

22-1049

No. _____

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IN THE
SUPREME COURT OF THE UNITED STATES

Bo Peng

Petitioner

Vs.

F.M. Tarbell Co.

Respondent

On Corrected Petition For A Writ Of Certiorari
TO The 2nd Appellate District Of California Court of Appeal

CORRECTED PETITION FOR WRIT OF CERTIORARI

Bo Peng
Pro Per
2332 Crystal Pointe
Chino Hills, CA 91709
951-423-0594

QUESTION PRESENTED

Justice Hoffstadt united trial judges, declined due process of this case of "the Jury trial on the 5 claims, under labor code §98.2", circumvented judgment of due process, unlawfully used government power to reverse the legal status of Plaintiff and Defendant, tried this case according to the defendant's unlawful objectives, and knowingly treated the void independent contractor agreement as valid to defraud the court and to deny the equal protection of the laws. Judge Moreton conspired with Defendant to use CCP §631.8 judicial process that violated due process and had no jurisdiction, to render a void judgment to achieve the defendant's unlawful objectives and deprived appellant of \$28,268.01 in wages. Judge Linfield conspired with Defendant to defraud the court through fabricating judicial process of Civil Code §1717 contract action, made the void amended judgments granting Defendant attorneys' fees and costs, twice depriving the appellant of total \$100,128.33 in wage property and adding Lien to appellant's real property. In order to control the outcome of this case, Justice Hoffstadt unlawfully diverted this case to himself to try; personally fabricated different judicial processes in his opinions; practiced unmitigated fraud upon the court itself; unlawfully affirmed that Judge Moreton's void judgment was valid; unlawfully affirmed that Judge Linfield's void amended judgment and void orders were valid; and finally secured defendant to evade tens of millions dollars in government fines. Judges involved in this case are highly partial to Defendant, this case lacked impartial judges.

Whether the lack of an impartial judges, and that the state judges, under color of law, without due process of law, deprived appellant of his wage property and placed a lien on his real property, or denied the equal protection of the laws, violate the 14th Amendment to the U.S. Constitution?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

RELATED CASES

Bo Peng, Petitioner v. F.M. Tarbell Co. Case 21-22 and Case 21-503. U.S. Supreme Court.

Bo Peng vs. F.M. Tarbell Co. No. 19STCP00416, Los Angeles County Superior court of California. Judgment entered at Feb. 3, 2020

Bo Peng vs. F.M. Tarbell Co. No. 19STCP00416, Los Angeles County Superior court of California. Order entered at July. 23, 2020

Bo Peng vs. F.M. Tarbell Co. No. 19STCP00416, Los Angeles County Superior court of California. Order entered at Aug. 17, 2020

Bo Peng vs. F.M. Tarbell Co. No. 19STCP00416, Los Angeles County Superior court of California. Amended judgment entered at Aug. 18, 2020

Bo Peng vs. F.M. Tarbell Co. No. B304763, 2nd Appellate District Of California Court of Appeal. Opinion entered at Dec. 24, 2020

Bo Peng vs. F.M. Tarbell Co. No. B307484, 2nd Appellate District Of California Court of Appeal. Opinion entered at May. 27, 2021

Bo Peng vs. F.M. Tarbell Co. No. B317907, 2nd Appellate District Of California Court of Appeal. Opinion entered at Jul. 25, 2022

Bo Peng vs. F.M. Tarbell Co. No. S266512, Supreme Court Of The State Of California. Order entered at Mar. 24, 2021

Bo Peng vs. F.M. Tarbell Co. No. S269724, Supreme Court Of The State Of California. Order entered at Aug. 11, 2021

Bo Peng vs. F.M. Tarbell Co. No. S276283, Supreme Court Of The State Of California. Order entered at Nov. 9, 2022

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OPINION BELOW

This case is from state courts: The opinion (No. B317907) of the highest state court to review the merits appears at Appendix A1-13 to the petition and is unpublished.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

The Supreme Court's power to review state court decisions is governed by the Judicial Code.¹ The appellate power so conferred is supported by both the letter and the spirit of the Constitution.²

For cases from state courts: The date on which the highest state court decided my case was Nov. 9th, 2022. A copy of that decision appears at Appendix B.

The petition for a writ of certiorari is 2/7/23. California Supreme court denied discretionary review on 11/9/22. Pursuant to Rule 13: Review on Certiorari: Time for Petitioning, the petition for writ of certiorari is on time.

This corrected petition for a writ of certiorari is on 4/25/23. U.S. Supreme Court issued the letter for correction on 2/24/23. Pursuant to Rule 14.5, this corrected petition for writ of certiorari is on time.

Congress has authorized the United States Supreme Court to review final judgments or decrees rendered by the highest court of a state.³

A finding of fact that is so grossly wrong as to amount to an infraction of the United States Constitution may be reviewed.⁴ A court has the inherent power to inquire into the integrity of its own judgments and to set them aside when fraud or corruption of its officers has been shown.⁵ "The court can consider this claim [of fraud] without the

¹ 28 U.S.C.A. § 1257

² U.S.—Martin v. Hunter's Lessee, 14 U.S. 304, 4 L. Ed. 97, 1816 WL 1721 (1816).

³ 28 U.S.C.A. § 1257(a). Atlantic Richfield Company v. Christian, 140 S. Ct. 1335 (2020).

⁴ U.S.—Milk Wagon Drivers Union of Chicago, Local 753 v. Meadowmoor Dairies, 312 U.S. 287, 61 S. Ct. 552, 85 L. Ed. 836, 132 A.L.R. 1200 (1941);

⁵ Chicago Title & Trust Co. v. Fox Theatres Corp., 182 F. Supp. 18, 38 (S.D. N.Y. 1960).

intervention of the movants as parties"⁶ The fact that there are no adversary parties on the claim of fraud on the court does not deprive the court of jurisdiction. Since the original judgment, by hypothesis, must have been given in a "case or controversy," the court continues to have ancillary jurisdiction to determine whether it has been the victim of a fraud.⁷

Therefore, The Supreme Court of the United States had ancillary jurisdiction over Supreme Court Cases: Bo Peng, Petitioner v. F.M. Tarbell Co. Case No. 21-22 and Case No. 21-503.

"A judgment absolutely void upon its face may be attacked anywhere, directly or collaterally, whenever it presents itself, either by parties or strangers. It is simply a nullity, and can be neither the basis nor evidence of any right whatever. ..." ⁸ "The only question for the court is whether the judgment is void; if it is, relief from it should be granted."⁹

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The 14th amendment to the U.S. Constitution, which provides, in part:

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

⁶ 410 U.S. 919, 93 S. Ct. 1363, 35 L. Ed. 2d 582 (1973)

⁷ Root Refining Co. v. Universal Oil Products Co., 169 F.2d 514, 521-522 (C.C.A. 3d Cir. 1948).

⁸ (Forbes v. Hyde, 31 Cal. 342, 347;)Texas Co. v. Bank of America etc Assn., 5 Cal. 2d 35, 41 [53 P.2d 127].)

⁹ Marquette Corp. v. Priester, 234 F. Supp. 799, 802 (D.S.C.1964)

Business and Professions Code provides, in part:

"A real estate salesman cannot contract in his own name; he can only be employed by a licensed real estate broker (Bus. & Prof. Code, §10132); he cannot "be employed by . . . any person other than the broker under whom he is at the time licensed" (§10137); and his license must remain in the possession of his broker employer (§10160), who risks the suspension or revocation of his own license if he fails "to exercise reasonable supervision over the activities of his salesmen".

