adjudication of the conservatee's inability properly to provide for the conservatee's personal; (3) needs or to manage the conservatee's own financial resources, or both, depending on the allegations made and the*

determinations requested in the petition, and the effect of such an adjudication on the conservatee's basic rights; (4) Not applicable; (5) The identity of the proposed conservator; (6) The nature and effect on the conservatee's basic rights of any order requested under Chapter 4 (commencing with Section 1870), ..., the specific effects of each limitation requested in such order; (7) The proposed conservatee has the right to oppose the proceeding, to have the matter of the establishment of the conservatorship tried by jury. ...

"

The Case is in violation of California Probate Code §§1424(a)(b); 1801(b)(c)(e); 1823(a)(b)(1 - 7). 1828.5(b)(c).

The Case is in violation of Probate Code §1800.3(b) states, "No conservatorship of the person or of the estate shall be granted by the court unless the court makes an express finding that the granting of the conservatorship is the least restrictive alternative needed for the protection of the conservatee."

F.R.Civ.P. Rule 60(b)(4) Void Judgment. Relief may also be granted where the judgment or order is void, whether because the court lacked jurisdiction over the subject matter, lacked personal jurisdiction over the parties, acted in some manner inconsistent with constitutional due process, or otherwise acted beyond the powers granted to it under the law.

Relief, can be granted irrespective of whether the fraud is considered "extrinsic" or "intrinsic". Proof that withheld information would have altered outcome is not required, because the Rule "is aimed at judgments or orders which were unfairly obtained, not

at those which are factually incorrect". There was a total want of jurisdiction and no arguable basis to support jurisdiction. Void judgments are "legal nullities", and the court's refusal to vacate such judgments is a *per se* abuse of discretion.

The, actions not only violated Article III, Sec. 2[1], "*The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the Laws of the United States, ... and between a State, or the Citizens thereof*" Article IV, Sec. 2[1], "*The Citizens of each State shall be entitled to all privileges and immunities of Citizens in the several States;*" but certainly Article VI, Sec. [2][1], "*This Constitution, and the Laws of the United States....shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State notwithstanding,*" these actions were in violation of Federal Law. These are guaranteed rights of the United States Constitution."

The ground for relief among others is fraud by preventing a fair adversary proceeding, (*The bench trial held in violation of CCP §916(a), violation of equal protection of law, which stays proceedings*) which cannot be enforced. See, *United States v. Throckmorton* (1878) 98 U. S. 61, 25 L. Ed. 93.

The Taking clause is a prohibition, not a grant of power, the Constitutions both the United States and California does not expressly grant the government the power to take property for any purpose whatsoever, and thereby invades individuals' traditional rights in real and personal property, "To lay hold of; to gain or receive into possession; to seize;

to deprive one of the use or possession of; to assume ownership is a Taking." Finnegan successfully obtained Clerk's Default Judgments against both the City of Dana Point and the Receiver Mark Adams, on 8/27/21, proving he was hardly unable to conduct his financial affairs.

The Standing clause, a Federal Question, was first brought to the attention of the trial court by Motions for the following: Petition for Relief from Petition 2/5/19; Motion for Dismissal 2/8/19; Reply to Motion 3/26/19; Motion for Dismissal of Petition, 4/12/19; Reply to Opposition 4/12/19; Motion to Dismiss, with Superior Court Form CIV 110, 4/12/19; Reply to Opposition 5/21/19; Motion to Dismiss, 6/5/16; Opposition to Appointment 7/29/19; Trial Setting Conference, 8/8/19; Motion to Disqualify Judge 9/12/19; and Motion to Presiding Judge 9/11/19; pursuant to *Chambers v. Miss.*, 410 U. S. 284 (U. S. 1973); *Adams v. Robertson*, 520 U. S. 83 (U. S. 1997); *Street v. New York*, 394 U. S. 576 89 S. Ct. 1354, 22 L. Ed2d 572 (1969); *Hendersonville Light & Power v. Blue Ridge Interurban Ry. Co.*, 243 U. S. 563 37 S. Ct. 440, 61 L. Ed. 900 (1917); *Coe v. Armor Fertilizer Works*, 237 U. S. 413 375 S. Ct. 625, 59 L. Ed. 1027 (1915); *Board of Dirs. Of Rotary Int'l v. Rotary Club of Duarte*, 481 U. S. 537 (U. S. 1987).

