## APPENDIX TABLE OF CONTENTS

### OPINIONS AND ORDERS



### CONSTITUTIONAL PROVISIONS, JUDICIAL RULES, AND STATUTORY PROVISIONS

## APPENDIX TABLE OF CONTENTS (Cont.)

### OTHER CASE DOCUMENTS

# ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT (APRIL 21, 2022)

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PERRY ADRON McCULLOUGH,

*Plaintiff-Appellant,*

v.

DAVID F. LEVI; ET AL.,

*Defendants-Appellees.*

No. 22-15393

D.C. No. 2:21-cv-00127-TLN-JDP
Eastern District of California, Sacramento

Before: PAEZ, RAWLINSON, and WATFORD, Circuit Judges.

This court has reviewed the notice of appeal filed March 14, 2022 in the above-referenced district court docket pursuant to the pre-filing review order entered in docket No. 98-80147. Because the appeal is so insubstantial as to not warrant further review, it shall not be permitted to proceed. *See In re Thomas*, 508 F.3d 1225 (9th Cir. 2007). Appeal No. 22-15393 is therefore dismissed.

This order, served on the district court for the Eastern District of California, shall constitute the mandate of this court.

No motions for reconsideration, rehearing, clarification, stay of the mandate, or any other submissions shall be filed or entertained.

DISMISSED.

**ORDER OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF CALIFORNIA ADOPTING MAGISTRATE FINDINGS AND RECOMMENDATIONS (FEBRUARY 14, 2022)**

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

PERRY ADRON MCCULLOUGH,

*Plaintiff,*

v.

DAVID F. LEVI, ET AL.,

*Defendants.*

No. 2:21-cv-00127-TLN-JDP

Before: Troy L. NUNLEY, United States District Judge.

On November 12, 2021, the magistrate judge filed findings and recommendations herein which were served on the parties and which contained notice that any objections to the findings and recommendations were to be filed within fourteen days. (ECF No. 12.) Plaintiff filed objections, which this Court considered. (ECF No. 15.)

The Court presumes that any findings of fact are correct. *See Orand v. United States*, 602 F.2d 207, 208

(9th Cir. 1979). The magistrate judge's conclusions of law are reviewed de novo. *See Robbins v. Carey*, 481 F.3d 1143, 1147 (9th Cir. 2007) ("[D]eterminations of law by the magistrate judge are reviewed *de novo* by both the district court and [the appellate] court . . . ."). Having reviewed the file, the Court finds the findings and recommendations to be supported by the record and by the proper analysis.

Accordingly, IT IS HEREBY ORDERED that:

1. The proposed Findings and Recommendations filed November 12, 2021, are adopted;
2. Defendants' motion to dismiss, (ECF No. 6), is GRANTED;
3. This case is dismissed with prejudice; and
4. The Clerk of Court is directed to close the case.

/s/ Troy L. Nunley
United States District Judge

Dated: February 14, 2022

**FINDINGS AND RECOMMENDATIONS THAT DEFENDANTS' MOTION TO DISMISS BE GRANTED (NOVEMBER 10, 2021)**

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

PERRY ADRON MCCULLOUGH,

*Plaintiff,*

v.

DAVID F. LEVI, ET AL.,

*Defendants.*

No. 2:21-cv-00127-TLN-JDP (PS)

ECF No. 6
OBJECTIONS DUE WITH IN 14 DAYS

Before: Jeremy D. PETERSON,
United States Magistrate Judge.

Plaintiff, Perry Adron McCullough, proceeding without counsel, seeks to challenge his criminal conviction under the theory that the law does not apply to him. ECF No. 1. Defendants move to dismiss, ECF No. 6, and plaintiff opposes that motion, ECF No. 8. I recommend that defendants' motion to dismiss, ECF No. 6, be granted because plaintiff's complaint is frivolous.

Plaintiff claims to be a sovereign non-citizen. ECF No. 1 at 7. He challenges his criminal conviction in *United States v. McCullough*, Case No. 2:89-cr-00251-WBS-1, under the theory that the court lacked jurisdiction over him. *Id.* at 8. He argues that he was not charged with a crime; instead, the government charged "PERRY ADRON MCCULLOUGH©, a DEBTOR and governmentally created Fiction existing for Commercial purposes only." *Id.* at 14. Plaintiff also claims that he never consented to the jurisdiction of the United States. *Id.* at 16. He alleges that courts "have no jurisdiction over a living man or woman" because they are sovereign. *Id.* at 27. He asserts that he "is a natural born, free, Living, breathing, flesh and blood human with sentient and moral existence, a real man upon the soil, a *juris et de jure,* also knows as a Secured Party and an inhabitant, not a United States Citizen." *Id.* at 11. And plaintiff claims that he is not subject to the law because he is a man. *See, e.g., id.* at 11, 27. For these reasons, plaintiff argues that the criminal judgment against him entered on November 5, 1990 is void.[1] *Id.* at 22. He seeks nearly eighteen billion dollars and reversal of his criminal conviction. *Id.* at 62-63.

"Dismissal under Rule 12(b)(6) is proper when the complaint . . . lacks a cognizable legal theory. . . . " *Somers v. Apple, Inc.*, 729 F.3d 953, 959 (9th Cir. 2013). Further, a complaint is frivolous when it is "based on an indisputably meritless legal theory." *Neitzke v. Williams*, 490 U.S. 319, 327 (1989). Claims that a person is sovereign and does not have to follow the law are frivolous. *See, e.g., United States v. Lorenzo*, 995 F.2d 1448, 1456 (9th Cir. 1993) (district court has criminal

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[1] Plaintiff does not seek habeas relief. *See* ECF No. 1 at 23.

jurisdiction over Hawaiian residents who claim that they are citizens of the Sovereign Kingdom of Hawaii and not of the United States); *Robinson v. United States*, 224 F. App'x 700, 701 (9th Cir. 2007) (same). Plaintiff cannot proceed on his theory that the district court lacked jurisdiction to charge him with a crime. Leave to amend would be futile because the complaint is frivolous.

Accordingly, I recommend that:

1. Defendants' motion to dismiss, ECF No. 6, be granted.
2. This case be dismissed with prejudice.
3. The Clerk be directed to close this case.

I submit the findings and recommendations to the district judge under 28 U.S.C. § 636(b)(1)(B) and Rule 304 of the Local Rules of Practice for the United States District Court, Eastern District of California. Within 14 days of the service of the findings and recommendations, the parties may file written objections to the findings and recommendations with the court and serve a copy on all parties. That document should be captioned "Objections to Magistrate Judge's Findings and Recommendations." The district judge will review the findings and recommendations under 28 U.S.C. § 636(b)(1)(C).

IT IS SO ORDERED.

/s/ Jeremy D. Peterson
United States Magistrate Judge

Dated: November 10, 2021

**ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT TO SHOW CAUSE (MARCH 4, 1998)**

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

In Re: PERRY ADRON MCCULLOUGH,

*Respondent.*

No. 98-80147

Before: Peter L. SHAW, Appellate Commissioner.

This court's records reflect that, since 1989, respondent Perry A. McCullough has initiated the following litigation in this court:

89-10660-affirmed;

90-10577-affirmed in part/reversed in part;

90-80199-petition denied;

90-80264-petition denied;

91-10204-dismissed in duplicative;

91-10581-affirmed in part/reversed in part;

91-80204-petition denied;

92-10141-dismissed for lack of jurisdiction;

92-10597-affirmed in part/reversed in part;

92-15350-reversed and remanded;

92-80403-petition denied;

93-16838-affirmed without argument;

94-15291-dismissed for failure to prosecute;

94-17120-affirmed without argument;

94-55783-affirmed without argument;

95-10122-dismissed for lack of jurisdiction;

95-10380-affirmed;

95-15230-vacated;

95-56394-voluntarily dismissed;

95-80342-petition denied;

96-10381-dismissed for lack of jurisdiction;

96-15114-summarily affirmed;

96-15909-affirmed without argument;

97-10035-appeal pending;

97-15167-dismissed for lack of jurisdiction;

97-17291-appeal pending; and

97-80214-petition denied.

Respondent's practice of burdening this court with meritless litigation justifies careful oversight of respondent's future litigation in this court.

The Supreme Court has recognized that "every paper filed with the Clerk of this Court, no matter how repetitious or frivolous, requires some portion of the institution's limited resources. A part of the (c)ourt's responsibility is to see that these resources are allocated in a way that promotes the interests of justice. The

continual processing of the [appellants] frivolous requests . . . does not promote that end." *In re McDonald*, 489 U.S. 180, 184 (1989). This court faces the same problems of limited resources in handling its large volume of appellate litigation.