We conclude, therefore, that a salesman, insofar as his relationship with his broker is concerned, cannot be classified as an independent contractor. Any contract which purports to change that relationship is invalid as being contrary to the law"¹⁰

Labor Code §98.2 provides, in part:

- (a) Within 10 days after service of notice of an order, decision, or award the parties may seek review by filing an appeal to the superior court, where the appeal shall be heard *de novo*.¹¹
- (b) The employer shall provide written notification to the other parties and the Labor Commissioner of the posting of the undertaking.

Labor code §216 provides, in part:

In addition to any other penalty imposed by this article, any person, or an agent, manager, superintendent, or officer thereof is guilty of a misdemeanor, who:

- (a) Having the ability to pay, willfully refuses to pay wages due and payable after demand has been made.

¹⁰ Resnik v. Anderson & Miles (1980) 109 Cal. App. 3d 570, 573, (Court of Appeal, Second District, Division 1)

¹¹ Hearing *de novo*: a new hearing of a matter, conducted as if the original hearing had not taken place. (Black's Law Dictionary (11th ed. 2019))

(b) Falsely denies the amount or validity thereof, or that the same is due, with intent to secure for himself, his employer or other person, any discount upon such indebtedness, or with intent to annoy, harass, oppress, hinder, delay, or defraud, the person to whom such indebtedness is due.

Labor Code §226.8 provides, in part:.

(a) It is unlawful for any person or employer to engage in any of the following activities:

(1) Willful misclassification of an individual as an independent contractor.

(3) If the Labor and Workforce Development Agency or a court issues a determination that a person or employer has engaged in any of the enumerated violations of subdivision

(a) and the person or employer has engaged in or is engaging in a pattern or practice of these violations, the person or employer shall be subject to a civil penalty of not less than ten thousand dollars (\$10,000) and not more than twenty-five thousand dollars (\$25,000) for each violation, in addition to any other penalties or fines permitted by law.

Penal Code 182 provides, in part:

(a) If two or more persons conspire:

(5) To commit any act injurious to the public health, to public morals, or to pervert or obstruct justice, or the due administration of the laws.

Penal Code 132 provides, in part:

Every person who upon any trial, proceeding, inquiry, or investigation whatever, authorized or permitted by law, offers in evidence, as genuine or true, any book, paper, document, record, or other instrument in writing, knowing the same to have been forged or fraudulently altered or ante-dated, is guilty of felony.

STATEMENT OF THE CASE

The Constitution and the Law has established that this case is "the jury trial on the 5 claims, under Labor Code §98.2 as the legal principle."

"When a state officer acts under a state law in a manner violative of the Federal Constitution, he / she comes into conflict with the superior authority of that Constitution, and he /she is in that case stripped of his / her official or representative character and is subjected in his/ her person to the consequences of his /her individual conduct. The State has no power to impart to him / her any immunity from responsibility to the supreme authority of the United States."¹²

I. **Bo Peng is the employee of F.M. Tarbell Co. and the independent contractor agreement is illegal and void.**

When Appellant Bo Peng joined F.M.Tarbell as a licensed real estate salesman in 2015, knowing that independent contractor agreement is contrary to the express statute, Defendant F.M. Tarbell deliberately made the signing of the independent contractor agreement as the primary condition for joining the company. Defendant did not give employees the opportunity to bargin, employees had no choices but to sign it. However, when the independent contractor agreement was entered into, it violated express statutes and the policy of express statutes, thus it is illegal contract. Such illegality voids the entire independent contractor agreement and voids it forever, see the following express statutes and case laws where Independent Contractor Agreement is void and void forever.

"A real estate salesman cannot contract in his own name; he can only be employed by a licensed real estate broker (Bus. & Prof. Code, §10132); he cannot "be employed by . . .

¹² Scheuer v. Rhodes, 416 U.S. 232, 94 S.Ct. 1683, 1687 (1974)

any person other than the broker under whom he is at the time licensed" (§10137); and his license must remain in the possession of his broker employer (§10160), who risks the suspension or revocation of his own license if he fails "to exercise reasonable supervision over the activities of his salesmen"

We conclude, therefore, that a salesman, insofar as his relationship with his broker is concerned, cannot be classified as an independent contractor. Any contract which purports to change that relationship is invalid as being contrary to the law"¹³

Contracts that are contrary to express statutes or to the policy of express statutes are illegal contracts, and any such illegality voids the entire contract.¹⁴

A contract illegal when entered into does not become valid because of a change in the law making that type of contract legal.¹⁵

Void contract is an absolute nullity from the contractual aspect, the equivalent of no contract at all;¹⁶ is a contract which cannot be validated by ratification or other act or omission;¹⁷ and is one which never had any legal existence or effect, and such contract cannot in any manner have life breathed into it.¹⁸

At the peak of Bo Peng's career, that is, when Plaintiff received rewards for two consecutive years and the increase in the distribution of commission wages from 70% to 90%, which occupied the interest of the company's management.

¹³ Resnik v. Anderson & Miles (1980) 109 Cal. App. 3d 570, 573, (Court of Appeal, Second District, Division 1)

¹⁴ Green v. Mt. Diablo Hospital Dist., 207 Cal. App. 3d 63, 254 Cal. Rptr. 689 (1st Dist. 1989).

¹⁵ Interinsurance Exchange of Auto Club of Southern Cal. v. Ohio Cas. Ins. Co., 58 Cal. 2d 142, 23 Cal. Rptr. 592, 373 P.2d 640 (1962);

¹⁶ Williston, Contracts 3d ed §15; 17 Am J2d Contr § 7

¹⁷ 17 Am J2d Contr § 7.

¹⁸ National Union Indemnity Co. v. Bruce Bros., Inc., 44 Ariz. 454, 38 P.2d 648, 652.

When Plaintiff's big deal went into the escrow, where deal was signed by all parties and was the time to get plaintiff's wage paid, Plaintiff suddenly received a text message of discharge without cause from F.M. Tarbell Co.: "You have been terminated from Tarbell Realtors" (See Trial Evidence 7). "[s]trong evidence in support of an employment relationship is the right to discharge at will, without cause."¹⁹ As matter of law and fact, Bo Peng, as a licensed real estate salesman, is an employee of F.M. Tarbell Co. This is untouchable and protected under the clause of equal protection of 14th Amendment to the U.S. Constitution.

Wages are the property that employees depend on for survival. According to the inalienable rights of property guaranteed by the Constitution, in order to recover the employer's intentional non-payment of wages of \$28,268.01 for two property sales, Plaintiff reported F.M. Tarbell Co. to the Labor commissioner. Tarbell hired a dishonest and unethical attorney who violated the code of professional conduct, deliberately lied to Labor Commissioner, and wrote a letter full of lies to Labor commissioner. (B304763 1AA 181). The labor commissioner established this case, conducted a hearing, Defendant's attorney and its representatives participated in the hearing. In front of the factual evidences, the defendant agreed to pay 50% of the wages owed. The parties did not reach an agreement, and finally the Labor commissioner gave the plaintiff a right to action for a trial de novo in accordance with the Labor Code §98.2 to the trial Court (Los Angeles County Superior court).

II. The Constitution and Law have established that the due process of law of this case is "the jury trial on the 5 claims, under Labor Code §98.2 as the legal principle", which governs the entire proceeding of this case.

