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21-5150

Case No.

In the

SUPREME COURT OF THE UNITED STATES

JOHN B. FREITAS,

PETITIONER

v.

BANK OF AMERICA N.A. et al.

RESPONDENT

On Petition for Writ of Certiorari to the

UNITED STATES COURT OF APPEALS

for the NINTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Certificate of Compliance

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June 12, 2021

ORIGINAL

CERTIFICATE OF COMPLIANCE

IN THE SUPREME COURT OF THE UNITED STATES

JOHN B. FREITAS,
Petitioner

v.

BANK OF AMERICA
Respondent

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 33.1 of the Rules of the Supreme Court of the United States, I certify that this "Petition for Writ of Certiorari" ... is proportionately spaced (double spaced between the lines) with Times New Roman 14 point typeface and contains no more than 9,000 words.

I certify that Petitioner, John B. Freitas' "Petition for Writ of Certiorari" contains 8,989 words, as shown by the word count function of the computer program used to prepare this "Petition for Writ of Certiorari"

Dated: June 12th, 2021

John B. Freitas, Petitioner



Little i's

Questions Presented for Review

1. Whether local, state and federal court officers, among which are judges, attorneys, sheriffs, clerks, county recorders and notaries public, should be held accountable for their ongoing continuous criminal conduct of an enterprise through a pattern of racketeering activity ("predicate acts") plus numerous felonies they regularly commit in complete and total violation of:

- a. the U. S. Constitution, 14th Amendment, §1 & § 3; and
- b. the legal, judicial and ethical codes which the officers of the court(s) swore to uphold.

2. Whether homeowners' rights of due process and of equal protection under the law are preempted by the doctrines of res judicata and collateral estoppel, thereby denying owners of residential real estate the right to be heard in a timely manner and in a meaningful way by allowing the parties to use regular litigation proceedings for such complicated legal issues, as contrasted with summary litigation proceedings as originally designed for landlord-tenant cases where the tenant's ownership of the apartment is not an issue.

3. Whether **Petitioner/Freitas is entitled to offer evidence to support the claims** advanced in his First Amended Complaint ("FAC"), especially in light of the void, altered, defective: **(a) "Deeds of Trust" and (b) "Trustee's Deed Upon Sale"**.

Parties to Proceeding

Petitioner John B. Freitas is the Petitioner and was the Plaintiff/Appellant below. Petitioner is a U.S. citizen and a resident of the State of California.

Freitas and his family owned and resided in the home located on the subject property for over forty (40)-years, until evicted on September 17, 2019.

Bank of America, N.A. ("B of A") is the Respondent here and was the appellee below.

Respondent/B of A is a Delaware corporation that operates as a national banking association, headquartered in Charlotte, North Carolina.

On or about April 23rd, 2009, Bank of America, N.A., acquired, by merger, the assets and liabilities of Countrywide Bank, FSB ("Countrywide") and thereafter Countrywide ceased to exist. B of A became the successor in interest to Countrywide.

Corporate Disclosure Statement

Petitioner is not engaged in or in any manner involved with Respondent/ Bank of America, N.A. nor any of B of A's affiliates, surrogates and proxies.

Statement of Related Proceedings

[x] For cases from federal courts:

1. The “MEMORANDUM” opinion of the United States Court of Appeals, Ninth Circuit, Freitas v. Bank of America, Case # 19-17394, filed 03/22/2021, is unpublished but appears at **Petitioner’s Appendix A.**

2. The opinion of the United States District Court for the Northern District of California, William H. Alsup, District Judge, Presiding, Freitas v, Bank of America, Case # D.C. No. 3:19-cv-03347- WHA, filed 11/11/2019, is unpublished but appears at **Petitioner’s Appendix B.**

[x] For cases from state courts:

1. The opinion of the Court of Appeal of the State of California, First Appellate District, Division Five, Freitas v. Bank of America, Case # A148140, Super. Ct. No RG 15792569, filed May 30th 2017 appears at **Petitioner’s Appendix C..**

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Date: June 12, 2021


John B. Freitas, Petitioner

PETITION FOR WRIT OF CERTIORARI

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner, John B. Freitas (“Petitioner” or “Freitas”) respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[x] For cases from federal courts:

1. The “MEMORANDUM” opinion of the United States Court of Appeals, Ninth Circuit, Freitas v. Bank of America, Case # 19-17394, filed 03/22/2021, is unpublished but appears at **Petitioner’s Appendix A**.

2. The opinion of the United States District Court for the Northern District of California, William H. Alsup, District Judge, Presiding, Freitas v, Bank of America, Case # D.C. No. 3:19-cv-03347- WHA, filed 11/11/2019, is unpublished but appears at **Petitioner’s Appendix B**.

Hereafter, all citations to Petitioner’s Appendix will be in this form:

PA at [Volume number]:[Page number]:[line number(s) where applicable], i.e., PA at II:28 – 31. e.g. See PA at I:57-59.

[x] For cases from state courts:

1. The opinion of the Court of Appeal of the State of California, First Appellate District, Division Five, Freitas v. Bank of America, Case # A148140, Super. Ct. No RG 15792569, filed May 30th 2017. (See PA C).

JURISDICTION AND VENUE

The Ninth Circuit issued its decision (designated as a “MEMORANDUM”) on March 22, 2021.

This Court has personal jurisdiction over Respondent/B of A because the case involves diversity of citizenship of the parties. Pursuant to 28 U.S.C. §1291 and §1332, Respondent is a citizen (entity) of a State other than the State of California, in which Petitioner/Freitas resides.

Respondent/B of A has transacted and continues to transact business in Alameda County, in the State of California. The “Amount in Controversy” is substantially more than \$75,000; and Petitioner/Freitas claims Respondent/B of A owes Petitioner/Freitas (substantially) more than \$75,000, plus attorney’s fees if any, interest and costs.

Venue is proper in the Ninth Circuit/Alameda County, California, because the subject real estate owned by Petitioner/Freitas is in Alameda County, California. Freitas has lived and continues to reside in Alameda County,

California and in the State of California, and the acts committed by Respondent/B
of A took place in Alameda County, California.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL & STATUTORY PROVISIONS INVOLVED

Relevant provisions are reproduced in **Petitioner's Appendix D.**

STATEMENT OF THE CASE

A. Legal Background

Freitas' constitutionally guaranteed rights to Due Process of law and equal protection under the law are not preempted by the doctrines of Res Judicata and collateral estoppel.

However, the doctrine of res judicata must conform to the mandate of due process of law that no person be deprived of personal or property rights by judgment without notice and an opportunity to be heard. *Bernhard v. Bank of Am. Nat'l Tr. & Sav. Asso.*, 19 Cal. 2d 807, 811, 122 P.2d 892, 894(1942.)

Res-Judicata and Collateral Estoppel do not apply to this case. The prior case involving Freitas and Respondent/Bank of America was dismissed on procedural issues, not on the merits of the respective case. Judge Alsup denied Freitas' "Motion for leave to proceed *in forma pauperis*".