Therefore, the respondent, Perry McCullough, is ordered to respond and show cause within 14 days of the entry of this order why this court should not enter the following pre-filing review order. *See Visser v. California*, 919 F.2d 113, 114 (9th Cir. 1990) ("This court has the inherent power to restrict a litigant's ability to commence abusive litigation.) If respondent fails to file a timely response to this order, the Clerk shall forthwith enter the pre-filing review order regardless of further filings by respondent.

Should the pre-filing review order be entered, respondent's failure to comply with the order shall result in any new appeal(s) he seeks to file being dismissed or not being filed and other sanctions being levied against respondent, such as monetary judgment or a judgment of contempt, as the court may deem appropriate.

**Pre-Filing Review Order**

(1) This pre-filing review order shall apply to all notices of appeal and petitions for extraordinary writs filed by respondent, in whole or in part, if he proceeds pro se. This order shall not apply to appeals or petitions in which respondent has counsel or where the district court has expressly certified in its order that the appeal or petition is not frivolous. Should respondent fail to comply with any of the provisions of this pre-filing review order, the Clerk Shall not file the document and shall return the document to respondent,

informing him of the deficiencies and granting him 14 days to correct the deficiency.

(2) Each notice of appeal or petition filed by respondent shall comply with requirements of the Ninth Circuit Rules and the Federal Rules of Civil and Appellate Procedure, especially Federal Rule of Civil Procedure 54 (b) and Federal Rule of Appellate Procedure 4(a), and shall contain the following sentence in capital letters "THIS NOTICE OF APPEAL/PETITION IS FILED IN SUBJECT TO PRE-FILING REVIEW ORDER No. 98-80147[n] in the body of the notice of appeal or petition.

(3) Each of respondent's future notices of appeal and petitions shall include a copy of the order(s) of the district court from which he is appealing, a short and plain statement of the facts or law on which he will rely for the purpose of the appeal, and a statement that he has not previously appealed this order or raised this issue in a prior appeal or petition.

(4) If respondent's future notices of appeal and petitions are submitted in compliance with this order, the Clerk shall lodge the notice of appeal or petition and accompanying documents. The Clerk shall not file the appeal or petition or establish a presumptive schedule for the certificate of record, briefing, or transcripts except upon further order of the court. *Accord Sassower v. Sansverie*, 885 F.2d 9, 10-11 (2d Cir. 1989) (clerk "to refuse to accept for filing any submissions from [appellant] unless he has first obtained leave of the court of file papers"). The court will review respondent's submissions and determine whether they merit further review and whether they should be filed.

(5) This pre-filing review order shall remain in effect until further order of this court. Respondent may, no earlier than April 1, 2000, petition the court to lift this pre-filing review order, setting fort the reasons why the order should be lifted.

/s/ Peter L. Shaw
General Order 6.3 (e)

## CONSTITUTIONAL PROVISIONS INVOLVED

**U.S. Constitution, Second Amendment:**

> A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

**U.S. Constitution, Fifth Amendment:**

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

**"Due Process" clause; U.S. Constitution, Fourteenth Amendment:**

> Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. 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.

**"Equal Protection" clause; U.S. Constitution Fourteenth Amendment:**

> Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. 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.

**Separation of Powers in the U.S. Constitution U.S. Constitution, Article I, Section 7:**

**Clause 1:**

"All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills."

**Clause 2:**

"Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States; If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved

by two thirds of that House, it shall become a Law. But in all such Cases the Votes of both Houses shall be determined by yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law."

**Clause 3:**

"Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill."

**United States Constitution; Article II, Section 1, Clause 1:**

The executive Power shall be vested in a President of the United States of America. He shall hold his Office during the Term of four Years, and, together with the Vice President, chosen for the same Term . . .

**United States Constitution; Article 2, Section 2, Clause 2:**

> He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

**United States Constitution; Article 3**

**Section 1**

> The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behavior, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

**Section 2**

> The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors,

other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State,—between Citizens of different States,—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects. In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make. The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

**Section 3**

Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.

The Congress shall have Power to declare the Punishment of Treason, but no Attainder of Treason shall work Corruption of Blood, or For-

feiture except during the Life of the Person attainted.

**Rule 52. Findings and Conclusions by the Court; Judgment on Partial Findings**

**(a) Findings and Conclusions.**

(1) In General. In an action tried on the facts without a jury or with an advisory jury, the court must find the facts specially and state its conclusions of law separately. The findings and conclusions may be stated on the record after the close of the evidence or may appear in an opinion or a memorandum of decision filed by the court. Judgment must be entered under Rule 58

(2) For an Interlocutory Injunction. In granting or refusing an interlocutory injunction, the court must similarly state the findings and conclusions that support its action.

(3) For a Motion. The court is not required to state findings or conclusions when ruling on a motion under Rule 12 or 56 or, unless these rules provide otherwise, on any other motion.

(4) Effect of a Master's Findings. A master's findings, to the extent adopted by the court, must be considered the court's findings.

(5) Questioning the Evidentiary Support. A party may later question the sufficiency of the evidence supporting the findings, whether or not the party requested findings, objected to

them, moved to amend them, or moved for partial findings.

(6) Setting Aside the Findings. Findings of fact, whether based on oral or other evidence, must not be set aside unless clearly erroneous, and the reviewing court must give due regard to the trial court's opportunity to judge the witnesses' credibility.

**(b) Amended or Additional Findings.**

On a party's motion filed no later than 28 days after the entry of judgment, the court may amend its findings—or make additional findings—and may amend the judgment accordingly. The motion may accompany a motion for a new trial under Rule 59.

**(c) Judgment on Partial Findings.**

If a party has been fully heard on an issue during a nonjury trial and the court finds against the party on that issue, the court may enter judgment against the party on a claim or defense that, under the controlling law, can be maintained or defeated only with a favorable finding on that issue. The court may, however, decline to render any judgment until the close of the evidence. A judgment on partial findings must be supported by findings of fact and conclusions of law as required by Rule 52(a).

**Rule E. Actions in Rem and Quasi in Rem: General Provisions**

(8) Restricted Appearance. An appearance to defend against an admiralty and maritime claim

with respect to which there has issued process in rem, or process of attachment and garnishment, may be expressly restricted to the defense of such claim, and in that event is not an appearance for the purposes of any other claim with respect to which such process is not available or has not been served.

## JUDICIAL RULES INVOLVED

### Federal Rules of Evidence

### Rule 801 Definitions That Apply to This Article; Exclusions from Hearsay

(a) Statement. A "statement" is (1) an oral or written assertion or (2) nonverbal conduct of a person, if it is intended by the person as an assertion.

(b) Declarant. A "declarant" is a person who makes a statement.

(c) Hearsay. "Hearsay" is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.

(d) Statements which are not hearsay. A statement is not hearsay if-

(1) Prior statement by witness. The declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement, and the statement is (A) inconsistent with the declarant's testimony, and was given under oath subject to the penalty of perjury at a trial, hearing, or other proceeding, or in a deposition, or (B) consistent with the declarant's testimony and is offered to rebut an express or implied charge against the declarant of recent fabrication or improper influence or motive, or (C) one of identification of a person made after perceiving the person; or

(2) Admission by party-opponent. The statement is offered against a party and is (A) the party's own statement, in either an individual or a representative capacity or (B) a statement of which the party has manifested an adoption or belief in its truth, or (C) a statement by a person authorized by the party to make a statement concerning the subject, or (D) a statement by the party's agent or servant concerning a matter within the scope of the agency or employment, made during the existence of the relationship, or (E) a statement by a coconspirator of a party during the course and in furtherance of the conspiracy. The contents of the statement shall be considered but are not alone sufficient to establish the declarant's authority under subdivision (C), the agency or employment relationship and scope thereof under subdivision (D), or the existence of the conspiracy and the participation therein of the declarant and the party against whom the statement is offered under subdivision (E).

**Rule 802 Hearsay Rule**

Hearsay is not admissible except as provided by these rules or by other rules prescribed by the Supreme Court pursuant to statutory authority or by Act of Congress.

**Rule 803 Exceptions to the Rule Against Hearsay**

(6) Records of a Regularly Conducted Activity. A record of an act, event, condition, opinion, or diagnosis if:(A) the record was made at or near

the time by—or from information transmitted by—someone with knowledge;

(B) the record was kept in the course of a regularly conducted activity of a business, organization, occupation, or calling, whether or not for profit;

(C) making the record was a regular practice of that activity;

(D) all these conditions are shown by the testimony of the custodian or another qualified witness, or by a certification that complies with Rule 902(11) or (12) or with a statute permitting certification; and

(E) the opponent does not show that the source of information or the method or circumstances of preparation indicate a lack of trustworthiness.