¹⁹ S. G. Borello & Sons, Inc. v. Department of Industrial Relations (1989.) 48 Cal.3d 341.)

On 2/13/19, Plaintiff filed the Lawsuit of "trial on the 5 claims, under labor code §98.2 as the legal principle" (B304763 AA 008-020.) Labor Code §98.2 proceeding is a trial de novo of the wage dispute between employer and employee.²⁰

Plaintiff's 5 claims against F.M. Tarbell Co. in the trial court were:

1. Intentionally not paying wages, which is defined by the Labor commissioner as wage theft and as a crime.²¹
2. For the purpose of stealing employees' wages, discharge without cause in violation of public policy is wrongful termination of employee, caused plaintiff harm.
3. Willfully misclassify employee as independent contractor, evading State and Federal taxes and profiting from employee benefits.
4. Compensatory damages of economic and emotional distress to plaintiff caused by defendant's wage theft and wrongful termination of employee.
5. Punitive damages for Defendant's large amount of illegal proceeds obtained through unlawful practice pattern of wage theft, the wrongful termination of employee, and misclassification.

The above is abbreviated as the 5 claims.

Based on the trial admitted defendant's Evidence 500, defendant:

- 1) fully admitted the relationship of employment between two parties.
- 2) fully admitted Bo Peng was an employee of defendant F.M. Tarbell Co.
- 3) fully admitted the facts that defendant F.M. Tarbell Co. intentionally failed to pay Bo Peng wages in the amount of \$28,268.01.

²⁰ See Labor Code §98.2(a)(b)

²¹ Labor code §216

The facts of this case are clear and the evidences are conclusive. Defendant should be fully liable to the damages to Plaintiff. Defendant felt it is impossible to win this case. Defendant's President expressed his willingness to pay \$23,000 unpaid wages without paying the penalties at the meeting with Plaintiff. (B304763 AA 537). No agreement was reached. Plaintiff applied for a jury trial and jury trial was granted, thus, the Constitution and the Law have established that "the jury trial on the 5 claims, under Labor Code §98.2 as the legal principle" is the due process of law of this case, which governs the entire proceeding of this case.

It is fundamental principle of American jurisprudence that for every wrong there is a remedy, and that, unless countered by public policy, an injured party should be compensated for all damage proximately caused by the wrongdoer,²² which is reflected in the statutory maxim that for every wrong there is a remedy.²³ Jury trial is an impartial mechanism. Both of labor Code and jury trial doomed the defendant's defeat.

In particular, due to defendant's willful misclassifying the employee as independent contractor in order to evade State and Federal taxes and profit from employee benefits, it is inevitable that defendant will not only pay compensatory damage, but also pay tens of millions of government fines under labor code § 226.8 based on its number of Tarbell's employees and years of operation.

III. Defendant presented 4 unlawful objectives against due process of law of this case.

In order to resist to pay damage compensation and huge government fines and to reverse the defeat, defendant

²² Hernandez v. Mendoza, 199 Cal. App. 3d 721, 245 Cal. Rptr. 36 (2d Dist. 1988).

²³ Civ. Code, § 3523.

presented the 4 unlawful objectives against due process of this case:

1. Ordering the judge that the court must preclude "emotional distress, lost wages, punitive damages". (B304763 AA 322).
2. "This case must be taken from the jury and a decision rendered on the written and admitted evidence at trial." (B304763 AA 318)
3. Turning a lawsuit impossible to win, into a win
4. Demanding \$40,000 attorney fees (1AA 401).

In order accomplish its unlawful objectives, defendant sought shortcuts by the means of a crime to corrupt the Judges who posse judiciary power. Defendant used large amount of illegal gains to influence and corrupt judges by its attorney. However, "the briber may not be able to keep the spoils of his corrupt decision."²⁴ The corrupt decision may be reversed on appeal. So, defendant has to corrupt two levels of the judges in the trial court and Justices of court of appeal. Successfully corrupting a decision, therefore, requires bribing two or more judges, which raises the price of the bribe and the risk of being caught for both the bribing party and the judges involved. For defendant, the cost of corrupting the multiple judges with its illegal gains, relative to the tens of millions dollars in government fines is a small fraction or even compared with the \$4,500,000 settlement in a similar case,²⁵ the expected benefits of purchasing a corrupt decision are far greater than the cost of corrupting multiple judges.

Defendant attorney engaged in the improper *ex parte* communication with the judge. And the judge permitted

²⁴ STRATOS PAHIS, *Corruption in Our Courts: What It Looks Like and Where It Is Hidden* (2009) 118 THE YALE LAW JOURNAL 1900, 1908

²⁵ Bararsani v. Coldwell Banker Residential Brokerage Co. B251588

and accepted improper ex parte communication which showed that he can be induced and corrupted.

When defendants or litigants already have a low opinion of the honesty of judges and the judicial process, they are far more likely to resort to bribing court officials, lawyers and judges to achieve their ends.²⁶

Improper ex parte communications between an arbitrator and a litigant can serve as a basis for a corruption, fraud, or other undue means finding as would support the vacation of an arbitration award.²⁷ Persons with whom contact prohibited: applies to a judge or judicial officer.²⁸ Under the Due Process Clause, no one can be a judge in his or her own case, and no one is permitted to try cases where he or she has an interest in the outcome.²⁹ Even a minuscule financial interest in a case is ground for disqualification.³⁰

The bribery of judges has a direct impact on the very essence of the judicial function, which is to deliver an independent, fair and impartial decision. The consequence is unfairness and unpredictability in the legal process from start to finish, and a systematic undermining of the rule of law.³¹

These cases do seem to intimate that corruption has a potentially infective quality and flourishes when those higher up in the hierarchical structure engage in it.³²

²⁶ TI GLOBAL CORRUPTION REPORT 2007, Comparative analysis of judicial corruption xxiv

²⁷ Baker Marquart LLP v. Kantor, 22 Cal. App. 5th 729, 231 Cal. Rptr. 3d 796 (2d Dist. 2018).

²⁸ Witkin, Cal. Proc. 5th Trial § 233 (2020)

²⁹ Williams v. Pennsylvania, 136 S. Ct. 1899, 195 L. Ed. 2d 132 (2016).

³⁰ 28 U.S.C. 455(b)(4). Other provisions of section 455 set out additional grounds for disqualification.

³¹ TI, Global Corruption Report 2007 supra P62

³² STRATOS PAHIS, supra, at P1924

IV. **Under Shelter of Justice Hoffstadt, Judge Moreton, declined to try this case with due process of law of this case, but tried this case with 4 unlawful objectives, made the judgment using CCP §631.8 that violates due process of Labor Code §98.2 and had no jurisdiction, accomplished defendant's first 3 unlawful objectives.**

A. Judge Moreton unlawfully used his judicial position to grant defendant immunity for unlawful acts to accomplish defendant's 1st unlawful objective

The due process of this case is "the jury trial on the 5 claims, under Labor Code §98.2 as the legal principle"

First of all, without entering the jury trial and even without the motion, Judge Moreton unlawfully used government power to let the defendant to unilaterally draft an order to exempt the defendant itself from all penalties, that is, "precludes any claims by Plaintiff of punitive damages, emotional distress, lost wages or ancillary claims against Tarbell". Judge Moreton is highly partial to defendant because Judges have no authority to grant immunity for unlawful acts.³³

To remain consistent with his void order, Judge Moreton also ordered the plaintiff not to make claims or face sanctions of \$500. Unjust Judge Moreton used the court as an unjust instrument, abused his position, unlawfully granted the defendant immunity for unlawful and criminal acts, violated the plaintiff's fundamental Constitutional rights to the action and to claims.