Petitioner's operative First Amended Complaint ("FAC") makes claims based on events that occurred and damages that were incurred **after the prior**

complaint(s) had been dismissed. The issues in Petitioner's operative complaint **were not litigated** in the prior complaint(s).

In the hearing (11/06/2019) on B of A's "Motion to Dismiss", Judge Alsup confirmed that by stating that **"The foreclosure wasn't litigated."** (See PA E at page 19, line 8).

Judge Alsup's statement, as just quoted, appears in the Certified Court Reporter's "Transcript of Proceedings" (of the Nov. 6th, 2019 hearing on B of A's Motion to Dismiss Freitas' FAC) at page 19, line 8. The Court Reporter's Certification appears on page 20 of the Transcript.

At the time of the hearing on B of A's Motion to Dismiss it would have been impossible to litigate the foreclosure. Freitas' FAC (the operative complaint in the case at bar before Judge Alsup) was filed on October 5, 2019.

The prior complaint(s) of Freitas were filed before B of A and its co-conspirators conducted and concluded the non-judicial foreclosure leading to the unlawful detainer action against Freitas and his family.

The doctrine of Res Judicata does not apply where Plaintiff was unable to rely on a theory or to seek a remedy because the damages occurred after adjudication. *Branson v. Sun-Diamond Growers*, 24 Cal. App. 4th 327, 344, 29 Cal. Rptr. 2d 314, 323 (1994.)

The following is a chronological list of the operative events:

1. June 3, 2019 -Trustee's Sale Conducted by Quality Loan,
~~Alleged Purchaser only of an unproven~~ "lien for possession" at the
non-judicial trustee's sale – Community Fund, LLC, Michael Marr;
2. June 10, 2019 -"Trustee's Deed Upon Sale" Signed by Quality,
Grantor: Quality Loan Service Corp.
Grantee: Community Fund, LLC (Plaintiff in the Unlawful
Detainer Case;
3. June 11, 2019 - "Trustee's Deed Upon Sale" Recorded;
4. June 21, 2019-Unlawful Detainer Action initiated by Community;
5. September 9, 2019-Freitas' First Amended Complaint filed; and
6. September 17, 2019- Freitas and his family evicted from their residence.

According to Community's UD Complaint, Community claims that
Community is seeking only POSSESSION of the subject premises, as the UD
complaint specifies in the unlawful detainer action (see **PA F :page 1. line 20, 24.**
/page 2.lines 1, 17, 19/and page 3. lines 5, 17.

Interestingly enough, (See **PA F:page 2. line 13**) Community switches the
pleading the following: "On or about June 3, 2019, Plaintiff (Community)
purchased the Subject premises...."

Then 4 -lines further, at line 17, Community alleges that "Plaintiff (Community) is
the owner of, and entitled to immediate possession of the property."

According to Judge Alsup.... "The foreclosure wasn't litigated". (supra)

Freitas now has been divested of his right, title and interest in and to the subject property and his right to enjoy the benefits of property ownership without due process of law, equal protection under the law and in violation of the Rule of Law. Freitas has been denied the right to be heard in a timely manner and in a meaningful way, which is the very essence of Due Process.

Petitioner/Freitas was prohibited from admitting any evidence regarding right, title and ownership interest in and to the subject property in the Unlawful Detainer action in a judgment dated Aug. 8th, 2019 captioned Community Fund, LLC (“Community”) v. Freitas filed in the Superior Court of the State of California.

Another example that res judicata issue does not apply because the ruling issued May 30th, 2017 by the Court of Appeal of the State of California, First Appellate District, Freitas v. Bank of America, Case # A148140 Division Five (Superior Court Case # RG15792569), (see PA C page 5, 2nd last paragraph close to the bottom of page 5), at Judge Bruiniers, with Judge Needham and Acting P.J. Simons concurring, specified the following:

“Freitas failed to furnish an adequate record. Without the operative complaint and the party pleadings on demurrer, it is simply impossible to determine if the trial court erred in granting the demurrer. **Accordingly, we cannot address the merits and the judgment must be affirmed**”

...affirming the judgment of the Superior Court in granting B of A's Demurrer. *Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1295-1296; *Foust v. San Jose Construction Co., Inc.*, *supra*, 198 Cal.App.4th at p. 187.)

Petitioner/Freitas Has Standing to Claim Redress in the United States

District Court for the Northern District of California

Petitioner/Freitas has alleged injuries sufficient to confer standing under Article III of the Constitution of the United States.

Respondent/B of A' Motion to Dismiss constitutes a facial attack on standing, and thus, the factual allegations of the complaint must be taken as true. *Thornhill Publ'g Co. v. General Tel. & Elec. Corp.*, 594 F.2d 730, 733 (9th Cir.1979); *see also*, *PNG Telecomm., Inc. v. Pac-West Telecomm, Inc.*, No. 10-1164, 2010 WL 3186195 at *2-3 (E.D. Cal. Aug. 11, 2010) (Damrell, J.).

Hence, the "standing question. . . is whether the constitutional or statutory provision on which the claim rests properly can be understood as granting persons in the Petitioner's position a right to judicial relief." *In re Facebook Privacy Litig.*, No. 10-02389, 2011 WL 2039995, at *4 (N.D. Cal. May 12, 2011) (Ware, J.) (internal quotations and citations omitted) (holding that plaintiffs had standing, but dismissing claims on other grounds); *see also* *Jenkins v. McKeithen*, 395 U.S. 411, 423 (1969) ("In this sense, the concept of standing focuses on the party seeking relief, rather than on the precise nature of the relief sought.") (emphasis added).

As Justice Alito stated, “[i]njury-in-fact is not Mount Everest.” *Danvers Motor Co., Inc. v. Ford Motor Co.*, 432 F.3d 286, 294 (3d Cir. 2005). To the contrary, it suffices for federal standing purposes to allege some specific, “identifiable trifle” of injury. *Id.*; See *Council of Ins. Agents & Brokers v. Molasky-Arman*, 522 F.3d 925, 932 (9th Cir. 2008) (in affirming the plaintiff’s standing, the Ninth Circuit court noted that the U.S. Supreme Court “has allowed important interests to be vindicated by plaintiffs with no more at stake in the outcome of an action than a fraction of a vote, a \$5 fine and costs, and a \$1.50 poll tax

‘The basic idea that comes out in numerous cases is that an *identifiable trifle is enough to fight out a question of principle; the trifle is the basis for standing* and the principle provides the motivation.’”) (Emphasis added).

Petitioner’s allegations rise to far more than such a “trifle”.¹

The determination of whether a plaintiff has standing is separate and preliminary to the issue of whether the plaintiff adequately pleaded a cause of action. *Meaunrit v. ConAgra Foods Inc.*, No. 09-2220, 2010 WL 2867393, at *4 (N.D. Cal. July 20, 2010) (Breyer, J.)