[ . . . ]

(8) Public Records. A record or statement of a public office if:

(A) it sets out:

(i) the office's activities;

(ii) a matter observed while under a legal duty to report, but not including, in a criminal case, a matter observed by law-enforcement personnel; or

(iii) in a civil case or against the government in a criminal case, factual findings from a legally authorized investigation; and

(B) the opponent does not show that the source of information or other circumstances indicate a lack of trustworthiness.

[ . . . ]

(14) Records of Documents That Affect an Interest in Property. The record of a document that purports to establish or affect an interest in property if:

(A) the record is admitted to prove the content of the original recorded document, along with its signing and its delivery by each person who purports to have signed it;

(B) the record is kept in a public office; and

(C) a statute authorizes recording documents of that kind in that office.

(15) Statements in Documents That Affect an Interest in Property. A statement contained in a document that purports to establish or affect an interest in property if the matter stated was relevant to the document's purpose—unless later dealings with the property are inconsistent with the truth of the statement or the purport of the document.

**Rule 804. Hearsay Exceptions; Declarant Unavailable**

**(a) Criteria for Being Unavailable.** A declarant is considered to be unavailable as a witness if the declarant:

(1) is exempted by ruling of the court on the ground of privilege from testifying concerning the subject matter of the declarant's statement; or

(2) persists in refusing to testify concerning the subject matter of the declarant's statement despite an order of the court to do so; or

(3) testifies to a lack of memory of the subject matter of the declarant's statement; or

(4) is unable to be present or to testify at the hearing because of death or then existing physical or mental illness or infirmity; or

(5) is absent from the hearing and the proponent of a statement has been unable to procure the declarant's attendance (or in the case of a hearsay exception under subdivision (b)(2), (3), or (4), the declarant's attendance or testimony) by process or other reasonable means.

A declarant is not unavailable as a witness if exemption, refusal, claim of lack of memory, inability, or absence is due to the procurement or wrongdoing of the proponent of a statement for the purpose of preventing the witness from attending or testifying.

**(b) Hearsay Exceptions.** The following are not excluded by the hearsay rule if the declarant is unavailable as a witness:

(1) Former Testimony. Testimony given as a witness at another hearing of the same or a different proceeding, or in a deposition taken in compliance with law in the course of the same or another proceeding, if the party against whom the testimony is now offered, or, in a civil action or proceeding, a predecessor in interest, had an opportunity

and similar motive to develop the testimony by direct, cross, or redirect examination.

(2) Statement Under Belief of Impending Death. In a prosecution for homicide or in a civil action or proceeding, a statement made by a declarant while believing that the declarant's death was imminent, concerning the cause or circumstances of what the declarant believed to be impending death.

(3) Statement Against Interest. A statement which was at the time of its making so far contrary to the declarant's pecuniary or proprietary interest, or so far tended to subject the declarant to civil or criminal liability, or to render invalid a claim by the declarant against another, that a reasonable person in the declarant's position would not have made the statement unless believing it to be true. A statement tending to expose the declarant to criminal liability and offered to exculpate the accused is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement.

(4) Statement of Personal or Family History.

(A) A statement concerning the declarant's own birth, adoption, marriage, divorce, legitimacy, relationship by blood, adoption, or marriage, ancestry, or other similar fact of personal or family history, even though declarant had no means of acquiring personal knowledge of the matter stated; or

(B) a statement concerning the foregoing matters, and death also, of another person, if the declarant was related to the other by blood, adoption, or marriage or was so intimately associated with the other's family as to be likely to have accurate information concerning the matter declared.

[(5) Other Exceptions.] [Transferred to Rule 807]

(6) Forfeiture by Wrongdoing. A statement offered against a party that has engaged or acquiesced in wrongdoing that was intended to, and did, procure the unavailability of the declarant as a witness.

**Rule 807. Residual Exception**

**a) In General.** Under the following conditions, a hearsay statement is not excluded by the rule against hearsay even if the statement is not admissible under a hearsay exception in Rule 803 or 804:

(1) the statement is supported by sufficient guarantees of trustworthiness—after considering the totality of circumstances under which it was made and evidence, if any, corroborating the statement; and

(2) it is more probative on the point for which it is offered than any other evidence that the proponent can obtain through reasonable efforts.

**(b) Notice.** The statement is admissible only if the proponent gives an adverse party reasonable

notice of the intent to offer the statement—including its substance and the declarant's name—so that the party has a fair opportunity to meet it. The notice must be provided in writing before the trial or hearing—or in any form during the trial or hearing if the court, for good cause, excuses a lack of earlier notice.

**Rule 901. Authenticating or Identifying Evidence**

(7) Evidence About Public Records. Evidence that:

(A) a document was recorded or filed in a public office as authorized by law; or

(B) a purported public record or statement is from the office where items of this kind are kept.

**Rule 902. Evidence That Is Self-Authenticating**

The following items of evidence are self-authenticating; they require no extrinsic evidence of authenticity in order to be admitted:

(1) Domestic Public Documents That Are Sealed and Signed. A document that bears:

(A) a seal purporting to be that of the United States; any state, district, commonwealth, territory, or insular possession of the United States; the former Panama Canal Zone; the Trust Territory of the Pacific Islands; a political subdivision of any of these entities; or a department, agency, or officer of any entity named above; and

(B) a signature purporting to be an execution or attestation.

[ . . . ]

(4) Certified Copies of Public Records. A copy of an official record—or a copy of a document that was recorded or filed in a public office as authorized by law—if the copy is certified as correct by:

(A) the custodian or another person authorized to make the certification; or

(B) a certificate that complies with Rule 902(1), (2), or (3), a federal statute, or a rule prescribed by the Supreme Court.

[ . . . ]

(11) Certified Domestic Records of a Regularly Conducted Activity. The original or a copy of a domestic record that meets the requirements of Rule 803(6) (A)-(C) as shown by a certification of the custodian or another qualified person that complies with a federal statute or a rule prescribed by the Supreme Court.

Before the trial or hearing, the proponent must give an adverse party reasonable written notice of the intent to offer the record—and must make the record and certification available for inspection—so that the party has a fair opportunity to challenge them.

**FRCP 26(b)(1)**

**Rule 26. Duty to Disclose; General Provisions Governing Discovery**

**(b) Discovery Scope and Limits.**

(1) Scope in General. Unless otherwise limited by court order, the scope of discovery is as follows: Parties may obtain discovery regarding any non-privileged matter that is relevant to any party's claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. Information within this scope of discovery need not be admissible in evidence to be discoverable.

**Blacks 1st Dictionary Evidence**

From Blacks 1st Evidence: " . . . the truth of which is submitted to investigation, . . . aside from mere argument; that is, everything that has a probative force intrinsically, and not merely as a deduction from, or combination of, original probative facts." [emphasis added]

frivolous: An answer or plea is called "frivolous" when it is clearly insufficient on its face, and does not controvert the material points of the opposite pleading, and is presumably interposed for mere purposes of delay or to embarrass the plaintiff

## LEGAL DEFINITIONS

### Blacks Law Dictionary 6th Edition

Blacks Law 6th Edition: "cognizable: Jurisdiction, or the exercise of jurisdiction, or power to try and determine causes; judicial examination of a matter, or power and authority to make it. Judicial notice or knowledge; the judicial hearing of a cause; acknowledgement; confession; recognition."

From Blacks 6th on Evidence: As a part of procedure "evidence" signifies those rules of law whereby it is determined what testimony should be admitted and what should be rejected in each case, and what is the weight to be given to the testimony admitted. *See Evidence rules*

Blacks Law 6th Edition: frivolous: "Of little weight or importance. . . . insufficient on its face and does not controvert the material points of the opposite side pleading, and is presumably interposed for mere purposes of delay or to embarrass the opponent. A claim or defense is frivolous if a proponent can present no rational argument based upon the evidence or law in support of that claim or defense." *Liebowitz v. Aimexco Inc.*, Colo. App, 701 P.2d 140, 142.