Judge Moreton did accomplish the defendant's 1st unlawful objective; he precluded all the penalties against Defendant; and he gained the defendant's trust. The very

³³ S.D.—Wipf v. Hutterville Hutterian Brethren, Inc., 2013 SD 49, 834 N.W.2d 324 (S.D. 2013)

withdrawing previous commitment of paying unpaid wages \$23,000 and settlement, presented more unlawful objectives.

Judge Moreton's void order was clearly made in violation of due process, without jurisdiction, with unlawful use of government power to grant defendant immunity for unlawful and criminal acts, being highly partial to defendant, with obvious injustice, in violation of plaintiff's constitutional fundamental rights to action and rights to claims, with usurpation of jurisdiction of jury, with judicial oppression to plaintiff and in violation of due process clause and equal protection clause of 14th Amendment to the U.S. Constitution and limitations on state government power. Due to above reasons, plaintiff immediately filed a petition for writ of mandate to the appellate court, but shockingly, the petition was unjustly denied by Justice Hoffstadt, which showed Justice Hoffstadt fully affirmed in full and supported Judge Moreton. This was evidenced in Justice Hoffstadt's full affirmance and support for Judge Moreton in his first appeal opinion.

B. Under the shelter of Justice Hoffstadt, Judge Moreton arbitrarily denied the jury trial which is the due process of this case, changed the 12 jurors jury trial to 1 Judge Moreton court trial, accomplished defendant's 2nd unlawful objective and paved the way for corruption

Due to the shelter of Justice Hoffstadt, Judge Moreton is emboldened, became more disregarding for the laws, unjustified imposed \$500 sanctions on plaintiff without due process, fabricated a jury trial re-application, committed fraud upon the court, denied the constitutionally entitled jury trial, accomplished the defendant's second unlawful objective, and changed 12 jurors jury trial to a court trial presided over by him alone.

Jury trial is the due process of this case. "Every constitutional provision is self-executing to the extent that

everything done in violation of it is void.”³⁴ Accordingly, Judge Moreton’s order denying the jury trial is void.

C. Judge Moreton conducted the unfair court trial using CCP §631.8 judicial process that violates due process of Labor Code §98.2 and has no jurisdiction, made the void judgment, accomplished defendant’s 3rd unlawful objectives, deprived Plaintiff of his wage property \$28,268.01.

In the court order publishing the evidences, it was found that the plaintiff’s evidences were extensively tampered with by the defendant’s attorney, resulted that the value of the evidences has been diminished. The defendant violated the Penal code 132, which required to go to prison for one to three years. The Ninth Circuit has declared that reversal is “““ virtually automatic ” ” once it is established that false evidence was introduced.³⁵

Judge Moreton disregarded the law, after denial of the constitutionally entitled jury trial, continued the unfair court trial with CCP §631.8 judicial process. Because the limit of Labor Code §98.2, the court has no jurisdiction over CCP §631.8. Lack of subject-matter jurisdiction means an entire absence of power to hear or determine the case.³⁶ Without jurisdiction, Judge Moreton could not hear or determine.

The Constitution and the Law have established that the due process of law of this case, which governs the entire proceeding of this case. Using CCP §631.8 judicial process, in violation of due process, without jurisdiction and committing the fraud upon the court, Judge Moreton unlawfully used government power, based on the void independent contractor agreement, to make the void judgment that a licensed real estate salesman is an

³⁴ Katzberg v. Regents of University of California (2002) 127 Cal.Rptr.2d 482, 29 Cal.4th 300, 58 P.3d 339 .Constitutional Law 640

³⁵ Hayes v. Brown (9th Cir. 2005) 399 F.3d 972, 978.

³⁶ People v. Superior Court (Marks), 1 Cal. 4th 56, 2 Cal. Rptr. 2d 389, 820 P.2d 613 (1991)

independent contractor who was not entitled to the \$28,268.01 wage property owed, defendant was the prevailing party in this case.

Obviously, Judge Moreton's judgment is denying the equal protection of laws and depriving Plaintiff of his \$28,268.01 wage property³⁷ without due process, being highly partial to defendant and violated 14th Amendment to the U.S. Constitution. "Every constitutional provision is self-executing to the extent that everything done in violation of it is void."³⁸ Accordingly, Judge Moreton's judgment is void.

V. Judge Linfield was influenced and controlled by Judge Moreton, not controlled by the law and continued to accomplish the defendant's unlawful objectives of obtaining the attorney's fees

The proceeding after Judge Moreton's void judgment is worthless. "A void judgment is in legal effect no judgment: no rights are acquired or divested by it, it neither binds nor bars any one, and all proceedings founded upon it are worthless."³⁹

However, Judge Linfield is the successor of Judge Moreton who accepted corruption; he has publicly and repeatedly stressed that if Judge Moreton is wrong, he is wrong; if Judge Moreton is right, he is right (B307484 AA 136, 225), and voluntarily tied up to Judge Moreton who accepted corruption, which showed Judge Linfield is influenced or controlled by Judge Moreton, not by LAW, which manifested that Judge Linfield was also a member of

³⁷ Court have found a sufficient property interest to trigger application of the due process clause: Wages. Sniadach v Family Finance Corp of Bay View (1969) 395 U.S. 337

³⁸ Katzberg v. Regents of University of California (2002) 127 Cal.Rptr.2d 482, 29 Cal.4th 300, 58 P.3d 339 .Constitutional Law 640

³⁹ OC Interior Services, LLC v. Nationstar Mortgage, LLC, 7 Cal. App. 5th 1318, 213 Cal. Rptr. 3d 395 (4th Dist. 2017);

the multi-judge corruption ring. Judge Linfield conspired with defendant to fabricate Civil Code §1717 contract action and the prevailing party of the contract action, both of which did not exist in the record of this case, to commit fraud upon the court to accomplish defendant's 4th unlawful objectives, that is, obtaining attorney's fees; he made void orders and amended judgments, deprived the plaintiff of his wage property in the amount of \$73,639.03 in the form of granting defendant attorney's fees and costs by his arbitrary power, conspired with defendant to place a lien⁴⁰ on plaintiff's real property, was highly partial to defendant, served for defendant's interests, was unable to remain impartial, and violated the due process clause and equal protection clause of the 14th Amendment of the Federal Constitution.

Due to the shelter of Justice Hoffstadt, Judge Linfield is emboldened, became more disregarding for the laws, used the same method violative to the 14th Amendment to the U.S. Constitution, to repeatedly commit fraud upon the court, to arbitrarily increase defendant attorney's fees amount, to make void orders awarding defendant undeserved attorney's fees and costs in the amount of \$65,038.3, to serve the interests of defendant, and to engage in the corruption.

VI. The declaration of the defendant's attorney exposed the inside story that Justice Hoffstadt united trial judges, conspired with defendant to engage unlawful operation.

Their scheme to defraud the court is: the defendant's attorney unlawfully submitted the void independent

⁴⁰ Temporary or partial impairments to property rights entailed by attachments, liens, and similar encumbrances are sufficient to merit due-process protection even though they do not amount to any complete, physical, or permanent deprivation of real property. *Connecticut v. Doehr*, 501 U.S. 1, 111 S. Ct. 2105, 115 L. Ed. 2d 1 (1991)

contractor agreement to the court, the trial court judges unlawfully treated it as valid to use and make the void judgment, and Justice Hoffstadt unlawfully determined the void independent contractor agreement as valid, and affirmed the void judgment as valid to form the unjust "law of the case", to complete defendant's unlawful objectives and finally secure defendant to evade tens of millions of dollars in government fines.