“While [defendant] may not be correct that there is no cognizable cause of action in this case *i.e.*, there was no actionable misrepresentation, this is not the same thing as finding the plaintiff lacks standing.”

¹ Footnote - Further, as explained by the *Augustine* Court, if the jurisdictional and substantive issues are so “intertwined that the question of jurisdiction is dependent on the resolution of factual issues going to the merits, the jurisdictional determination should await a determination of the relevant facts on either a motion going to the merits or at trial.” *Id.*

⁷ See generally 13A Charles Alan Wright, Arthur R. Miller, *et al.*, *Federal Practice and Procedure* § 3531.4 (3d ed. 2011) (“The choice is made between the importance of having the issues decided by the courts and the importance of leaving the issues for resolution by other means”).

Petitioner/Freitas alleges an injury, and alleges that it was caused by Respondent/B of A's actions. Asking whether or not Plaintiff has a legally cognizable claim is not the same thing as asking whether he has suffered an injury in fact. *See also Davis v. Passman*, 442 U.S. 228, 239 n.18 (1979) (court of appeals improperly confused the question of standing with the question of whether plaintiff had a cause of action). Sufficiently alleging injury in fact creates a justiciable issue that allows the court to advance to the merits inquiry. (Emphasis added).

Petitioner/Freitas's allegations of injury arising from Respondent/B of A's misconduct raise a justiciable issue that the court has subject matter jurisdiction to decide.

There is no constitutional or factual basis for depriving Petitioner/Freitas access to this Court, the only venue for resolution available to him.

Investigative Report of Reuters

Thomson Reuters Inc. ("Reuters") has recently completed an in depth, extensive investigation into the judicial misconduct in Alameda County, California and a number of other counties in California and surrounding states....the initial target area of Reuters' investigation. The findings of the Reuters' investigation have indicated that the activity of judges in the target area already have risen to the level of obstruction of justice and in many cases a flagrant dereliction of duty.

The investigative report was published in early June, 2020, by “**Reuters**”.

The news and media division of Thomson Reuters Inc. is the world’s largest international multimedia news provider, reaching more than one-billion (1,000,000,000) people every day.

The findings of the Reuters’ 5-year-long investigative reports, published June 30th, 2020, are used herein with the permission of Reuters. Reuters is responsible for the content of the investigative report.

According to the **Reuters** report, written by researchers Michael Berens and John Shiffman, thousands of U.S. Judges who broke laws and oaths remained on the bench.

The exhaustive Reuters investigation found that in the past dozen years “**...judges have repeatedly escaped public accountability for misdeeds that have victimized thousands of homeowners.**” (Emphasis added).

Local, state and federal judges are among the numerous enablers that are complicit with the co-conspirators involved in and who have perpetrated the single largest criminal enterprise in the history of the State of California, the United States of America and, most likely, in the history of the world.

Judges in California and numerous other jurisdictions in the U.S. are violating their legal ethics, judicial code of ethics and sworn oaths of office to

defend, protect and uphold the Constitution of the State of California (or their respective state Constitution) and the United States Constitution.

Reuters' investigative reporters found that Judges in Alameda County, California arbitrarily and capriciously **ignored**:

- a. (Freitas') Constitutional right to Due Process;
- b. (Freitas') Constitutional right to Equal Protection of the law;
- c. statutory law, including but not limited to C.C.C. § 2936;
- d. the Uniform Commercial Code including but not limited to §§ 3-201 and 3-301;
- e. statutory and case law and precedents, including but not limited to *Carpenter v. Longan*, *Yvanova*, *Dimock*, and "void is void";
 1. *Carpenter v. Longan*, 83 U.S. 271, 16 Wall. 271
 2. *Yvanova v. New Century Mortgage Corporation*, 62 Cal.4th 919, 938 (2016)
 3. "Dimock" "A later sale by a prior Trustee is Void." *Dimock V. Emerald Properties, LLC* ("Dimock"), Court of Appeal, Fourth District, Division One. 97 Cal.Rptr.2d 255 (2000) 81 Cal.App.4th 868;
 4. *Wutzke v. Bill Reid Painting Service, Inc.* (1984) 151 Cal.App.3d 36, 43. **Void is Void**, "A forged document is void ab initio and constitutes a nullity; **as such it cannot provide the basis for a superior title as against the original grantor**"(Freitas); *Halajian v. Deutsche Bank Nat.Trust Co.* (E.D. Cal Feb.14th, 2013, No. 1:12-CV-00814 AWIGSA) 2013 WL 593671, at p. *7;
 5. The Notary's commission had expired in the year 2000, more than five-5-years prior to the forged signature allegedly affixed to the "Deed of Trust" recorded Oct. 25th, 2005. (See P A G).

Because the “Deed of Trust” Recorded Oct. 25, 2005 (PA: G) **is altered, forged defective and Void**, the Power of Sale **is Void**, and the “Trustee’s Deed upon Sale” recorded June 11, 2019, by Quality, **is Void** (PA: H).

Community did not, could not, and cannot, “**duly perfect**” Community’s Title to the subject Property.

5. The prerequisite “Notice Requirements of CCP § 1161a” must **be strictly adhered to**. There are neither “de minimus” nor “substantial compliance” rules to save non-compliant, defective, void notices.

Quality and Community did not strictly comply with the notice requirements of CCP § 1161a, e.g.:

a. no “Notice of Default”, (because there was no Default); and

b. no “3-day Notice to pay or quit” (see AP I).

c. The only notice issued by Community was a “Notice of Possession”

which was improperly attached to Community’s UD complaint. Prior to receiving the UD Complaint, that notice had not been served on . A “Notice of Possession” is not the same as a “3-day Notice to Pay or Quit” and therefore the strict notice requirements of CCP § 1161a were not adhered to. The entire UD process used by Community is defective, flawed and **void**.

This is jurisdictional.

The purchaser at the Trustee's Sale (Community) did not obtain valid title to the property and could not satisfy the prerequisite strict Notice Requirements under CCP § 1161a. *Bank of N.Y. Mellon v. Preciado* 224 Cal. App. 4th Supp. 1 2013, 169 Cal. Rptr. 3d 653 (publication order March 19, 2014) ("Preciado").

6. Quality was **Substituted IN** as the Substituted Trustee on April 22, 2014. Quality was **Substituted OUT** on July 1, 2016 when Recon Trust Company, N.A (was substituted IN as the new trustee) on July 1, 2016, (See PA J).

That document removed/dissolved all authority which the prior Trustee (Quality) **may have had before** July 1, 2016.

"A later sale by a prior Trustee is Void." *Dimock V. Emerald Properties, LLC* ("Dimock"), Court of Appeal, Fourth District, Division One. 97 Cal.Rptr.2d 255 (2000) 81 Cal.App.4th 868. **This is jurisdictional.**

Quality did not have any standing or authority to initiate, conduct or conclude a Non-judicial foreclosure sale after July 1, 2016.