"The rule of law, sometimes called "the supremacy of law", provides that decisions should be made by the application of known principles or laws without the intervention of discretion in their application. . . . see also Stare decisis."–Blacks Law Dictionary 6th edition

**Black's Law Dictionary 8th Edition**

Black's Law Dictionary 8th Edition: "Merits: The elements or grounds of a claim or defense; the substantive considerations to be taken into account in deciding a case, as opposed to extraneous or technical points, esp. of procedure." [emphasis added]

**Blacks Law Dictionary 9th Edition**

Blacks Law 9th Edition: "cognizable: Capable of being known or recognized (for purposes of establishing standing, a plaintiff must allege a judicially cognizable injury). Capable of being judicially tried or examined before a designated tribunal; within the court's jurisdiction."

Blacks Law 9th Edition: frivolous: "Lacking a legal basis or legal merit: not serious; not reasonably purposeful." [emphasis added]

To demand proof of Jurisdiction is far from frivolous, and the purpose is obvious: to recoop sufficient monetary compensation in order to facilitate amble enjoyment in the rest of his life, with enough luxury and gratification so as to cure and heal the pain and suffering from being falsely imprisoned for 30 years.

The fact that Petitioner seeks $19 Billion dollars and has meticulously tallied the math for justifying that amount, clearly shows his intent to enjoy life with a purpose. Having a purpose to filing his Tort Claim, by definition and by simple logic, discounts frivolous intent. Petitioner obviously is not intending to delay as he is the moving party by filing his Tort Claim, and it has been the courts

who have delayed justice in this matter (albeit pandemic issues, some out of it's control). And the U.S.'s attorney has ignored all e-mails and phone calls from Petitioner to seek resolution of the matter. Petitioner is very serious about seeking redress in the form of monetary compensation and will testify to his seriousness under oath if asked or required to do so.

Petitioner is serious, he has a basis, and he has a purpose that drives him. He is not looking to delay (that is oxymoronic) or to embarrass anyone, instead he sincerely seeks justice and remedy.

Rule of law also defined: "The supremacy of regular as opposed to arbitrary power. The doctrine that general constitutional principles are the result of judicial decisions determining the rights of private individuals in the courts." Blacks Law Dictionary 8th edition and 9th edition

**Bouvier's Dictionary 6th Edition**

Bouviers 6th Edition: "substantive: Substance: evidence. That which is essential; it is used in opposition to form."

**Burton's Legal Thesaurus. William C. Burton. 2006**

From Burton's Legal Thesaurus. William C. Burton. 2006: "gibberish: unintelligible language"

**Collins English Dictionary (Complete and Unabridged 2012 Digital Edition)**

From Collins English Dictionary (Complete and Unabridged 2012 Digital Edition): "gibberish: rapid

chatter like that of monkeys; incomprehensible talk; nonsense."

**MOTION TO VACATE PRE-FILING ORDER, OR IN THE ALTERNATIVE LEAVE TO PROCEED ON APPEAL (APRIL 4, 2022)**

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT
(San Francisco)

PERRY ADRON MCCULLOUGH,
In Propria Persona,

*Appellant,*

v.

DAVID F. LEVI, and/or successor,
In his private and personal capacity,

GEORGE L. O'CONNELL, and/or successor,
In his private and personal capacity,

*Appellees.*

Case No. 22-15393

PLEASE TAKE NOTICE, that the Appellant, hereby and herewith Moves the Court to vacate the Pre-Filing Order issued in case #98-80147 on 02/13/1998 or in the alternative to grant LEAVE to proceed on appeal in the instant case for good cause shown below.

## ARGUMENT

The complaint filed in the united states district court for the eastern district of California, case 2:21-cv-00127 TLN-JDP, on January 22, 2021 challenges the district court's personal and subject-matter jurisdiction in case CR S 89-00251-ejg between June 9, 1989 and October 29, 2020. The seminal issue in jurisdiction, not the appellant's relationship to the government. The issue presented in the appellant's complaint is the failure of the united states to provide a jurisdictional authority for the court to proceed in the case of *United States of America v. Perry Adron McCullough*, CR S 89-00251-ejg

THE PLAINTIFF IN CASE # CR s 89-00251-EJG, THE UNITED STATES OF AMERICA, by and through David F. Levi, and George L. O'Connell, failed to establish on the record, or otherwise, the district court's constitutional and/or statutory authority to decide the matter.

The Cover Page of the Complaint in case #2:21-cv-00127-TLN-JDP clearly states its demand for proof of jurisdiction:

**Complaint of Federal Question Pursuant to 28 USC § 1331; 48 CFR CH.1, 53, 228**
**Demand for Proof of Personal Jurisdiction and Subject-Matter Jurisdiction**

The Complaint clearly restated the issue in question at page 14: The claim is that the UNITED STATES DISTRICT COURT EASTERN DISTRICT OF CALIFORNIA did not have personal jurisdiction and subject-matter jurisdiction to precede against Perry-Adron: McCullough from the beginning and

said claim can be granted a relief in which is outlined throughout this jurisdictional federal question.

The Appellant's argument that the district court lacked both subject-matter and personal jurisdiction in case CR S 89-00251-EJG begins at page 10 of the Complaint and continues to page 18. Therein, the Appellant cited to six Supreme Court opinions supporting the law that "it is the petitioner's right to challenge jurisdiction, and it is the plaintiff/prosecutor's duty to prove that it exists." Comp. p. 12, L 21-22. Those cases clearly state that the plaintiff must "put the facts of jurisdiction . . . on the record." Comp. p12-13, L 1, L14, L 17-18. *See Main v. Thiboutot*, 100 S. Ct. 2502 (1980); *Hagans v Lavine*, 415 U.S. 533; *Owen v Indiana*, 445 U.S. 622; *Butz v. Economou*, 438 U.S. 478; and, *Bivins v. Six Unknown Named Narcotics Agents*; 403 U.S. 388.

The Appellant also showed that "A court cannot confer jurisdiction where none exists and cannot make a void proceeding valid. It is clear and well established law that a void order can be challenged at any time." *Old Wayne Mutual Law Association v. McDonough*, 204 U.S. 8, (1907).

In the face of Appellant's 8 page argument citing numerous cases supporting his jurisdictional challenge, the defendants filed a MOTION TO DISMISS in which they attempted to demonize the plaintiff instead of addressing is jurisdictional challenge. The defendants claimed that "[t] he Court should dismiss the action [#2:21-cv-00127-TLN-JDP] because it consists of sovereign-citizen gibberish and fails to plead anything close to a cognizable claim under Fed. R. Civ. P. 8(a)." MTD 1.

While the defendants disingenuously claim that the complain is "sovereign citizen gibberish," they quote the plaintiffs claim at page 14 of the Complaint in their Motion to Dismiss, in contradiction to their claim that the Complaint if "frivolous."

The claim is that the UNITED STATES DISTRICT COURT EASTERN DISTRICT OF CALIFORNIA did not have personal jurisdiction To Procede (sic) against Perry-Adron McCullough® from the beginning and said Claim can be granted a relief in which is outlined throughout this jurisdictional Federal question." *See,* Mot. Dis. P.3. [emphasis added]

By quoting from the Complaint the defendants cannot genuinely claim that the issues is something other than what is clearly stated therein.

Nowhere in the defendants' MOTION TO DISMISS, do the defendants claim that jurisdiction was clearly established in the criminal trial 33 years ago. Nor do they point to an entry in the clerk's record citing the required jurisdictional statements without which the resulting judgment is void *ab initio.*

*Jurisdiction. A power constitutionally conferred upon a judge or magistrate, to take cognizance of, and decide causes according to law, and to carry his sentence into execution . . . An inferior court has no jurisdiction beyond what is expressly delegated. Courts of inferior jurisdiction must act within their jurisdiction, and so it must appear upon the record. Bouvier's Law Dictionary, Revised Edition (1856), Vol.1, p. 701-702.*

The UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF CALIFORNIA is an "inferior court." The United States Constitution, Article III, § 1., states *"The judicial Power of the United*

*States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish."* As an "inferior court" the UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF CALIFORNIA can exercise only its "expressly delegated" jurisdiction, and that it has failed to do.

Appellant Perry Adron McCullough asked the defendants to clearly state what "expressly delegated" statute or constitutional authority it provided to the district court in the case of UNITED STATES OF AMERICA v. PERRY ADRON MCCULLOUGH, CR S 89-00251-, but they have failed to do so even though several opportunities were provided to them. *See* Exhibits A—H of the Complaint.

A Private Administrative Procedure was performed prior to filing the Complaint in which the facts of the matter, including jurisdiction, were presented in the form of a negative averment. The defendants chose not to respond. By their failure to respond the facts of the matter were tacitly established *res judicata. Id.*

No statutory provision or constitutional provision for the district court to proceed appears on the Clerk's record of the criminal case, and the defendants' MOTION TO DISMISS in the civil case does not state any statutory or constitutional authority for the district court to prosecute PERRY ADRON MCCULLOUGH, or Perry Adron McCullough.