The independent contractor agreement entered on 2015 had been contrary to express statute, that is, Business and Professions Code 10132 et seq, the independent contractor agreement is illegal contract and thus it is void, and forever void.

Justice Hoffstadt united trial Judges, conspired with Defendant to use the void independent contractor agreement as the basis for their judgments, opinions and orders. The void contract is an absolute nullity from the contractual aspect. The equivalent of no contract at all;⁴¹ Void contract is a contract which cannot be validated by ratification or other act or omission.⁴² Therefore the judgments, opinions and orders founded on the void independent contractor are all void. ;

The scheme to defraud the court, that Justice Hoffstadt united trial Judges and conspired with defendant was exposed by defendant attorney Griffin's following declaration:

"A true and correct copy of the original Independent Contractor Agreement maintained in the course and scope of business operations, and personally copied from the original file in the custody of Tarbell which is signed by Plaintiff in connection with the transaction at issue in the Plaintiffs Complaint, and admitted into evidence at trial, and upheld as valid and binding on appeal is hereby

⁴¹ Williston, Contracts 3d ed §15; 17 Am J2d Contr § 7.

⁴² 17 Am J2d Contr § 7

attached as Exhibit "1" and incorporated herein by this reference. It is now law of the case that the independent contractor is valid and provides for the award of attorneys fees against Bo Peng in this matter." (see declaration of Benjamin K. Griffin on page 9-10 of Motion for Attorney Fees filed by defendant on 09/21/2021)

Not only did judges who accepted corruption, refuse to disqualify themselves, but also formed the air tight multi judge corruption ring⁴³ and united to disobey and resist to follow the due process of Law of this case, that is, "the jury trial on the 5 claims, under labor code §98.2 as the legal principle", to circumvent the judgment of due process, to unlawfully use government power to reverse the legal status of Plaintiff and Defendant, to try this case according to the defendant's unlawful objectives, and knowingly treated the void independent contractor agreement as valid to defraud the court and to deny the equal protection of the laws.

The law says: Judges have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given. The one or the other would be treason to the Constitution".⁴⁴ No court or tribunal can acquire jurisdiction by the mere assertion of it.⁴⁵ In particular, the jurisdiction of a subject matter over which a court has otherwise no jurisdiction cannot be conferred by motion⁴⁶, contract.⁴⁷

⁴³ See STRATOS PAHIS, *supra*, P 1931 [The incidence of multijudge corruption schemes is also Noteworthy]

⁴⁴ *Cohen v Virginia*, (1821), 6 Wheat. 264 and *U.S. v. Will*, 149 U.S. 200

⁴⁵ *In re Madera Irrigation District*, 92 Cal. 296, 28 P. 272 (1891); *Mannix v. Superior Court of Sacramento County*, 133 Cal. App. 740, 24 P.2d 507 (3d Dist. 1933).

⁴⁶ *Kurtz v. Cutler*, 178 Cal. 178, 172 P. 590 (1918)

⁴⁷ *Marshall v. Phillips*, 39 Cal. App. 2d 404, 103 P.2d 240 (2d Dist. 1940)

Judge Moreton used CCP §631.8 oral motion to usurp the jurisdiction not given by labor code §98.2 to make the void judgment; Judge Linfield used the contract to usurp the jurisdiction not given by labor code §98.2 to make the void amended judgment and the void orders; and Justice Hofstadter usurped the jurisdiction by assertion to affirm Judge Moreton's void judgment and affirm Judge Linfield's void amended judgment and void orders. "Where jurisdiction is absent, i. e., where officials exercise powers which have not been conferred upon them, they cease to be agents of the people, and become usurpers. It is peculiarly true of the courts, whose function it is to interpret laws."⁴⁸ Their actions constitute the treason to the Constitution.

"Every constitutional provision is self-executing to the extent that everything done in violation of it is void."⁴⁹ Accordingly, their judgments are void.

"The only question for the court is whether the judgment is void; if it is, relief from it should be granted."⁵⁰

VII. Justice Hoffstadt, in violation of due process and without jurisdiction, unlawfully diverted this case to himself to try, unlawfully used government power to affirm in full Judge Moreton's void judgment as valid, to affirm Judge Linfield's void amended judgment and void orders as valid, and to blatantly violate the 14th Amendment to the U.S. Constitution

⁴⁸ State ex rel. Lofthus v. Langer, 46 N.D. 462, 177 N.W. 408 (1920)

⁴⁹ Katzberg v. Regents of University of California (2002) 127 Cal. Rptr.2d 482, 29 Cal.4th 300, 58 P.3d 339 .Constitutional Law 640

⁵⁰ Marquette Corp. v. Priester, 234 F. Supp. 799, 802 (D.S.C.1964)

A. Justice Hoffstadt from Division 2 unlawfully diverted this case which had been tried in Division 1 for almost half a year, to himself to try.

The first appeal of this case, being randomly assigned to Division 1, had been tried by Division one for almost half a year, especially Division 1 has made ruling on it. The due process is that "Once a case is assigned to a particular division, it cannot be reassigned except by order of the supreme court or, in some instances, by the presiding judge of the appellate division."⁵¹

However, without the order of the California Supreme Court or presiding justice of Division 1, Justice Hoffstadt from division 2 unlawfully diverted this case from Division 1 to himself for try because case law from Division 1 is contrary to his desired outcome.

The case law from Division 1 is that "We conclude, therefore, that a salesman, insofar as his relationship with his broker is concerned, cannot be classified as an independent contractor. Any contract which purports to change that relationship is invalid as being contrary to the law" (Resnik v. Anderson & Miles (1980) 109 Cal. App. 3d 570, 573, (Court of Appeal, Second District, Division 1)

Justice Hoffstadt's opinions made the real estate salesman as independent contractor, made the void independent contractor agreement as valid, both of which are contrary to the case law of Division 1.

"Where jurisdiction is absent, i. e., where officials exercise powers which have not been conferred upon them, they cease to be agents of the people, and become usurpers. It is peculiarly true of the courts, whose function it is to interpret laws."⁵² Apparently, Justice Hoffstadt did usurp the jurisdiction of Division 1 by unlawfully diverting this case from Division 1 to himself to try and he is usurper.

⁵¹ California Civil Appellate Practice §1.28, (Cal Rules of Ct 10.1000) CEB
OnLAW

⁵² State ex rel. Lofthus v. Langer, 46 N.D. 462, 177 N.W. 408 (1920)

Knowing that unlawful diverting this case from Division 1, who had tried this case for almost half a year, to himself to try, is obstruction of justice, Justice Hoffstadt made the statement in his third appeal opinion that this transfer was performed by the Administrative Presiding Justice.

If Justice Hoffstadt 's statement is true, it is a serious issue because the administrative presiding justice is the presiding Justice on the decision denying the appellant's petition for writ of mandate, Justice Hoffstadt also had his signature on it, both of them are close related. According to the law, it violated Penal Code 182 (a)(5), that is, if two or more persons conspire to commit any act injurious to the public health, to public morals, or to pervert or obstruct justice, or the due administration of the laws.