In *Frothingham v. Mellon*, 262 U.S. 447 (1923), a unanimous Supreme Court held that the proceeding "must be disposed of for want of jurisdiction" because the defendant "has no such interest in the subject-matter."

It was clear error by trial court to conduct any trial without Jurisdiction. The record in its current

form does not support the trial court because two separate timely Appeals were filed with their respective courts.

A Notice of Appeal was filed with the United States Court of Appeals for the Ninth Circuit, on February 22, 2020, Case No. 20-55233, for an Appeal of a case that was filed with the United States District Court, Central District of California, on December 30, 2019, Case No. 8:19-cv-02249-MWF among other issues, to make a determination that there was no legally appointed trustee, in the Bankruptcy Case No. 8:18-bk-10762-TA.

The acts of Superior Court Dept. C8 in January 2019, is in violation of an order by the Supreme Court of the United States making it mandatory in its decision of *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58, 103 S. Ct. 400, 402, 74 L.Ed.2d 225 (1982) ("noting that notice of appeal is an event of jurisdictional significance, of conferring jurisdiction on the Court of Appeals and divesting all courts of control over the those, aspects of the litigation involved in the appeal)." Any act is in violation of decisional law of the United States Supreme Court, and Federal Rules of Appellate Procedures §6.6.

A Notice of Appeal was filed in the Probate Case No. 30-2019-01047364-PR-CE-CJC, with the Court of Appeal, Fourth Appellate District, Division Three on December 5, 2019, at 8:15 a. m., Case No. G058635, and California Supreme Court Case No. S271232. Pursuant to Probate Code §1310(a), which states in part, ... "*stays the operation and effect of the judgment or order.*"

The illegal trial is in violation of *Griggs v. Provident Consumer Discount Co.*, the Federal Rules of Appellate Procedures §6.6; California Rules of Court, 8.1 to 8.642; California Code of Civil Procedure §916; and Probate Code §1310(a), which states, "Once the appeal is taken, jurisdiction over the case passes from all courts to the court of appeals." These statutes do not state any time limit for an Appeal, they do however, state, §6.6, "The perfecting of an Appeal ..., §916, Once the Appeal is taken..., §1310(a), Stays the operation and effect of the judgment or order." A pure violation, by the court, of the 14th Amendment.

The illegal trial held on December 5, 2019, commencing at 11:15 AM, in Superior Court Dept. C8 but not filed or entered until May 13, 2020, (6 months later), after an Appeal was legally filed three hours earlier, was in violation of California Rules of Court, Rules 8.1 to 8.64; California Code of Civil Procedure §916; and Probate Code §1310(a). All judgements and orders of that illegally held trial are void.

All of the Orders supported by the Official Record are NUGATORY pursuant to Federal Rules of Civil Procedure Rule 60.

The Constitution provides that a man's property shall not be taken for public uses without just compensation. Fifth Amendment of the United States Constitution. Property may be deemed "taken" within the meaning of these constitutional provisions when it is totally destroyed or rendered valueless, or in connection with an actual taking or when there is interference with the use of property to owner's prejudice, with resulting diminution in value thereof.

It is well settled that all Taking claims are

under the Constitution. See, *Jacobs v. United States* 290 U.S. 13 (1933), *quoted in, Cotton Land Co. v. United States*, 109 Ct. Cl. 816 (1948).

The Government may take property only when necessary and proper to the exercise of an expressly enumerated power. For a law to be within the Necessary and Proper Clause, it must be an “obvious, simple, and direct relation” to an exercise of Congress enumerated powers, See, *Sabri v. United States*, 541 U.S. 600, 613 (2004), and must not “subvert basic principles of constitutional design, *Gonzales v. Raich*, [citation omitted] in other words, a taking is permissible under the Necessary and Proper Clause only if it serves a valid public purpose. See, *Yee v. Escondido*, 112 S. Ct. 1522 (1992).

Chief Justice Burger added: “To permit a petition who has no concrete injury to require a court to rule on important constitutional issues in the abstract would create the potential for abuse of the judicial process, distort the role of the Judiciary.

Justice Stewart added, “Standing is not found wanting because an injury has been suffered by many, but rather because none of the petitioners has alleged the sort of direct, palpable injury required for standing under Article III of the Constitution. Justice Douglas emphasized two ingredients of standing: (1) The Article III requirement that the challenged action caused the petitioner “injury in fact” They were found to lack standing —because theirs was not a “legal injury.”