A reasonable question for anyone to ask after 26 years of imprisonment might be: "By what authority did the district court adjudge me guilty and sentence me to 189 years and 8 months of imprisonment?" Plaintiff Perry Adron McCullough did ask that question

numerous times in the case at issue. Nevertheless, that question remains unanswered after 33 years.

The magistrate's "FINDINGS AND RECOMMENDATIONS THAT DEFENDANTS' MOTION TO DISMISS BE GRANTED" does not cite any jurisdictional authority for the criminal prosecution in 1989-1990, nor does it address the plaintiff jurisdictional question.

The Magistrate merely accepted the defendants' allegation that Perry Adron McCullough's "theory [is] that the law does not apply to him." Findings at p.1. The Magistrate "recommed[ed] that the defendant's motion to dismiss be granted, with prejudice, because plaintiffs complaint is frivolous. *id.* And, "Plaintiff cannot proceed on his theory that the district court lacked jurisdiction to charge him with a crime." *Id.* at p.2.

The district court merely accepted the magistrate's FINDINGS AND RECOMMENDATIONS, without proper statement of facts and conclusions of law required by Rule 52(a) (6), F.R. Civ. P. because the question of proper jurisdiction was again ignored.

The defendants, the magistrate and the judge are all clearly wrong, because a jurisdictional challenge can never be frivolous. It is authority for the court to proceed in any matter, and it is the burden of the person bringing the action to prove the court's jurisdiction ON THE RECORD. *Hagans v. Lavine*, 415 U.S. 533. "Where jurisdiction does not appear on the face of the record of the case the defendant had a right to ask by what authority the court proceeded to prosecute him." *Id.* It is clear and well established in the case law cited

herein and in the Complaint that a void order can be challenged in any court and at any time.

Plaintiff/Appellant Perry Adron McCullough, based his challenge to the district court's jurisdiction on the plethora of Supreme Court cases cited in his Complaint stating that where jurisdiction for the court to proceed is missing from the record that the resulting judgment is void and must be vacated. The Complaint was dismissed in error, and an appeal to a higher court is the proper method to determine that issue. A 24 year old Pre-filing Order should not be used to prevent appeal of a void judgment.

## CONCLUSION

For all the reasons stated hereinabove the Ninth Circuit should vacate the pre-filing Order and allow the Appellant to proceed with his appeal, or in the alternative grant leave to proceed on appeal.

Respectfully Submitted,

/s/ Perry-Adron McCullough
In Propia Persona Trade Name
Owner, Holder-in Due Course,
Secured Party Creditor

Dated: March 31, 2022

**MEMORANDUM OF THE LAW AND OBJECTIONS TO "FINDINGS AND RECOMMENDATIONS THAT DEFENDANTS' MOTION TO DISMISS BE GRANTED" (NOVEMBER 30, 2021)**

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

PERRY ADRON MCCULLOUGH,®
In Propria Persona, General Delivery
C/O: Post Office Box 14442
Long Beach, California [90853A]

v.

DAVID F. LEVI, and/or successor,
In his private and personal capacity,
501 I Street, Suite 10-100
Sacramento, CA 95814

GEORGE L. O'CONNELL, and/or successor,
In his private and personal capacity,
501 I Street, Suite 10-100
Sacramento, CA 95814

Case No.: 2:21-CV-00127-TLN-JDP

## MEMORANDUM OF THE LAW

Plaintiff and Defendants do not disagree that his case rests on the Jurisdictional issues that are now before this court. "The law provides that once State and

Federal Jurisdiction has been challenged, it must be proven." *Main v. Thiboutot*, 100 S. Ct. 2502 (1980).

"Jurisdiction can be challenged at any time" and "Jurisdiction, once challenged, cannot be assumed and must be decided." *Basso v. Utah Power & Light Co.*, 495 F.2d 906, 910. "The burden shifts to the court to prove jurisdiction." *Rosemond v. Lambert*, 469 F.2d 416.

"A court has no jurisdiction to determine its own jurisdiction, for a basic issue in any case before a tribunal is its power to act, and a court must have the authority to decide that question in the first instance."–*Rescue Army v. Municipal Court of Los Angeles*, 171 P.2d 8; 331 U.S. 549, 91 L.Ed 1666, 67 S. Ct. 1409. Therefore, it is outside the jurisdiction of any court to use Rule 12(b) Failure to State a Claim to which relief can be granted, to dismiss this instant action.

Any " . . . departure by a court from those recognized and established requirements of law however close apparent adherence to mere form in method of procedure, which has the effect of depriving one of a constitutional right, is an excess of jurisdiction." *Wuest v. Wuest*, 127 P.2d 934, 937.

"Jurisdiction can be challenged at any time, even on final determination." *Basso v. Utah Power & Light Co.*, 495 2nd 906 at 910

"Once jurisdiction is challenged, the court cannot proceed when it dearly appears that the court lacks jurisdiction, the court has no authority to reach merits, but, rather, should dismiss the action." *Melo v. US*, 505 F.2d 1026.

"Indeed, no more than (Affidavits) is necessary to make the Prima Facie Case." *U.S. v. Kis*, 658 F.2d, 526, 536-337 (7th Cir. 1981). Cert Denied, 50 U.S. L.W. 2169; S. Ct. March 22, 1982. "Uncontested Affidavit taken as true in support of Summary Judgment." *Seitzer v. Seitzer*, 80 Cal. Rpm 688. "Uncontested Affidavit taken as true in Opposition of Summary Judgment" *Melorich Builders v. The Superior Court of San Bernardino County (Serbia)*, 207 Cal.Rptr. 47 (Cal.App.4 Dist. 1984).

"No instruction was asked, but, as we have said, the judge told the jury that they were to regard only the evidence admitted by him, not statements of counsel" *Holt v. United States*, (10/31/10) 218 U.S. 245, 54 L. Ed. 1021, 31 S. Ct. 2. "Where there are no depositions, admissions, or affidavits the court has no facts to rely on for a summary determination." *Trinsey v. Pagliaro*, D.C. Pa. 1964, 229 F. Supp. 647. Thus, this *Prima Facie* Case shall survive any Motion to Dismiss.

**OBJECTION TO MAGISTRATE'S FINDINGS AND RECOMMENDATIONS THAT DEFENDANTS' MOTION TO DISMISS BE GRANTED**

Plaintiff McCullough objects to "FINDINGS AND RECOMMENDATIONS THAT DEFENDANTS' MOTION TO DISMISS BE GRANTED" and in particular:

**Page 1: Line 18:**

"Plaintiff . . . seeks to challenge his criminal conviction under the theory that the law does not apply to him."

Defendants' and now the Magistrate also are apparently seek to warp reality and fool the onlooker, claiming that Plaintiff in this instant matter is a "sovereign citizen" who believes they are outside of all the laws–when actually nothing could be further from the truth and the Prosecutor/Defendants' in this instant matter are actually flying to get away with operating outside the law. This is a classic case of projection as the government agents operate outside of the law by refusing to prove jurisdiction when required to do so by a U.S. Supreme Court precedent, which is *stare decisis*. Yet the Prosecutor's and with help from the Magistrate, they are now incorrectly accusing the injured party's allegations of being frivolous, in an effort to stop or delay justice, and to save $18 Billion dollar payout to the injured victim here. Therefore their statements are highly prejudice and hopefully this court will not illegally rubber-stamp the Prosecutors arguments, which are colored in self-interest.

The government, when sued, uses this frivolous tactic presumably quite often, and although is oftentimes successful. However, "the devil is in the details" as the famous saying goes. Every case MUST be treated as unique on it's merits, especially if the circumstances are different than the other cases cited. To throw out all cases of people suing the government without reviewing the substance and claims that are different, would be an incorrect application of the law in the U.S. justice system.

Actually, Plaintiff-McCullough's position, supported by the record of this court with the properly admitted evidence, none of which has been stricken, none of which has been objected to, and build a prima

face case supporting McCullough's claims; is that the Defendants' in this case are the one's who are seeking to bypass being held accountable to the law.