The "Notice of Trustee's Sale", recorded March 7th, 2019, signed by Quality is **VOID**, (See PA K). Quality had been substituted OUT on July 1, 2016 when Recon Trust became the newly substituted trustee.

The "Trustee's Deed Upon Sale" recorded on June 11, 2019, signed by Quality is **VOID**, (See PA H).

Quality had been substituted OUT on July 1, 2016 when Recon Trust became the newly substituted trustee.

f. the fact that Quality Loan Service was without authority or standing to initiate, conduct or conclude a trustee's sale/non-judicial foreclosure sale (see *Dimock* ruling which held that ...“a later sale by a prior trustee is void.”);

g. the fact that Quality and Community committed numerous felonies including but not limited to knowingly and intentionally filing fraudulent, forged and void documents with the Recorder of Alameda County and the Alameda County Superior Court;

h. Judges in Alameda County, California have a vested interest in the outcome of the subject case(s);

i. The judges' vested interest is to quickly clear the Court's docket and to collect the “judge's bonus”, as confirmed by **Reuters'** investigative team;

j. **Reuters** discovered that “judges' bonuses” are deposited by Bank of America (“B of A”) and B of A's co-conspirators into bank accounts of judges who clear the Court's docket(s) of the massive numbers of non-judicial foreclosure cases and unlawful detainer cases;

k. Judges, as officers of the respective state and federal courts took oath(s) of office swearing that they would uphold the:

1. U.S. Constitution;
 2. Constitution of the State of California;
 - 3 “Code of Judicial Ethics;
 4. “Code of Conduct”.
-

7. District Court Judge W. Alsup and other officers of the U.S. District Court for the Northern District of California among which are included judges, lawyers, clerks and other officers are conducting an ongoing enterprise through a pattern of racketeering activity (“predicate acts”) causing injury to Petitioner/Freitas and millions of other homeowners in California.

Other participants in the ongoing enterprise include, among others:

Community Fund, LLC, Quality Loan Service, Corp. (“Quality”), Clear Recon Corp., Nationstar Mortgage LLC, and Reunion Mortgage, LLC;

m. The above-listed entities and groups of individuals are the perpetrators and enablers for knowingly and intentionally recording fraudulent, forged obviously defective and void documents;

n. Judge Alsup, and the attorneys representing the predatory “lenders” and their co-conspirators who are going along with all of this bogus paperwork have to answer for any defective, void paperwork even after having been put on notice by the court(s) that Judge Alsup could be an accessory to:

- a. fraud on the court;
 - b. perjury; and
 - c. subornation of perjury by the attorneys representing the predatory lenders and their con-conspirators; and
-

d. violations of Title 42 U.S.C. §1983, regarding the fabrication of evidence.

8. Bribes have been paid to members of the Federal and California judicial systems, including but not limited to judges, attorneys, court clerks, county recorders, notaries public and other individuals who are co-conspirators, aiders and abettors of those guilty of perpetrating crimes against the State of California, the citizens of the State of California and millions of home owners;

9. Judge W.H. Alsup and the other enterprise participants in the ongoing, continual pattern of organized criminal activity in California are equally as guilty as B of A, Community Fund, LLC and the other financial institutions and their respective agents, representatives, co-conspirators, surrogates, proxies, aiders and abettors.

10. The Federal judiciary and the judiciaries of Alameda County and the State of California have fidelity bonds and/or faithful performance bonds designed to “insure” against liability for the lack of fidelity, the lack of faithful performance, the indiscretions, misdeeds and illicit behavior committed by public officers including but not limited to the respective sheriffs, county recorders, court clerks, district attorneys and judges that have violated the due process rights of citizens of the State of California regarding redress of grievances under the Constitution of the State of California and the Constitution of the United States, including but not limited to violations of the following:

- a. RICO 18 U.S.C. §1962;
- b. Fabrication of Evidence 42 USC §1983;
- c. Misprison of Felony - violated §8.0A (18 U.S.C. § 4)
- d. Title 18 U.S.C. § 241. Conspiracy against rights of citizens -
“If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; ... They shall be fined ... or imprisoned ... or both.”;
- e. Title 42 U.S.C. § 1986. Actions for neglect to prevent conspiracy;
- f. Title 28 U.S.C. Section 1738; the Full faith and credit statute;
- g. Article IV, § 1 (Full Faith and Credit Clause), requires recognition of the personal and property rights in California;
- h. Article IV, § 1. Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state;
- i. the Fourteenth Amendment due process, equal protection, life, property, liberty, freedom rights, by denying to Freitas due process, equal protection, and the protections of California **and** federal law; (Emphasis Added);
- j. the Privileges and Immunity Clause rights under Article IV, § 2, and under the 14th Amendment;
- k. the Fourteenth Amendment, § 1;
“No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall **any state** deprive any person of life, liberty, property and the pursuit of happiness **without due process of law**; nor deny to any person within its jurisdiction **the equal protection of the law**”;

According to the extensive, 5-year investigation of Reuters (supra), Judge Alsup and many other state and federal judges in Alameda County , State of California and the federal judicial systems are members of the ongoing organized criminal enterprise of judges and attorneys (as officers of the Court), who:

- violated their Code of Judicial Ethics, which were updated and

amended as recently as July 1st, 2020;

- violated their Code of Judicial Conduct;
- violated the judge's Oath of Office to uphold the California Constitution and the U.S. Constitution;
- violated "RICO" statutes (Racketeer Influenced and Corrupt Organizations Act): U.S.C. sections created: 18 U.S.C. Sections 1961-1968;
- committed judicial misconduct;
- obstructed justice;
- acted in an arbitrary and capricious manner;
- became an accessory to a felony;
- covered up the felonious acts of misfeasance, malfeasance and nonfeasance of other judicial officers and Bank of America, N.A., Quality and Community, Nationstar and ClearRecon.

The Commission On Judicial Performance –California (<http://cjp.ca.gov>), in its January 26, 2021 letter to Freitas, at the top of page 2, (see **PA: L**) indicates the following:

"A judge's legal error might be the basis for investigation by this commission if there is sufficient evidence of bad faith, bias, abuse of authority, disregard for fundamental rights, [and] intentional disregard of the law or any purpose other than the faithful discharge of judicial duty."

There exists a very large "risk pool" for State Judges and another "risk pool" for Federal judges both of which provide a large source of funds to pay off indiscretions carried out by public officers against the injured in the form of a **Tort Claims Action**. ~~California judges have gone along with all of the bogus paperwork~~

and have not suffered any consequences for the defective paperwork, even after being put on notice by the court that judges, court clerks, sheriffs, notaries public and other public officials could be an accessory to fraud on the court and/or perjury and/or subornation of perjury by the foreclosure mill attorney of any witness put on the stand. Maybe those “participants and enablers” should be reminded of their “exposure”.