The filing of a Petition for Conservator was done in violation of United States Code Title 11. The filing was a fraud, deceit, and a misrepresentation because Richard Marshack was not legally appointed

a Chapter 11 trustee. There was no Motion filed by a Party in Interest or the court as required by 11 USC §105(a)(d). Richard Marshack was not legally appointed a Chapter 7 trustee, only the Debtor can request conversion, See, 11 USC §1112(f), and Local Bankruptcy Rule 1017-1(a). No provision in 11 USC allows a Bankruptcy court to order a Conservatorship, this would be a Non-Core decision requiring a District Court Judge to do so.

The Taking must be for a public use and just compensation must be paid to the owner.

A purely private purpose scrutiny of the public use requirement; it would serve no legitimate purpose of government and would thus be void. Court cases have repeatedly stated that one person's property may not be taken for the benefit of another private person without a justifying public purpose, even though compensation be paid. *Thompson v. Consolidated Gas Util. Corp.*, 300 U.S. 55, 80 (1937); see also *Missouri Pacific R. Co. v. Nebraska*, 164 U.S. 403, 417 (1896). *Marbury v. Madison*, 1 Cranch 137, 174 (1803); *Myers v. United States*, 272 U.S. 52, 151 (1926); *Cole v. LaGrange*, 113 U.S. 1, 8 (1885).

The Fifth Amendment is violated when regulation "does not substantially advance legitimate state interests or denies an economically viable use of his property."

Taking of the entire parcel denied all viable economic and productive use of property gives rise to an unqualified obligation to compensate for value of property, whenever government physically takes property. No subsequent action by government can relieve it of the duty to provide just compensation.

Interest in protecting individual property owners from bearing public burdens which, in all fairness and justice, should be borne by the public as a whole. *Armstrong v. United States*, 364 U.S. 40 [438 U.S. 104, 124 49] (1960).

Due Process Clause of the 14th Amendment bars state governments from depriving people of their property without due process of law. The first Clause prevents government from depriving a person of property without due process of law. It applies to any deprivation of property, not just takings for public purposes. The second prevents the government from taking private property without just compensation. The due process Clause of the 14th. See, *Mugler v. Kansas*, 123 U.S. 623 (1887).

They were the product of a direct invasion of Finnegan's domain as stated in *United States v. Cress*, 243 U.S. 316, 328, 37 S. Ct. 380, 385; *Ferguson*, 852 P2d at 207 it is the character of the invasion. Taking (or damaging) of property without just compensation. *San Diego Gas & Electric Co. v. City of San Diego*, 450 U.S. 621, 638 n.2 (1981), *United States v. Clarke*, 445 U.S. 253, 257 (1980).

We are asked to hold that state courts and state legislatures have deprived their own citizens of life, liberty, and property without due process of law. *First English Evangelical Lutheran Church v. County of Los Angeles*, 482 U.S. 304 (1987).

The Supreme Court in *Palazzolo v. Rhode Island*, 533 U.S. 606 (2001), held that a Taking Claim can be ripe for review if the owner did everything, he could reasonable and necessary to avoid the loss.

The United States Supreme Court has established a number of tests under which a state

regulation constitutes a Taking per se. These are physical invasion denial of all economical viable private property uses among others.

REVERSE AND REINSTATE

That Probate Case No. 30-2019-01047364 must be reversed and/or dismissed.

Improvident dismissal of following Cases, Case No. 8:19-cv-02249-MWF the District Court must determine withdrawal, removal of United States Trustees, and fraudulent claims #2 through #10.

Case No. SACV-21-01845-JVS-KESx be reversed, and reinstated.

Case No. 8:21-1856-JLS-ADSx be reversed, and reinstated.

Case No. 8:22-288-JVS-JDEx be reversed, and reinstated.

Order the District Court to conclude the Bankruptcy case 8:18-bk-10762-TA, pursuant to 28 USC §157(d).

CONCLUSION

Where the validity of a State statute is sustaining a ruling repugnant to the United States Constitutions and Federal laws the, United States Constitution, Article VI, Section [2], Supremacy Clause should govern, and when the state courts nevertheless enforced its action, its action constituted "an affirmation of its validity when so applied.

Jurisdiction was broadened in 1914, when review was for the first time extended to assurance of greater uniformity in federal law interpretation, not simply assurance of federal supremacy, thus became a major goal of the review statute.