This law known as the "Accardi Doctrine" which has been thoroughly plead in this Plaintiff's pleadings on this court's record, IS THE LAW AS UPHELD BY THE U.S. SUPREME COURT. Plaintiff has ignored it's obligation to comply with a precedent in due process known as the "Accardi Doctrine". *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954), *United States v. Heffner*, 420 F.2d 809; et al. (*see* Jurisdictional Complaint for longer list of Citations and Authorities). This is the greatest testament of the legal system to assure continuity, consistency and fairness. The judicial system must respect the past and to adhere to these precedents and not unsettle things which are established. (*Ballard County v. Kentucky County Debt Commission*, 290 KY 770, 162 S.W.2d 771, 773). Plaintiff MUST COMPLY WITH THIS LAW yet is unlawfully refusing to do so. Prosecutor/Magistrate's arguments instead accused McCullough of not following "the law" yet they cite no specific law that he is allegedly bound to and not complied with?

Page 201 U.S. 44 "There is a clear distinction between an individual and a corporation, and the latter, being a creature of the State, has not the constitutional right to refuse to submit its books and papers for an examination at the suit of the State;" Page 201 U.S. 74 "The individual may stand upon his constitutional rights as a citizen. He is entitled to carry on his private business in his own way. His power to contract is unlimited. He owes no duty to the State or to his neighbors to divulge his business, or to

open his doors to an investigation, so far as it may tend to criminate him. He owes no such duty to the State, since he receives nothing therefrom beyond the protection of his life and property. His rights are such as existed by the law of the land long antecedent to the organization of the State, and can only be taken from him by due process of law, and in accordance with the Constitution. Among his rights are a refusal to incriminate himself and the immunity of himself and his property from arrest or seizure except under a warrant of the law. He owes nothing to the public so long as he does not trespass upon their rights." *Hale v. Henkel*, 201 U.S. 43 at 47 (1905).

It is an undisputed fact that all law, whatsoever, originates from an original contract. There has been no contracts admitted into evidence that make the Plaintiff in this instant matter a part of a private corporation known as "UNITED STATES OF AMERICA" and there is no nexus that has been presented or proven by the Prosecutor. The Plaintiff in this matter agrees that any valid bona fide contracts that he is a party to, he is bound by those laws. But, he maintains that he has no contract with the Prosecutor, the Prosecutor's office, or the private corporation known as UNITED STATES OF AMERICA, nor does he live in the UNITED STATES OF AMERICA, nor does he receive any benefits or privileges therefrom.

**Page 1; Line 22-23:**

"<u>. . . under the theory that the court lacked jurisdiction over him</u>."

Jurisdiction has not been proven. Therefore, it is no longer a "theory" but in fact is the current record of

the case, as supported by the record of exhibits as admitted evidence.

**Page 1; Line 26-27:**

"He alleges that courts 'have no jurisdiction over a living man or woman" because they are sovereign."

RE: Page 21 of Plaintiff's complaint. See context, in which is summarized as follows: private courts for private corporations without a proper nexus and valid contract binding the party; in contrast with proper Constitutionally-authorized courts (Article III courts), which do have jurisdiction over living men and women. Plaintiff admits that PROPER courts do have jurisdiction over everybody, yet certain courts only have a limited jurisdiction. If a court is not authorized in law to do a certain thing or to prosecute a certain party, then they are not legally allowed to. Plaintiff in this instant matter has pushed the record to try to get the Prosecutor in his original criminal conviction to present, admit, and prove jurisdiction—which is a matter of right and his due process right, even after serving his entire sentence. So far the record shows that the Prosecutors' who are Defendants in this matter have gone silent on proving jurisdiction. No evidence has been admitted by the Prosecutors, therefore, this court has no discretion but to treat this matter as if jurisdiction was absent. Even if jurisdiction was there and can be proven, the Prosecutors have willfully chose to be in default of Plaintiff's Complaint, and therefore they are choosing to stipulate to Plaintiff's claim.

**Page 2; Line 2-3:**

"And plaintiff claims that he is not subject to the law because he is a man. [sic]"

The above is NOT a direct quote from Plaintiff's Complaint. Magistrate's statement is inaccurate and not a proper representation of Plaintiff's claims. Magistrate's vague phrase here, "the law" has never been properly defined.

To clarify, Plaintiff does claim that he is not subject to the jurisdiction of the particular Defendants' and the agency or corporation they allegedly represent(ed) (UNITED STATES OF AMERICA) in this particular matter because—(1) he is a living, competent, adult man with no nexus to the UNITED STATES OF AMERICA Corporation, and he is not a surety for any entity of the UNTIED STATES OF AMERICA corporation, that should have been prosecuted in a proper Constitutionally-authorized Article III court instead; and (2) the Defendant's in this matter, whom were Prosecutors in the original criminal action at the time, have not proven all of the elements of jurisdiction over McCullough when due process rights were exercised and demanded to do so. The U.S. Supreme Court is clear on this RE: "The Accardi Doctrine".

Thus, the Magistrate's over-simplification is a gross perversion of the instant Plaintiff's actual claims as supported by his Complaint and the record of this court. The Magistrate's twisting of words is a clever tactic to play the Prosecutor's bidding and to protect the status quo. A good judge should see through it and follow the facts and the law(s) only supported by this court's record.

*In RE: "cognizable" / "frivolous":*

McCullough previously filed and docketed "OBJECTION TO DEFENDANTS' MOTION TO DIS-

MISS" is fully herein reincorporated and re-alleged by this reference.

*In RE: United States v. Lorenzo:*

In United States vs. Lorenzo, "district court has criminal jurisdiction over Hawaiian residents who claim that they are citizens of Sovereign Kingdom of Hawaii and not of the United States". The Magistrate has incorrectly compared this case as the facts and circumstances are no where near the same in this McCullough case. Although due to timing of only having 14 days to respond herein, McCullough is not immediately able to study and outline and compare ALL OF the facts of this case and that case, there are significant differences that make these two cases not exactly the same. A prudent judge would research this on their own to see if the Magistrate's comparison is incorrect, which Plaintiff believes that it is. For instance, the obvious differences between the Defendants in the Lorenzo case and McCullough are as follows: [See Following Page]

| **McCullough:** | **Defendants in Lorezno Case:** |
|---|---|
| Is Holder-in-Due-Course [UCC 3-302(a)(2)], and said status is recognized by admitted evidence from the Secretary of State who reviewed, stamped filed, and approved his claim of status over the original and all other court actions and their Cause | Is NOT a bona fide Holder-in-Due-Course, nor did Lorenzo; et al; even state or claim they were Holder-in-Due-Course |

| | |
|---|---|
| numbers or Case numbers; and over all matters concerning his DEBTOR tradename | |
| No Nexus of U.S. Jurisdiction has been stated or proven by any evidence of any party in the case, despite many opportunities to do so | Created a Nexus of U.S. Jurisdiction by: at minimum, filling out IRS 1099-MISC forms (which are only for U.S. Persons, U.S. Citizens or Residents, or those whose primary conduct is connected to a trade or business in the United States); therefore, acquiring U.S. jurisdiction. Also, Lorenzo Defendants' all fraudulently tried to claim unwarranted millions of dollars in fake tax refund credits which is a clear case of filing false claims against the United States, thus acquiring U.S. jurisdiction as a result |
| No counsel or standby counsel for this instant case; and has discharged counsel for all causes/ cases in his entire life | Accepted standby counsel from the BAR British Accredited Registry, a benefit from the U.S. Court, thus |

| | |
|---|---|
| | acquiring U.S. jurisdiction as a result |
| Accepts no federal benefits whatsoever | Was asking for a refund check from IRS, therefore, is clearly in a contract with the IRS and admission of having one's conduct and/or presence "within the United States", therefore U.S. gained jurisdiction for at least two reasons: (1) by asking for a federal benefit or privilege in the form of money; and (2) by admitting was within U.S. territory and boundaries when said Income/business conduct was occurring. |
| Has No Contracts, Benefits, or Privileges with UNITED STATES OF AMERICA or any subdivision | Some or All Defendants have other Contracts, Benefits, Privileges with the UNITED STATES OF AMERICA, thus acquiring U.S. jurisdiction by result |

As is outlined in the chart above, there are FIVE reasons why the Lorenzo Defendants' claim to sovereignty from the UNITED STATES OF AMERICA was incorrect and not a bona fide claim. It is alleged that McCullough's status is correct and is a bona fide claim of his status, as supported by all the record of evidence

admitted into this case. In this instant matter, the Prosecutors'/Defendants' have been given numerous opportunities to state it's allegations for having Jurisdiction over McCullough. Not even one reason has been uttered, stated, or presented. If jurisdiction is so easy to prove in this instant case, why not write it out on paper and enter it into this courts record?

It is also alleged that the Robinson vs. United States case also lacks many, most, or all of the same similarities, and the Judge would be in error to skim over and not carefully compare the pertinent differences. These two cited cases are not the same facts and circumstances as for this McCullough case.