California has criminal code/penal code statutes that make it illegal to knowingly record documents in the land records that contain patently false and misrepresentative information:

1. Penal Code Violation § 115 PC – knowingly filing a forged document with a government office;
2. Penal Code Violation § 470 PC – falsifying a signature or seal (e.g. a notary’s seal);
3. Penal Code Violation § 478 PC – Counterfeiting; and
4. Penal Code Violation § 532 PC – Theft by false pretenses.

6. Filing a defective, void “Trustee’s Deed Upon Sale” recorded by Quality June 11, 2019 that was signed by an entity or an individual who was not the substituted trustee at the time of executing and recording the subject document(s).

Dimock V. Emerald Properties, LLC, Court of Appeal, Fourth District, Division One. 97 Cal.Rptr.2d 255 (2000) 81 Cal.App.4th 868, which stands for the proposition that **“a later sale by a prior trustee is void.”** That’s exactly what happened in the foreclosure action against Freitas regarding his family’s residence in Newark, CA 94560.

Federal District Court Judge Alsup and many of the California Superior Court and Court of Appeal Judges are turning a blind eye to the crimes being committed against California homeowners. The Superior Court Judges and Court of Appeal Judges no longer give any credence (weight) to the above violations being perpetrated against the State of California Courts and the California homeowners. The judges are enabling these crimes to escalate by **not allowing** the cases to go to a jury trial as demanded by the homeowners and dismissing valid complaints with prejudice. The California Court of Appeal is rubber stamping the Superior Courts' defective rulings, and the California Supreme Court very often refuses to hear the cases.

The Supreme Court of the United States ruled in a case known as "*Carpenter v. Longan*, (1872) 83 U.S. 271, 16 Wall. 271. ("Carpenter") as follows;

1. "A Note and Mortgage are Inseparable"; and
2. "If a Note and the Mortgage are Separated, both are void".

Shortly after the United States Supreme Court issued its ruling in "Carpenter", the State of California, also in 1872, enacted what is now referred to as California Code of Civil Procedure Section 2936, Section 2012 leg FEFF, which codifies the ruling in Carpenter as follows:

"An Assignment of the debt secured by a mortgage carries with it the security."

The Uniform Commercial Code, including but not limited to §§ 3-301 and 3-201;(Under the California Uniform Commercial Code, a negotiable instrument, such as a promissory note secured by a mortgage, may only be enforced by the holder or a person with the rights of a holder. Commercial Code Section 3-301. For instruments payable to an identified person, such as a lender, a holder is

generally recognized as the payee or one to whom the negotiable instrument has been negotiated. This requires transfer of possession and endorsement by the prior holder. Commercial Code Section 3-201. Unless the parties otherwise provide, the mortgage follows the note, Civil Commercial Code § 2936.

The County of Alameda, California, the State of California, the judicial systems of Alameda County and the State of California, and the indiscretions carried out by their respective public officers, including their acts of omission and commission, have violated John B. Freitas' due process rights regarding redress of grievances under the California and U.S. Constitutions, in violation of 42 USC 1983.

According to then Hon. Amy Coney Barrett, prior to being appointed the newest Justice of the U.S. Supreme Court, ruled that due process rights come into play "if the other side" uses dishonorable means to prosecute a case.

Rainsberger v. Benner, 7th app.cir.no. 17 – 2521-Jan. 15, 2019 (Applies to civil and criminal cases). See also U.S. Supreme Court case *McDonough v. Smith*, U.S. sup.ct.no. 18-485. June 20, 2019.

B. Factual Background and Procedural History

Approximately forty (40) years ago John B. Freitas/Petitioner ("Petitioner" or "Freitas") purchased the subject raw land and built a home for his family in the City of Newark, County of Alameda, California. Freitas and his family have continually occupied the subject premises for the entire time period up to the non-judicial foreclosure action filed by Quality and the Unlawful Detainer action filed by Community Fund, LLC

("Community") which resulted in Freitas and his family being evicted from the property on September 17th, 2019. Respondent Bank of America, Quality and Community conducted an enterprise through a pattern of racketeering activity causing damages to Freitas.

On October 12, 2005, Freitas agreed to a Home Equity Line of Credit ("HELOC") loan, evidenced by a Deed of Trust. (See PA: M).

That line of credit was never "drawn down" (used) by Freitas. This HELOC had been satisfied, as evidenced by the Deed of Full Reconveyance filed on July 1, 2016. (See PA J).

However, on October 25, 2005, a forged, void, fraudulent, defective *copy* of the October 12, 2005 Deed of Trust was filed for record. That fussy, bad copy is void. The date on which Freitas allegedly signed the void, altered, defective copy of the copy was allegedly notarized was altered.

B of A acquired, by merger, the assets and liabilities of Countrywide Financial Corp. ("Countrywide") in April, 2009. B of A became the successor in interest to Countrywide. B of A knowingly created this void, altered, defective "Deed of Trust" and thereafter knowingly filed this void "Deed of Trust" for record with the Recorder's office of Alameda County. B of A knowingly filed the void, altered, defective DOT and the Superior Court of Alameda County. B of A committed a number of felonies in violation of the California Penal Code § 115PC.

Freitas had no actual or constructive knowledge that a void, altered, defective deed of trust had been filed for record. No money transferred to, for or on behalf of Freitas. Freitas never made any payments on the void, altered, defective deed of trust filed October 25th, 2005. Freitas knew nothing about the

void deed of trust.

This is a civil action filed against Respondent/ Bank of America N.A. (“B of A”) and Doe Defendants 1-60 for misfeasance, malfeasance and non-feasance related to the origination and servicing of single family residential mortgages and trust deeds.

For the sake of efficiency, the phrase “DOT” or “trust deed” will be used as a terms descriptive of the type of 3-party arrangements primarily used in the State of California (and 22 other states) in real estate transactions in which buyers or borrowers obtain a loan the repayment of which is collateralized by a lien on a particular parcel of real estate. That “lien” is generally in the form of trust deed.

The acts of commission and the acts of omission of Respondent/Bank of America and Doe Defendants 1-60 including but not limited to B of A’s service companies, agents, representatives, proxies, co-conspirators, surrogates, aiders and abettors, resulted in the issuance of defective, fraudulent, forged and void deeds of trust and other documents which enabled B of A and its co-conspirators to:

- a.) illegally initiate, conduct and conclude illegal, fraudulent, void, defective and non-Code compliant judicial trustee sales (“foreclosures”);
 - b.) violate Petitioner’s constitutionally guaranteed rights of due process of law, equal protection under the law and the Rule of Law as they apply to Petitioner, John B. Freitas;
-

c.) violate those same, constitutionally guaranteed rights of over five-million (5,000,000+) other California homeowners since the year 2000;

d.) violate those same, constitutionally guaranteed rights of over Seventy-Million (70,000,000+) other homeowners in the United States of America since the year 2000;

e.) record forged, false, void, defective, unauthorized copies of document(s) (among which are "Deeds of Trust", "Trustee's Deeds upon Sale", Notices of Default, and "Notices of Trustee's Sale") in County Records' offices in California and in many other counties in the United States;

f. file forged, false, void, defective, unauthorized copies of document(s) (among which are "Deeds of Trust", "Trustee's Deeds upon Sale", Notices of Default, and "Notices of Trustee's Sale") in courtrooms in California and in many other jurisdictions in the United States; and

g. conduct an enterprise through an ongoing, continual pattern of organized criminal racketeering activity (known as "predicate acts") causing injury to homeowners (among which is Petitioner/Freitas) in courtrooms in California and numerous other states in the United States.