If Justice Hoffstadt 's statement is not true. Then it is his fraud upon the court to blame the obstruction of justice on the Administrative Presiding Justice.

B. After usurping jurisdiction of this case, Justice Hoffstadt, under color of law, acted in a manner violative to the U.S. Constitution, and disregarded the equal protection clause of the 14th Amendment, unlawfully used government power to make unlawful affirmance, was highly partial to defendant, was unable to remain impartial and served for the interests of Defendant by depriving appellant of his wage property without due process.

According to Law, Justice Hoffstadt has no authority to affirm void judgments. His full "affirmance of a void judgment upon appeal imparts no validity to the judgment, but is itself void by reason of the nullity of the judgment appealed from."⁵³ A void judgment is not rendered valid by a mere affirmation on appeal.⁵⁴

⁵³ Pioneer Land Co. v. Maddux, 109 Cal. 633

⁵⁴ Bank of Italy v. E.N. Cadenasso, 206 Cal. 436, 274 P. 534 (1929); Ball v. Tolman, 135 Cal. 375, 67 P. 339 (1902).

However, Justice Hoffstadt unlawfully used government power to be above the law, acted in a manner violative to the U.S. Constitution:

1) His first appeal opinion that he unlawfully affirmed in full Moreton's void judgment as valid, deprived appellant of his wage in the amount of \$28,268.01 without due process.

2) His second appeal opinion that he unlawfully affirmed in full Judge Linfield's void order and the void amended judgment as valid, deprived appellant of his wage property in the amount of \$73,639.03 without due process through awarding defendant's undeserved attorney's fees and costs, and placed lien to appellant real property.

3) His third appeal opinion that he unlawfully partially affirmed Judge Linfield's void orders as valid, deprived appellant of his wage property in amount of \$26,489.30 without due process through awarding partial defendant's undeserved attorney's fees and costs.

According to the law, "Void judgment is One which, from its inception is and forever continues to be absolutely null, without legal efficacy, ineffectual to bind parties or support a right, of no legal force and effect whatever, and incapable of confirmation, ratification, or enforcement in any manner or to any degree."⁵⁵ Justice Hoffstadt's third opinion in partial affirmation and ratification of the void judgment is also void. Defendant should not be awarded to any attorney's fees and costs. Therefore, Justice Hoffstadt's third opinion is void too.

Justice Hoffstadt used the change of the amount granting attorney's fees, that is, to defraud the court to cover up void judgment made in violation of due process, without jurisdiction and in fraud on the court.

Justice Hoffstadt 's 3 void opinions, made without due process, without jurisdiction and through fraud upon the court, deprived appellant of his wage property total in the

⁵⁵ Black's law dictionary, revised fourth edition, Void judgment

amount of \$128,396.34 which is financially devastating to appellant.

- C. Justice Hoffstadt personally fabricated different judicial processes, which are nonexistent in this case and suitable to accomplish the Defendant's unlawful objectives, committed fraud upon the court, and made corrupt judicial decisions so that defendant can buy the judicial decision favorable to defendant, and finally secured defendant to evade tens of millions dollars in government fines.
- 1. Justice Hoffstadt personally fabricated different judicial processes to commit fraud upon the court, and made opinions founded on them to finally complete the defendant's unlawful objectives.

In the first appeal, by fabricating CCP 581c jury trial judicial process to defraud the court, Justice Hoffstadt affirmed in full and supported that Judge Moreton denied the constitutionally entitled jury trial, which showed that he united with Judge Moreton to prevent the orderly administration of law and justice, which constitutes obstruction of justice.⁵⁶

In the 2nd appeal, by fabricating contract action in labor commissioner to defraud the court, Justice Hoffstadt supported Judge Linfield and defendant's conspiracy to defraud the court through fabricating Civil Code §1717 contract action to make the void order and the void amended judgment, which showed that he united Judge Linfield to jointly complete the defendant's unlawful objective obtaining attorney's fees and costs.

In the 3rd appeal, through his false statement, Justice Hoffstadt fabricated "Tarbell established its *prima facie* case," which is non-existent in the record of this case, to defraud the court, intentionally reversed the legal status of

⁵⁶ Black's Law Dictionary (11th ed. 2019), obstruction of justice

plaintiff and defendant, circumvented the judgment of due process, continued to use the non-existent Civil Code §1717 contract action to defraud the court, and without due process, once again deprived appellant of his wages in the amount of \$26,489.30 in the form of awarding defendant's attorney's fees and costs, and violated the 14th Amendment of the Federal Constitution; which resulted in the lack of impartial judges in these 3 appeal.

The United States Supreme Court has recognized that the lack of an impartial judge is violative of the due process clause of the fourteenth amendment.⁵⁷

2. In his fabricated judiciary processes, he arbitrarily tampered with Law and tampered with judgment.

1) In order to accomplish defendant's unlawful objectives, Justice Hoffstadt violated the separation of powers to rewrite Labor Code §98.2.

Under the doctrine of separation of powers, neither the trial courts nor the appellate courts are authorized to "review" legislative determinations.⁵⁸

Justice Hoffstadt has no authority to rewrite Labor code §98.2 from trial de novo⁵⁹ to "appeal de novo" in his three opinions, has no authority to change the wage dispute between employee and employer,⁶⁰ has no authority to change parties' employment relationship and has no authority to overturn the labor code §98.2 legislation.

2) Justice Hoffstadt committed fraud upon the court by tampering the judgment

In the third appeal, Justice Hoffstadt made false

⁵⁷ See, e.g., *Aetna Life Ins. Co. v. Lavoie*, 475 U.S. 813 (1986);

⁵⁸ *Lockard v. City of Los Angeles*, 33 Cal. 2d 453, 202 P.2d 38, 7 A.L.R.2d 990 (1949).

⁵⁹ See labor code §98.2 (a)

⁶⁰ See labor code §98.2 (b)

statement that "In the first appeal, we affirmed a judgment concluding that a real estate agent who fell outside of the statutory definition of an "employee" was not entitled to unpaid wages under the Labor Code.

In fact, there is no statutory definition of "employee" under the Labor Code. Justice Hoffstadt blatantly used his opinion to replace the labor code, committed fraud upon the court by his own falsifying record in his opinion, covered up the void judgment made by CCP §631.8 which violated due process of labor code §98.2 and has no jurisdiction. That he continuously and repeatedly defrauded the court, made his opinion void. "Fraud destroys the validity of everything into which it enters."⁶¹

D. Justice Hoffstadt knew that falsifying record is a crime and conspiracy with defendant to obstruct justice is unlawful and a crime⁶², and sought immunity."

Justice Hoffstadt, knowing that he had falsified records and fabricated different judicial process, knowing that FALSIFYING A RECORD is A high offense against public justice, punishable in England⁶³ and in the United States, generally, by statute.⁶⁴, generally, by statute, Knowing that it is often asserted (usually as dictum) that a judicial officer has complete immunity only when the officer acts within his or her jurisdiction, and that liability may be imposed for acts in excess of jurisdiction⁶⁵, he brought the "abuse of discretion" and sought immunity. He even shifted the blame to others by falsely claiming that standard of review of "abuse of discretion" was filed by the appellant. Obviously, Justice Hoffstadt constantly and

⁶¹ Nudd v. Burrows (1875), 91 US 426 440

⁶² See Penal Code 182 (a) (5)

⁶³ 24 & 25 Vict. c. 98, §§ 27, 28,

⁶⁴ See U. S. Rev.Stat. § 5394, 18 U.S.C.A. § 1506.