These differences make all the difference in the world, as the court was likely right in the Lorenzo case to treat a non-sovereign as a non-sovereign despite their incorrect claim that they were of sovereign status. This court could schedule a 201D hearing to make the Defendants' come forward and present any evidence that they are Holder-in-due-course of any contracts or documents between any agent of the UNITED STATES OF AMERICA and McCullough. The record of this case shows that McCullough is both the Holder-in-Due-Course over himself (the living man), and over his corporate entity name PERRY ADRON MCCULLOUGH©.

**In Conclusion:**

McCullough hereby requests that he be entitled to his day in court, and that simply logic shall prevail that being—if Jurisdiction is so easy to prove, then come now forthwith with evidence and then shouldn't the Government easily win this case? The facts and circumstances alleged in the McCullough case is

totally different than in both *United States vs. Lorezno* and *Robinson v. United States [see the chart above].* It would not be an appropriate, equal, or fair application of the law, if the Judge in this case made a decision based upon a prior "sovereign" case, when the pertinent facts in this case are totally different. In fact, unlike the Defendants in the Lorenzo, et al; and Robinson cases, McCullough fully and clearly outlines and alleges he has done everything absolutely correctly to be sovereign in relation to the UNITED STATES OF AMERICA, whom he owes nothing and has no contracts or benefits with, AND this is supported by his admitted evidence in the Exhibits in this case (Official Filed Secretary of State Filings, etc). With that said, it is not the accused's responsibility to unfamiliarity with pleading requirements" (*Spencer v Doe; 1998; Green v Bransou 1997*; *Boag v McDougall*; 1998; *Haines v Kerner*, 1972)

**INTERNATIONAL HUMAN RIGHTS LAW**

The Universal Declaration of Rights drafted in the year 1948 gave universal recognition to these rights including the right of 'access to justice' in the following manner:

Art.7: All are equal before the law and are entitled without any discrimination to equal protection of the law.

Art 8: Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the Constitution or by law.

Art.10: Everyone is entitled in full equality to a fair and public hearing by an independent

> and impartial tribunal, in the determination of his rights and obligations, and of any criminal charge against him.

McCullough hereby requests that he be entitled to his day in court, and that simply logic shall prevail that being—if Jurisdiction is so easy to prove, then come now forthwith with evidence and then shouldn't the Government easily win this case in Summary Judgment?

Plaintiff pleads that to Dismiss this action clearly full of prima facie evidence would be an incorrect application of the law, not in the interests of justice, and a violation of McCullough's rights he is entitled to.

Executed by own hand this 22nd day of November, 2021.

/s/ Perry-Adron McCullough
In Propia Persona Trade Name
Owner, Holder-in Due Course,
Secured Party Creditor
Perry-Adron: McCullough

**PLAINTIFF MCCULLOUGH'S OBJECTION TO MOTION TO DISMISS (NOVEMBER 30, 2021)**

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

PERRY ADRON MCCULLOUGH,®
In Propria Persona, General Delivery
C/O: Post Office Box 14442
Long Beach, California [90853A]

v.

DAVID F. LEVI, and/or successor,
In his private and personal capacity,
501 I Street, Suite 10-100
Sacramento, CA 95814

GEORGE L. O'CONNELL, and/or successor,
In his private and personal capacity,
501 I Street, Suite 10-100
Sacramento, CA 95814

Case No.: 2:21-CV-00127-TLN-JDP

Plaintiff McCullough objects to the Motion to Dismiss. According to both the Defendant's Motion to Dismiss and Memorandum of Points and Authorities in Support:

> "In a nutshell, McCullough claims that the district court in his criminal case lacked personal and subject matter jurisdiction . . ."

Plaintiff and Defendants therefore do not disagree that his case rests on the Jurisdictional issues that are now before this court. "Once jurisdiction is challenged, the court cannot proceed when it clearly appears that the court lacks jurisdiction, the court has no authority to reach merits, but, rather, should dismiss the action." *Melo v. US*, 505 F.2d 1026. "The law provides that once State and Federal Jurisdiction has been challenged, it must be proven." *Main v. Thiboutot*, 100 S. Ct. 2502 (1980). "Jurisdiction can be challenged at any time" and "Jurisdiction, once challenged, cannot be assumed and must be decided." *Basso v. Utah Power & Light Co.*, 495 F 2d 906, 910. "The burden shifts to the court to prove jurisdiction." *Rosemond v. Lambert*, 469 F.2d 416.

"A court has no jurisdiction to determine its own jurisdiction, for a basic issue in any case before a tribunal is its power to act, and a court must have the authority to decide that question in the first instance."— *Rescue Army v. Municipal Court of Los Angeles*, 171 P2d 8; 331 U.S. 549, 91 L.Ed 1666, 67 S. Ct. 1409.

Any " . . . departure by a court from those recognized and established requirements of law however close apparent adherence to mere form in method of procedure, which has the effect of depriving one of a constitutional right, is an excess of jurisdiction." *Wuest v. Wuest*, 127 P.2d 934, 937.

"Jurisdiction can be challenged at any time, even on final determination." *Basso v. Utah Power & Light Co.*, 495 2nd 906 at 910 [emphasis added]

Plaintiff objects to the parts of Defendant's Points and alleged Authorities in support of a Motion to Dismiss as: a) weak and riddled mostly with name-

calling; b) off-topic; and c) a distraction or detraction from the central part of McCullough's Complaint, and d) entirely consists of unsworn attorney statements.

Every man is entitled to "have his day in court" which is defined as "to get an opportunity to give your opinion on something or to explain your actions after they have been criticized". The cornerstone of U.S. Jurisprudence, U.S. court procedure, and the American Exceptionalism Experiment is the personal rights of the accused, due process, equal protection, and the other personal rights which has since been adopted by much of the civilized world (and thank God for that). McCullough's right to have this case heard is supported by the First Amendment of the U.S. Constitution: "the right of the people . . . to petition the Government for a redress of grievances". Right of access to the Courts is a fundamental right rather than a specific right set forth in the Constitution. It is a protected right under the combination of the First, Fifth, and Fourteenth Amendments. A denial of this instant petitioner's right to the Court's that everybody else is entitled to would be a denial of McCullough's equal protection rights under the U.S. Constitution.

It is no surprise that the Prosecutor's response by and through their attorney, and in an attempt to retain their Corporate Veil and Qualified Immunity from the Government, is clearly an entire criticism of McCullough's Complaint. Dismissal without allowing McCullough, a non-violent American Citizen and former prisoner for almost 30+ years of the unpopular *War on Drugs,* would be a violation of his due process and equal protection rights and his right to petition the government for redress of grievances.

If the Prosecutor and Government can back their assumption that they had Jurisdiction over McCullough as a living man, then wouldn't it accomplish more to prove their point to the world by allowing Discovery and producing the evidence of such. So far the only admissible evidence shows the contrary as McCullough has attached with his Complaint Numerous Exhibits of Official State Records, Official Court Records, and sworn Affidavits under oath and penalty of perjury that the Prosecutors agreed to and never rebutted (all complying with the mandatory Federal Rules of Evidence). No evidence to the contrary exists on the record.

The Maxim of Law that "an Unrebutted Affidavit is Truth" is acknowledged and codified in the Court's rules of procedure. Said documents without rebuttal under oath by a competent witness or with contradictory documents, leave McCullough's exhibits as "Undisputed Material Facts" for purposes of Summary Judgment, Jury Trial, and any/all Appellate Review. Non-Rebutted Affidavits are *Prima Facie Evidence* in the Case. "Indeed, no more than (Affidavits) is necessary to make the Prima Facie Case." *U.S. v. Kis*, 658 F.2d, 526, 536-337 (7th Cir. 1981). Cert Denied, 50 U.S. L.W. 2169; S. Ct. March 22, 1982. "Uncontested Affidavit taken as true in support of Summary Judgment." *Seitzer v. Seitzer*, 80 Cal. Rptr. 688. "Uncontested Affidavit taken as true in Opposition of Summary Judgment." *Melorich Builders v. The Superior Court of San Bernardino County (Serbia)* 207 Cal.Rptr. 47 (Cal.App.4 Dist 1984).

"No instruction was asked, but, as we have said, the judge told the jury that they were to regard only the evidence admitted by him, not statements of counsel" *Holt v. United States*, (10/31/10) 218 U.S. 245,

54 L.Ed. 1021, 31 S. Ct. 2. "Where there are no depositions, admissions, or affidavits the court has no facts to rely on for a summary determination." *Trinsey v. Pagliaro*, D.C. Pa. 1964, 229 F. Supp. 647. Thus, this *Prima Facie* Case shall survive any Motion to Dismiss.