The federal power over state judgments is to correct them to the extent that they incorrectly adjudge federal rights. United States Constitution, Fourth Amendment.

In constitutional litigation, the most common example of an independent and adequate state substantive ground is a state court ruling that a state ruling violates both the California and Federal Constitutions.

Justice Clark's dissent in *Williams v. Georgia*, 349 U.S. 375, 399 (1955), "A purported state ground is not independent and adequate in two instances. First, where the circumstances give rise to an inference that the state is guilty of an evasion—an interpretation of state law with the specific intent to deprive a litigant of a federal right and where the state court decision lacked fair support in the state law. Second where the state law, throws such obstacles in the way of enforcement of federal rights that it must be struck down as unreasonably interfering with the vindication of such rights " In *Henry v. Mississippi*, 379 U.S. 443 (1965), suggested that state procedural grounds are subject to broader Supreme Court reexamination than state substantive grounds. Justice Brennan's majority opinion stated "that a litigant's procedural defaults in state proceedings do not prevent vindication of his federal rights unless the State's insistence on compliance with its procedural rules serves a legitimate state interest. In every case we must inquire whether the enforcement of a procedural forfeiture serves such an interest. If it does not, the state procedural rule ought not be permitted to bar vindication of important federal rights."

Where a state court has decided a federal question of substance not theretofore determined by this court, or has decided it in a way probably not in accord with applicable decisions of this court. Where a court of appeals has rendered a decision in conflict with another court of appeals on the same matter; or has decided an important question of federal law which has been settled by this court; or has decided a federal question in a way in conflict with applicable decisions of this court; or has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this court's power of supervision.

PRAYER

Writ of Mandamus should issue:

Order disqualification of Inferior Officer, T. Albert, pursuant to 28 USC §455, due to a bias, prejudice, set aside all Orders and Judgments as void.

That Richard A. Marshack was never legally appointed as a Chapter 11 or Chapter 7 trustee in the Bankruptcy Case, 8:18- bk-10762-TA.

That the Real and Personal Property located at 871 Avenida Acapulco be returned to Finnegan its rightful owner.

That Richard A. Marshack, Marshack Hays LLP, and Laila Masud, should be held accountable for all costs incurred by Finnegan because of the illegal **Taking** and Finnegan be reimbursed according to and including, all Constitutional Damages, and Punitive Damages, Per Diem, Expenses, Mileage, Costs of Suits, all replacements, all Real and Personal Property Damage, all Food Spoilage, and Other costs.

This Court should find that the Probate Case No. 30-2019-01047364, should be reversed and/or dismissed for want of Jurisdiction, for violation of the provisions of the United States and California Constitutions, and Federal and California Statutes addressed in this brief and based upon the fraud, deceit and misrepresentation of the lower court.

Order the District Court to conclude the Bankruptcy case 8:18-bk-10762-TA, pursuant to 28 USC §157(d).

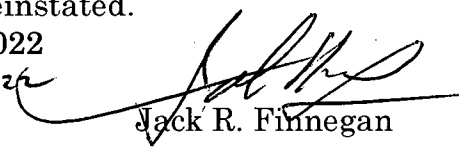
Order the dismissal of Case No. SACV-21-01845-JVS-KESx be reversed, and reinstated.

Order the dismissal of Case No. 8:21-1856-JLS-ADSx be reversed, and reinstated.

Order the dismissal of Case No. 8:22-288-JVS-JDEx be reversed, and reinstated.

Dated: April 18, 2022

JUNE 13, 2022

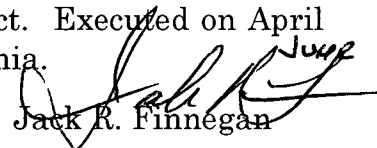

Jack R. Finnegan

DECLARATION

I Jack R. Finnegan, declare as follows:

I am the Petitioner for the Writ of Mandamus, herein. I have prepared and read the forgoing Writ and know of its contents of new and different circumstances or law to support relief. The facts alleged in the Writ are within my own knowledge, and I know these facts to be true because of my familiarity with the relevant facts pertaining to the trial proceedings and Appellate proceedings. I declare under penalty of perjury that the foregoing is true and correct. Executed on April 18, 2022, at Santa Ana, California.

13, 2022


Jack R. Finnegan