⁶⁵ (See Franklin v. Municipal Court (1972) 26 C.A.3d 884, 898, 103 C.R. 354; 47 Cal. L. Rev. 314.)

repeatedly defrauded the court, which showed extreme dishonesty.

No official records show that plaintiff filed the standard of review of "abuse of discretion". However, Justice Hoffstadt reviewed the third appeal with his own assertion of "abuse of discretion" to cover up that neither Judge Linfield, nor himself has jurisdiction over the contract action in this case, and to cover up that judgments and opinions made without jurisdiction are void. Lack of subject-matter jurisdiction means an entire absence of power to hear or determine the case.⁶⁶ "Fraud destroys the validity of everything into which it enters."⁶⁷

U.S. Supreme Court had inherent power to protect the sanctity of the judicial process—to combat those who would dare to practice unmitigated fraud upon the court itself.

REASONS FOR GRANTING THE PETITION

I. U.S. Supreme Court not only had the responsibility, but also the duty to enforce 14th Amendment to the U.S. Constitution

The freedom secured by the United States Constitution consists, in one of its essential dimensions, of the fundamental right of the individual not to be injured by the unlawful exercise of governmental power.⁶⁸ Fundamental rights guaranteed by the United States Constitution include freedom from the deprivation of life, liberty, or property without due process of law⁶⁹

Court has found a sufficient property interest to trigger application of the due process clause: Wages, ⁷⁰ Lien.⁷¹

⁶⁶ People v. Superior Court (Marks), 1 Cal. 4th 56, 2 Cal. Rptr. 2d 389, 820 P.2d 613 (1991)

⁶⁷ Nudd v. Burrows (1875), 91 US 426 440

⁶⁸ Obergefell v. Hodges, 135 S. Ct. 2584, 192 L. Ed. 2d 609 (2015).

⁶⁹ 16A Am. Jur. 2d Constitutional Law § 412

⁷⁰ Sniadach v Family Finance Corp of Bay View (1969) 395 U.S. 337

Certain fundamental constitutional rights, like the guarantees that all citizens enjoy equal protection of the laws and due process of law, are not structural limitations on government power but they are rights given to individual citizens which limit governmental power generally, and, as such, these rights accrue to individual citizens.⁷² An individual can invoke a right to constitutional protection when harmed.⁷³

The 14th Amendment does not apply to the federal government⁷⁴ but is directed at state action,⁷⁵ encompassing the conduct of state government officials,⁷⁶ whether high or low,⁷⁷ or legislative, executive, or judicial.⁷⁸

The touchstone of due process is protection of the individual against arbitrary actions of the government.⁷⁹ The cornerstone of due process is the prevention of abusive governmental power.⁸⁰ The government is forbidden by the fundamental law to take either life, liberty, or property without due process of law, and its courts are included in the prohibition.⁸¹

The Constitution and Law have established that “the jury trial on the 5 claims, under labor code §98.2 as the

⁷¹ Connecticut v. Doebr, 501 U.S. 1, 111 S. Ct. 2105, 115 L. Ed. 2d 1 (1991)

⁷² San Diego County Water Authority v. Metropolitan Water Dist. of Southern California, 12 Cal. App. 5th 1124, 220 Cal. Rptr. 3d 346 (1st Dist. 2017), as modified on other grounds on denial of reh'g, (July 18, 2017).

⁷³ Obergefell v. Hodges, 135 S. Ct. 2584, 192 L. Ed. 2d 609 (2015).

⁷⁴ Life Savers Concepts Association of California v. Wynar, 387 F. Supp. 3d 989 (N.D. Cal. 2019);

⁷⁵ Jarvis v. Village Gun Shop, Inc., 805 F.3d 1 (1st Cir. 2015);

⁷⁶ Davison v. Randall, 912 F.3d 666 (4th Cir. 2019), as amended on other grounds (Jan. 9, 2019).

⁷⁷ U.S. v. Raines, 362 U.S. 17, 80 S. Ct. 519, 4 L. Ed. 2d 524 (1960).

⁷⁸ Cooper v. Aaron, 358 U.S. 1, 78 S. Ct. 1401, 3 L. Ed. 2d 5, 3 L. Ed. 2d 19, 79 Ohio L. Abs. 452, 79 Ohio L. Abs. 462 (1958).

⁷⁹ Wolff v. McDonnell, 418 U.S. 539, 94 S. Ct. 2963, 41 L. Ed. 2d 935 (1974);

⁸⁰ Weimer v. Amen, 870 F.2d 1400 (8th Cir. 1989).

⁸¹ Bass v. Hoagland, 172 F.2d 205 (5th Cir. 1949)

legal principle" is the due process of law of this case, which governs the entire proceeding of this case.

Justice Hoffstadt united trial judges, declined due process of this case of "the Jury trial on the 5 claims, under labor code §98.2", circumvented judgment of due process, unlawfully used government power to reverse the legal status of Plaintiff and Defendant, tried this case according to the defendant's unlawful objectives, and knowingly treated the void independent contractor agreement as valid to defraud the court and to deny the equal protection of the laws. Judge Moreton conspired with Defendant to use CCP §631.8 judicial process that violated due process and had no jurisdiction, to render a void judgment to achieve the defendant's unlawful objectives and deprived appellant of \$28,268.01 in wages. Judge Linfield conspired with Defendant to defraud the court through fabricating judicial process of Civil Code §1717 contract action, made the void amended judgment granting Defendant attorneys' fees and costs, twice depriving the appellant of total \$100,128.33 in wage property and adding Lien to appellant's real property. In order to control the outcome of this case, Justice Hoffstadt unlawfully diverted this case to himself for try; personally fabricated different judicial processes in his opinions; practiced unmitigated fraud upon the court itself; unlawfully affirmed that Judge Moreton's void judgment was valid; unlawfully affirmed that Judge Linfield's void amended judgment and void orders were valid; and finally secured defendant to evade tens of millions dollars in government fines. Judges involved in this case are highly partial to Defendant, this case lacked impartial judges.

The phrase "under color of law" was intended to cover illegal activity of state officers.⁸²

An individual can invoke a right to constitutional

⁸² See Monroe v. Pape(1961) 365 U.S. 167, 81 S.Ct. 473, 484, 5 L.Ed.2d 492, 505,

protection when harmed.⁸³ Supreme court has the duty and responsibility to protect American citizen from depriving the property without due process of law.

There is no such avenue of escape from the paramount authority of the Federal Constitution. When there is a substantial showing that the exertion of state power has overridden private rights secured by that Constitution, the subject is necessarily one for judicial inquiry in an appropriate proceeding directed against the individuals charged with the transgression."⁸⁴

After an appeal to the highest state court, if the issue involves the Federal Constitution, plaintiff may appeal directly to the United States Supreme Court, since no further review is available to him or her within the state. The usual method of review of a lower court's determination of a constitutional issue is by appeal, and other forms of review are not ordinarily available where an appeal may be taken.⁸⁵

The enforcement of fundamental rights guaranteed by the constitution is generally against state action and a state actor,⁸⁶ meaning that the government is responsible,⁸⁷ not private parties.⁸⁸ So U.S. Supreme Court has the responsibility to enforce the 14th Amendment to the U.S. Constitution.

No higher duty rests upon this Court than to exert its full authority to prevent all violation of the principles of the Constitution."⁸⁹ The Supreme Court should not decline the

⁸³ Obergefell v. Hodges, 135 S. Ct. 2584, 192 L. Ed. 2d 609 (2015).