Judge Alsup, while presiding in the cases involving Petitioner is enabling Respondent/B of A to commit violations of numerous federal statutes among which are the following:

1. The Constitution of the United States, 14th Amendment, §1 and § 3;
a. §1 (See Petitioner's Appendix, N)

b. §3 See Petitioner's Appendix, O)

2. The Constitution of the State of California; due process and equal protection clauses; See PA : P)

3. The "Rule of Law";

4. Title 18 United States Code ("USC") §§1961-1968, otherwise known as the Racketeer Influenced and Corrupt Organizations Act ("RICO" Act);

The elements of a RICO violation of 18 U.S.C. §1962 are as follows:

- a. "conduct
- b. of an enterprise;
- c. through a pattern;
- d. of racketeering activity (known as "predicate acts");
- e. causing injury to"Petitioner/Freitas.

5. Title 18 of the United States Code ("U.S.C.") § 1346, "Honest Services Fraud" which states:

"...the term, scheme or artifice to defraud includes a scheme or artifice to deprive another of the intangible right of honest services." "Honest Services Fraud" is a valid Federal Claim against Corrupt Government Officials.

6. Title 42 U.S.C § 1983 Fabrication of Evidence;

7. Title 42 U.S.C. §1986 - Actions for neglect to prevent conspiracy;

8. Title 18 U.S.C. §8.0 A (18 U.S.C. § 4) Misprison of Felony – Conspiracy against rights of citizens;

9. Having a vested interest in the outcome of this case;

10. Being an accessory to the commission of felonies including perjury and subornation of perjury; and

11. Being an accessory to fraud on the court by:

- a. granting motions for judicial notice of bogus, defective, void paperwork;
- b. enabling perjury and the subornation of perjury by attorneys who put “fact witnesses” on the witness stand that do not qualify to testify about the facts in a given case; and
- c. admitting into evidence that which Judge Alsup knew to be fabricated, false and void.

The criminal activities specified above constitute violations of the judicial, legal, ethical oaths of office taken by U.S. District Court Judge W.H. Alsup to support, protect and uphold the Constitution of the United States.

The criminal activities specified above constitute violations of the judicial, legal, ethical oaths of office taken by the judges of the State of California presiding in the case(s) involving Petitioner Freitas. Those judges swore to support, protect and uphold the Constitution of the United States and the Constitution of the State of California.

Judge W.H. Alsup, while presiding in the cases involving Petitioner, is committing acts among which are the following:

- a. violating his Code of Judicial Ethics;
- b. violating his Code of Judicial Conduct;
- c. obstructing justice;
 - all of which has risen to the level of dereliction of duty;
- d. clog up the judicial system of the State of California and the Federal courts; and
- e. waste and abuse taxpayer funds and the resources of local, state and federal judiciary systems.

Respondent/ B of A seeks much more than the dismissal of a complaint.

B of A continues in its efforts and actions to fundamentally alter the balance of due process rights in the real estate industry. The essence of the constitutional guarantee of “due process” is that no one should be denied the right to be heard in a timely manner and in a meaningful way. In the case at bar, **Freitas has been denied both.**

Petitioner has owned and occupied the subject property for over forty (40) years. To be more accurate, Petitioner owned and occupied the subject property until he and his family were evicted from the property on September 17th, 2019.

Petitioner lost all the equity he had in the property and Petitioner’s personal health and financial strength have deteriorated greatly.

B of A’s efforts to avoid answering for its wrongful conduct as outlined herein and to continue the undisclosed exploitation and monetization of Freitas’ personal freedom to own, occupy and enjoy his residence is simply wrong ---- wrong for Petitioner and bad for our society.

This conduct was initiated by Countrywide and is now being directed by B of A in order to serve B of A’s particular business purposes to the detriment of Petitioner Freitas and the owners of over Five-Million (5,000,000+) homes in California and over Seventy-Million (70,000,000+) homes in the United States.

B of A is an active and indispensable “player” in this scheme to capture, exploit and eradicate private ownership of real estate in America. B of A has maintained tight control over every facet of how the scheme works. B of A trades on its control of the entire process by being involved from beginning to end, including the initiating, servicing and foreclosing on homeowners’ property. B of A has taken concrete actions to make looking behind its wall of control difficult if not impossible.

B of A’s ruinous actions have gone on for far too long and have severely impacted millions of homeowners.

Petitioner seeks redress for the injuries caused by the unlawful and improper collection, exploitation and monetization of Petitioner’s home equity, Petitioner’s due process rights and equal protection rights.

REASONS TO GRANT THE PETITION FOR WRIT OF CERTIORARI

I. The Questions Presented Are Critically Important and Warrant Immediate Review.

Nothing is more important than re-establishing the respect and dignity once associated with the justices, judges and the entire **judicial branch** of the United States government. **Reuters** News Service (remember their 1- Billion readers per day) (supra at page 9) considers the matters discussed in this “Petition for Writ of Certiorari” important enough to have conducted an exhaustive, 5-year-long

investigation regarding state and federal judges in California and surrounding states who are among the enablers that are complicit with the co-conspirators perpetrating the single largest criminal enterprise in history.

II. Federal and State Courts are divided.

Review is Necessary to Secure Uniformity of Decision among the Appellate Courts.

1. The case at bar is an “unlimited” case.

California Superior Courts and Courts of Appeal have *different opinions* in their decisions under California Code of Civil Procedure (“CCP”) § 1161a (as in the present case) concerning whether a case is a “limited case” or an “unlimited case”.

The issues heard in the California Superior Court of Alameda County should have involved title to and ownership of the subject property, not just as an attempt to regain possession of the property as if this were a landlord-tenant case.

Community had never been in the property. Community has a void “trustee’s deed upon sale” that it obtained from one of its affiliates/proxies or surrogates (Quality) who conducted an illegal private foreclosure sale under a false claim of having conducted a non-judicial foreclosure sale pursuant to California’s statutory non-judicial foreclosure scheme under Civ. Code § 2924.

The complications of fraud, duplicitous, deceitful conduct, deception and straight-out lies, untrue assertions, slandered title, civil conspiracy, ongoing

organized criminal activity and wrongful foreclosure require full judicial procedures and evidentiary practices that are not afforded by summary proceedings in a typical unlawful detainer case.

CCP § 85 requires such complicated matters be adjudicated under the full judicial procedures and evidentiary practices that are only available once the case is affirmed to be an unlimited civil case.

There is *a narrow and “qualified exception” to the rule* that title cannot be tried in an unlawful detainer case. That “qualified exception” is contained in CCP § 1161a. Community pursuing a post foreclosure action under section 1161a(b)(3) **must** “prove a sale in compliance with the statute [Civ. Code, § 2924] and deed of trust, followed by purchase at such sale.” (*Cheney v. Trauzettel* (1937) 9 Cal.2d 158, 160 (*Cheney*); see also *Old National Financial Services, Inc. v. Seibert* (1987) 194 Cal.App.3d 460, 465.)

Community must show that Community acquired the property at a regularly conducted sale and thereafter “duly perfected” his title (§1161a, subd. 3). “Thus, we have declared that ‘to this limited extent, as provided by statute, ... title may be litigated in such a proceeding.’” (*Cheney v. Trauzettel*, supra, 9 Cal2d. at p. 159.) (emphasis added).

A judgment rendered by a court of competent jurisdiction is conclusive in another action as to any issues founded upon allegations of irregularity in a

trustee's sale and would be barred by the prior unlawful detainer judgment. (*Freeze v. Salot* (1954) 122 Cal.App.2d 561; *Bliss v. Security-First Nat. Bank* (1947) 81 Cal.App.2d 50; *Seidell v. Anglo-California Trust Co.* (1942) 55 Cal.App.2d 913).

However, if the claim sought to be asserted in the second action encompasses activities not directly connected with the conduct of the sale, applicability of the res judicata doctrine, either as a complete bar to further proceedings or as a source of collateral estoppel, is much less clear.

If the validity of the foreclosure sale and the transfer of title to the purchaser (in this case, Community) by means of a perfected legal title obtained in the nonjudicial foreclosure sale, are directly in issue in the unlawful detainer case, *the validity of [the purchaser's] title had to be resolved in the unlawful detainer action.* Under CCP §1161a..... “a purchaser who has acquired the title at such trustee’s sale must prove that the property was sold in accordance with CCP § 2924 under a power of sale and that title under the sale has been duly perfected.

Under such unlawful detainer statute, title to the extent required by § 1161a not only may but must be tried....” *Vella v. Hudgins* (1977) 20 Cal.3d 251(*Vella*) and *Malkoskie v. Option One Mortgage* (2010) 188 Cal.App.4th 968 (*Malkoskie*) (a present-day application of *Vella*). (Emphasis Added).

Consideration of issues regarding ownership of and title to the subject property was not permitted in the lower court. The Court said:

“We’re not going to litigate title.”

That limited case resulted in a judgment in favor of Community and against Freitas.

Community received a void “Trustee’s Deed Upon Sale”, signed by Quality on June 10, 2019 and filed for record on June 11, 2019 (See PA H), almost three years after Quality had been substituted OUT as the Trustee when Recon Trust Corp. became the newly appointed Substitute Trustee on July1, 2016 (see PA J).

Quality is one of the many co-conspirators, surrogates, proxies and affiliates of B of A and Community involved in the conduct of an enterprise through a pattern of racketeering activity (known as “predicate acts”) causing injury to Freitas by conducting illegal, fraudulent, unlawful non-judicial foreclosures and illegal fraudulent, unauthorized unlawful detainer action(s).

After Quality was substituted OUT as the substituted trustee, on July1, 2016, everything, including notices, “deeds of trust upon sale” and anything else issued, initiated, conducted and/or concluded by Quality was VOID. **“A later sale by a prior trustee is void.”** *Dimock V. Emerald Properties, LLC* (“Dimock”), Court of Appeal, Fourth District, Division One. 97 Cal.Rptr.2d 255 (2000) 81 Cal.App.4th 868.

CCP § 85 requires a reclassification of this case to the status of an unlimited civil case because (1) the amount in controversy well exceeds the \$25,000 cap for limited civil cases and (2) because the only way to afford due process of law and the right to be heard in a timely manner and in a meaningful way is by allowing the

parties to use regular, as contrasted with summary, litigation proceedings for such complicated legal issues.

The Unlawful Detainer is an unlimited civil case if all conditions are not satisfied for limited case status pursuant to CCP Section 85. The **UD action does not satisfy the requirements of CCP Section 85**, thereby requiring that the case be reclassified as an unlimited civil action. A civil case is either limited or unlimited. If the lawsuit is not a limited civil case, it is a regular, unlimited civil case. **CCP Section 88.**

Until the person demanding payments under the loan proves its authority to enforce the debt under the fact-intensive provisions of the Uniform Commercial Code (§ 1101 Com., et seq., the “UCC”), **that person is not owed the debt.**

Regarding reclassification, the most important rule is as follows:

A case is not entitled to limited status when:

(1) the ‘amount in controversy’ is too high; or (2) the legal issues are too complicated for resolution in a summary proceeding like the UD case.

The amount in controversy is not simply the amount stated in the UD complaint by the UD Plaintiff: **the law**, not the UD Plaintiff Community’s self-serving request for a cash award, controls. *Stern v. Superior Court* (2003), 105 CA4th 223, 234.

The **amount in controversy** “means the amount of the demand, **or** the recovery sought, **or the value of the property, or** the amount of the lien that is in

controversy in the action, exclusive of attorneys' fees, interest, and costs." CCP Section 85(a).

An unlawful detainer action filed pursuant to CCP Section 1161a (b)(3) (i.e., the UD case) is *an attempt to get title and possession of the house by getting a seemingly sterile judgment of eviction*. A UD complaint alleging that the case is merely about regaining possession of what allegedly (already) belongs to the UD Plaintiff (Community) is a **fraudulent or an ignorant assertion** by the UD Plaintiff (Community).

When the amount of the subject mortgage lien or the market value of the house exceeds \$25,000, the amount in controversy exceeds the Section 85(a) limit and the case must be reclassified as an unlimited case.

California's Supreme Court knows that demands and threats are made by persons with no right to do so. "Banks are neither private attorneys general nor bounty hunters, armed with a roving commission to seek out defaulting homeowners and take away their homes in satisfaction of some other bank's deed of trust." *Yvanova v. New Century Mortgage Corporation*, 62 Cal.4th 919, 938 (2016). It is reasonable to demand proof that the person wanting payments is actually owed a debt secured by the house. Most businesses have no problem with this concept.

Until the person demanding payments under the loan proves its authority to enforce the debt under the fact-intensive provisions of the Uniform Commercial Code (§ 1101 Com., et seq., the “UCC”), **that person is not owed the debt.** 2/

Payment to a person not entitled to enforce the Note leaves the homeowner liable to the person who is actually entitled to enforce the Note, if such person still exists. 3/

Regardless the terms of the deed of trust, CA Civ. §2888 states that the deed of trust is just a lien that “transfers no title to the property.” *Jenkins v. JP Morgan Chase Bank*, 216 Cal.App.4th 497, 508, 156 Cal.Rptr.3d 912 (CA App 4th Distr 2013), overruled on other matters, by *Yvanova v. New Century Mortgage Corporation*, 62 Cal.4th 919 (2016). “[U]nder California law, a 'deed of trust' creates a lien on the property in favor of the creditor.”