⁸⁴ Scheuer v. Rhodes, 416 U.S. 232,249

⁸⁵ Rescue Army v. Municipal Court of City of Los Angeles, 28 Cal. 2d 460, 171 P.2d 8 (1946).

⁸⁶ Manhattan Community Access Corporation v. Halleck, 139 S. Ct. 1921, 204 L. Ed. 2d 405 (2019);

⁸⁷ Peery v. Chicago Housing Authority, 791 F.3d 788 (7th Cir. 2015).

⁸⁸ Grogan v. Blooming Grove Volunteer Ambulance Corps, 768 F.3d 259 (2d Cir. 2014);

⁸⁹ Downs v. Bidwell, 182 U.S.244, 382, (1901)

exercise of its jurisdiction if this will result in the denial of important constitutional rights.⁹⁰ The petition for a writ of certiorari should be granted.

II. U.S. Supreme Court had inherent power to protect the sanctity of the judicial process—to combat those who would dare to practice unmitigated fraud upon the court itself.

“The spirit of the ‘fraud on the court’ rule is applicable whenever the integrity of the judicial process or functioning has been undercut—certainly in any instance, of misconduct by a party.”⁹¹ A clear example is the corruption of judicial officers.⁹² The cases in which it has been found that there was, or might have been, a “fraud upon the court,” for the most part, have been cases in which there was “the most egregious conduct involving a corruption of the judicial process itself.”⁹³ The concept clearly includes bribery of a judge⁹⁴ or the employment of counsel in order to bring an improper influence on the court.⁹⁵ In these circumstances, judges cannot perform in the usual manner their impartial task of adjudging the cases before them.⁹⁶

In the first appeal, by fabricating CCP 581c jury trial judicial process to defraud the court, Justice Hoffstadt affirmed in full and supported that Judge Moreton denied the constitutionally entitled jury trial

In the 2nd appeal, by fabricating contract action in labor

⁹⁰ *Rogers v. State of Alabama*, 192 U.S. 226, 24 S. Ct. 257, 48 L. Ed. 417 (1904).

⁹¹ *Greater Boston Television Corp. v. F.C.C.*, 463 F.2d 268, 278 (D.C. Cir. 1971).

⁹² *Wilkin v. Sunbeam Corp.*, 466 F.2d 714, 717 (10th Cir. 1972).

⁹³ *Corruption of judicial process Lockwood v. Bowles*, 46 F.R.D. 625, 632 (D. D.C. 1969).

⁹⁴ *Root Refining Co. v. Universal Oil Products Co.*, 169 F.2d 514, 525–535 (C.C.A. 3d Cir. 1948).

⁹⁵ *Id*

⁹⁶ *Fraud on the Court*, 11 Fed. Prac. & Proc. Civ. § 2870 (3d ed.)

commissioner to defraud the court, Justice Hoffstadt supported Judge Linfield and defendant's conspiracy to defraud the court through fabricating Civil Code §1717 contract action to make the void orders and the void amended judgment.

In the 3rd appeal, through his false statement, Justice Hoffstadt fabricated "Tarbell established its *prima facie* case," which is non-existent in the record of this case, to defraud the court, intentionally reversed the legal status of plaintiff and defendant, circumvented the judgment of due process, continued to use the non-existent Civil Code §1717 contract action to defraud the court.

If by fraud and misconduct one has gained an unfair advantage in proceedings at law, whereby the court has been made an instrument of injustice, equity will interfere to prevent him from reaping the benefit of the advantage thus unfairly gained.⁹⁷

If the judge himself is a party to the fraud, the ground for interference is especially strong and such a case it need not be shown that he intentionally did wrong.⁹⁸

"No fraud is more odious than an attempt to subvert the administration of justice."⁹⁹

All in all, we find it surpassingly difficult to conceive of a more appropriate use of a court's inherent power than to protect the sanctity of the judicial process— to combat those who would dare to practice unmitigated fraud upon the court itself. To deny the existence of such power would, we think, foster the very impotency against which the Hazel-Atlas Court specifically warned.¹⁰⁰

III. Justice Hoffstadt's opinion are not uniform with judgment of Supreme Court, other

⁹⁷ CONE v. HARRIS (1924) OK 1004 230 P. 721

⁹⁸ Cone v. Harris *supra* 723

⁹⁹ Hazel-Atlas Glass Co. v. Hartford-Empire Co., 322 U.S. 238, 251 (1944)

¹⁰⁰ Aoude v. Mobil Oil Corp., 892 F.2d 1115, 1119 (1st Cir. 1989)

**federal circuit court and other states
Supreme Court.**

A. Justice Hoffstadt made the void independent contractor agreement as valid, which is contrary to the judgment made in the Supreme Court and Arizona Supreme court.

Justice Hoffstadt, acted under a state law in a manner violative of the Federal Constitution to find the void independent contractor agreement as valid, violated equal protection clause of 14th Amendment to the U.S. Constitution because Justice Hoffstadt's judgment is conflict with Arizona Supreme court judgment and authority of this court.

In Hannay v. Eve, 7 U.S. (3 Cranch) 242 [2 L.Ed. 427], Mr. Chief Justice Marshall, speaking for the court, held that a contract, violative of war regulations when made, could not form the basis of an action brought after the repeal of those regulations.

"Void contract" is one which never had any legal existence or effect, and such contract cannot in any manner have life breathed into it." National Union Indem. Co. v. Bruce Bros, 44 Ariz. 454, 455 (Ariz. 1934) " "National Union Indem. Co. v. Bruce Bros 44 Ariz. 454 455 Ariz. 1934

B. Justice Hoffstadt affirmed in full the judgment founded on false evidences, contrary to Ninth Circuit's judgment that reversal is virtually automatic once it is established that false evidence was introduced.

In the court order publishing the evidences, it was found that the plaintiff's evidences were extensively tampered with by the defendant's attorney, resulted that the value of the evidences has been diminished, The defendant attorney committed felony prescribed by Penal code 132, which required to go to prison for one to three years. Justice Hoffstadt not only did not reverse the judgment, but also

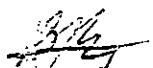
affirmed the judgment in full, deprived appellant wage property \$28,268.01 on the basis of the judgment founded on the false evidences, and determined tampering with evidence as "re-labeling" in his appeal opinion to secure impunity for defendant, which is contrary to Penal Code 132 and Ninth Circuit's judgment, that is, Ninth Circuit has declared that reversal is " ' ' virtually automatic " , " once it is established that false evidence was introduced.¹⁰¹

"To make the Constitution and laws of the United States uniform, and the same in every State, and to guard against evils which would inevitably arise from conflicting opinions between the courts of a State and of the United States, if there was no common arbiter authorized to decide between them.¹⁰² Fundamental rights guaranteed by the United States Constitution include freedom from the deprivation of life, liberty, or property without due process of law,"¹⁰³ THIS COURT SHOULD GRANT CERTIORARI "

CONCLUSION

This corrected petition for a writ of certiorari should be granted.

Respectfully submitted,



Bo Peng

Petitioner/Appellant

Date: 4/25/23

¹⁰¹ Hayes v. Brown (9th Cir. 2005) 399 F.3d 972, 978.

¹⁰² Ableman v. Booth, 62 U.S. 506, 518 (1858)

¹⁰³ 16A Am. Jur. 2d Constitutional Law § 412