2/ The debt instrument of a routine residential loan (the “Note”) is **acknowledged as a negotiable instrument.**

See, *Yvanova*, at 927-928. Division 3 of the UCC is California’s law of negotiable instruments and it defines the rights and duties respecting the Note. The right to enforce the Note is a cause of action that requires the person claiming that right to prove with admissible evidence its entitlement to enforce the Note pursuant to § 3-301 Com. No such proof means no right to enforce and a homeowner who refuses to honor a demand for payment by a person who has not proven its right is **not an event that dishonors the Note or creates a default.** § 3501(b)(3).

3/ Payments, even in the form of a taking of the house, to a person **not owed the debt under the Note do not reduce the homeowner’s debt obligation.** §3602(a) Com. (the debt is reduced only for payments made to the person entitled to enforce the Note at the time of the payment or that person’s bona fide agent). The UCC has no provision authorizing debt reduction **even if a court orders payment to a person not authorized to enforce the Note** for itself or the real person entitled to enforce the Note.

The conflict rages on.

The NJF (non-judicial foreclosure) is not a foreclosure in the conventional sense because IT DOES NOT TRANSFER TITLE OR OWNERSHIP TO THE FORECLOSURE BUYER. **California's Supreme Court** holds that no foreclosure is legal unless undertaken by the person entitled to enforce **the Note**. *Yvanova* (2016), *Id.* **Court of Appeal** decisions consistently maintain that the 2924 Scheme does not require proof of right in, or possession of, **the Note during the NJF process**. *Debrunner v. Deutsche Bank National Trust Co.*, 204 Cal.App.4th 433, 441 (Cal.App. 6th Dstr. 2012) ("There is no stated requirement in California's non-judicial foreclosure scheme that requires a beneficial interest in the Note to foreclose.").

DEBRUNNER CURRENTLY IS FOLLOWED IN FEDERAL AND CALIFORNIA CASES.

Yvanova and the *Debrunner* line of authorities are not in conflict even though one requires compliance with the UCC and the other holds that the UCC is not important to the NJF process. These two legal authorities are not in conflict because they are not addressing the same subject matter. *Yvanova* is discussing a legal foreclosure that is an effort to enforce the Note by foreclosing on the collateral securing payment of that Note. The *Debrunner* line of authorities **concerns a NJF process which is not about debt enforcement or foreclosure.**

The §2924 procedure does not mention the UCC and does not mention or require proof of right to enforce the Note. This is because the §2924 procedure only concerns a complicated way to sell a mortgage lien. The §2924

procedure is not about who has the right to enforce the Note or that lien. **It does not result in a legal foreclosure**, so the §2924 procedure and a resulting NJF sale are not at odds with California's law as *summarized by Yvanova*.

What needs to happen is that the PROCESS of an unlawful detainer action, especially in California and the 22 other non-judicial foreclosure states, should be examined, reviewed and clarified so as to secure uniformity of decision among courts. In the past 20 years 5-million homes just in California and more than 70-Million homes around the country have been caught in the middle of this raging battle. Enough is enough.!!!!

III. Petitioner/Freitas is entitled to offer evidence to support the claims advanced in his FAC, especially in light of the void, altered, defective:

(a) "Deeds of Trust" and (b) "Trustee's Deed Upon Sale".

Petitioner's First Amended Complaint ("FAC") included enough facts ... "to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A claim has facial plausibility when its factual allegations, rather than mere conclusory statements, create the reasonable inference that the defendant is liable for the misconduct alleged. *Ashcroft v. Iqbal*, 556 U.S.662, 678 (2009). In ruling on a "motion to dismiss", the court must accept factual allegations in the complaint as true and construe the pleadings in the light most favorable to the

nonmoving party (Freitas). *Manzarek v. St. Paul Fire & Marine Ins. Co.*, 519 F.3d 1025, 1030-31 (9th Cir. 2008).

The focus in this case is on the void status of the forged, altered, defective documents, among which are the "Deed of Trust" recorded on 10/25/2005 and the "Trustee's Deed Upon Sale" signed by Quality on 06/10/2019 and recorded on 06/11/2019 by Quality without standing and without authority to do either act.

Not the (void or voidable) status of an Assignment.

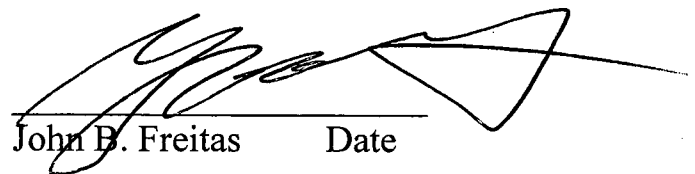
After reviewing all of the facts herein stated and the void documents included in Petitioner's Appendix, at issue in a **12(b) (6) analysis is not whether plaintiff (Petitioner/Freitas) will ultimately prevail, but whether Freitas is entitled to offer evidence to support the claims** advanced in his complaint. *Scheuer v. Rhodes*, 416 U.S. 232, 236, 94 S.Ct. 1683, 40 L.Ed.2d 90 (1974). While "a complaint need not contain detailed factual allegations... it must plead enough facts to state a claim to relief that is plausible on its face." *Cousins v. Lockyer*, 568 F.3d 1063 (9th Cir. 2009).

CONCLUSION

The Supreme Court of the United States should grant the Petition for a Writ of Certiorari to Petitioner/Freitas.

Petitioner John B. Freitas
36937 Cherry Street
Newark, California 94560
Phone: (510) 377-8777

Respectfully submitted,



John B. Freitas Date

Note from Petitioner John B. Freitas:

June 4, 2021, while crafting the last portions of the “PETITION FOR WRIT OF CERTIORARI”, “Today’s Devotional” serendipitously surfaced.

PERFECT JUSTICE

“All God’s ways are just.”

Deuteronomy 32:1-4 verse 4. (as quoted in 2020 Holy Bible, New International Version)

“Message: Our Daily Bread 4 June 2021 Today Devotional”

“In 1983, three teens were arrested for the murder of a fourteen-year-old. According to news reports, the younger teen was “shot . . . because of his [athletic] jacket.” Sentenced to life in prison, the three spent thirty-six years behind bars before evidence surfaced that revealed their innocence. Another man had committed the crime.”

“Before the judge released them as free men, he issued an **apology**.”

“No matter how hard we try (and no matter how much good is done by our officials), **human justice is often flawed**. **We never have all the information.** Sometimes dishonest people manipulate the facts. Sometimes we’re just wrong.”

“And often, evils may take years to be righted, if they ever are in our lifetime.”

“We may be dogged by uncertainty regarding what’s right or wrong. We may fear that the injustices done to us or those we love will never be made right. But we can trust the God of justice to one day—either in this life or the next—enact justice for us.” *By: Winn Collier* [Emphasis added].