**On "Sovereign-Citizen" name calling**

Nowhere in McCullough's Complaint does he claim or use the phrase "sovereign-citizen", nor identify as such; however no definition of what this term means has been agreed upon. Instead of guilt-by-association name-calling, Plaintiff will strenuously defer back to the dozens of laws and issues laid out on the face of his Complaint as well as his unrebutted Affidavits on Public record, filed with the Secretary of State, and personally served upon the Prosecutors (*see service of Affidavit of Negative Averment*). Hopefully this honorable court will see through the Prosecutor's strawman argument of association with a demonized group or theory as it's choice of tactic here. For if the Prosecutor can easily prove Jurisdiction officially with any admitted discovery documents, perhaps it will suffice Plaintiff who can then voluntarily dismiss his complaint and move on with his life to other matters. In Contrary the Prosecutor's lack of any producing any evidence is suspicious and telling.

It is entirely predictable that the Government would stated that Plaintiff's claim "lacks merit". This honorable court shall hopefully be unbiased and allow McCullough his day in court. Prosecutor's entire argument for dismissal without grant to leave to amend, is NOT supported by any produced EVIDENCE, and is only based upon weak name-calling ["non-sensical, "naive", "frivolous", "utterly meritless", "irrational",

"unintelligible", "utterly meritless] and association with ("sovereign citizen theories"] a demonized group.

**On Cognizability**

"A cognizable claim or controversy is one that meets the basic criteria of viability for being tried or adjudicated before a particular tribunal. The term means that the claim or controversy is within the power or jurisdiction of a particular court to adjudicate."

The Prosecutor has stated: "Moreover, McCullough cannot state a cognizable claim to challenge his criminal judgment in this civil proceeding." This is simply not true.

McCullough's claim is most certainly viable and capable of being adjudicated and is within the power of this court to adjudicate. There is only two outcomes, either the Prosecutor through their attorney's produce one or more certified/admissible document or witness to attest under oath that Jurisdiction over McCullough in his conviction case did exist; or they do not. Since we cannot predict the future, it's about a 50/50 chance of outcome one way vs. the other. This court does have the power to issue a Judgment for Relief based upon the numerous pages of citations, statutes, laws, namely the following:

> 28 USC § 1331 ; 48 CFR CH.1, 53, 228; Title 18 § 1002; Title 18 § 1018; Title 18 § 241; Title 18 § 242; Title 18 § 872; Title 18 § 1621; Title 18 § 1621; Title 18 § 1622; Title 18 § 1622; Title 18 § 1951; Title 18 § 2386; Title 18 § 1201; Title 18 § 1581 (a); Title 18 § 1581 (b); Title 18 § 1583 (a) (1); Title 18 § 1583 (a) (2); Title 18 § 1589 (a); Title 18 § 1589 (b);

Title 18 § 287; Title 42 § 1985 (3) ; The Supremacy Clause of the U.S. Constitution; The Separation of Powers Doctrine of the U.S. Constitution; *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954), *United States v. Heffner*, 420 F.2d 809; et al. (*see Jurisdictional Complaint for longer list of Citations and Authorities*)

A party seeking to vacate a void judgment could file a motion for relief "at any time subsequent to its rendition" and that a void judgment could be vacated at any time and cited *Sweeney v. Tritsch* as authority for this proposition. The rationale for being able to vacate a void judgment. . . . As a nullity, a void judgment has no effect and is subject to attack at any time.

"The law provides that once State and Federal Jurisdiction has been challenged, it must be proven." *Main v. Thiboutot*, 100 S. Ct. 2502 (1980).

"While voidable orders are readily appealable and must be attacked directly, void order may be circumvented by collateral attack or remedied by mandamus." *Sanchez v. Hester*, 911 S.W.2d. 173, (Tex. App.-Corpus Christi 1995).

Void judgment under federal law is one in which rendering court lacked subject matter jurisdiction over dispute or jurisdiction over parties, or acted in manner inconsistent with due process of law or otherwise acted unconstitutional in entering judgment. U.S.C.A. Const. Amend. 5, *Hays v. Louisiana Dock Co.*, 452 N.E.2d 1383 (III App. 5 Dist. 1983). [Emphasis added].

"Where jurisdiction is denied and squarely challenged, jurisdiction cannot be assumed to exist 'sub

silentio', but, must be proven."—*Hagan v. Lavine*, 415 U.S. 528, 533, n.5; *Monell v. N.Y.*, 436 U.S. 633.

"Mere 'good faith' assertions of power and authority (jurisdiction) have been abolished."—*Owen v. Indiana*, 445 U.S. 622; *Butz v. Economou*, 438 U.S. 478; *Bivens v. 6 Unknown Agents*, 403 U.S. 388.

"A court cannot confer jurisdiction where none exists and cannot make a void proceeding valid. It is clear and well established law that a void order can be challenged in any court" *Old Wayne Mut L. Assoc. v. McDonough*, 204 U.S. 8,27 S. Ct. 236 (1907).

The Prosecutor's Attorney states that:

> "Finally, McCullough fails to state a cognizable claim for civil damages because his criminal case has not been terminated in his favor."

In Plaintiff's instant collateral attack action, he is dually demanding Jurisdiction be placed on the official record and proven, and in the event none is produced, consequently/simultaneously seeking damages for his injuries. Prosecutor has not shown any law or precedent that a claimant is forbidden by some law from doing both. Thousands of lawsuits are filed every week across America and many or most of them have more than one action, request, or claim within them. There being no evidence to the contrary, we'll assume no rule or law is being broken here.

It is entirely predictable that the Government would stated that Plaintiff's claim "lacks merit". This honorable court shall hopefully be unbiased and allow McCullough his day in court. Prosecutor's entire argument for dismissal without grant to leave to amend, is

based upon name-calling ["non-sensical", "naive", "frivolous", "utterly meritless", "irrational", "unintelligible", "utterly meritless"] and false association with ["sovereign citizen theories"] a demonized group.

"Fraud vitiates the most solemn contracts, documents, and even judgments." *U.S. v. Throckmorton*, 98 U.S. 61. documents"; ("Constitutions")

Therefore, it is outside of any court discretion to lay claim as to any Rule 12(b) "Failure to State a Claim to Which Relief Can be Granted" decision as said decision would, in fact, be outside the Jurisdiction of any court.

**On Corporate Veil and Immunity**

For the Prosecutor by and through the UNITED STATES ATTORNEY'S in this matter have not made a statement trying to rebut any of the Loss/Waiver of Immunity Points in Plaintiff's Complaint, let it be known for the record that they have averred and admitted to this claim being filed against their personal and professional capacity and without a Corporate Veil or Qualified Immunity. (*See pages 22 through 33 of Plaintiff's Jurisdictional Complaint.*)

"Officers of the court have no immunity, when violating a constitutional right, from liability, for they are deemed to know the law."—*Owens v. City of Independence*, 448 U.S. 1, 100 S. Ct. 2502; *Hafer v. Melo*, 502 U.S. 21

"Qualified immunity defense fails if public officer violates clearly established right because a reasonably competent official should know the law governing his conduct" *Jones v. Counce* 7-F.3d-1359-8th Cir 1993; *Benitez v Wolff*, 985 F.3d 662 2nd Cir. 1993.

**On Creation of the Corporate Entity "PERRY ADRON MCCULLOUGH"**

Plaintiff contests and challenges the Prosecutor's statement that

> "McCullough was not charged or convicted as a corporate or fictional entity–his "corporate fiction" did even exist until December 31, 2015."

Plaintiff files this petition exactly to prove otherwise and discovery/request for production of documents will either prove or disprove this. McCullough's Corporate Fiction was created on the day of or around the days of his Birth, via a Birth Registration and Social Security Registration done under fraud, omission, lies, and deceit; creating a government controlled trust/entity that is the true party officially being "Charged" in the criminal action. Instead of using the word "Accused" the Prosecutor's and Courts "Charge" the Government-created entity in a commercial "for Profit" venture. The Prosecutor has already admitted this by not responding to the Public Records, Court Filings (Affidavit of Notice) and Personal Service (ASNA); in some cases for more than Five Years and counting. Further Discovery will compel Prosecutor to testify about this money-making racket/scheme. Use of McCullough's name to make money or profit is fraud through theft, concealment, deception, and a violation of his Fiduciary duty as a public official. "Fraud vitiates the most solemn contracts, documents, and even judgments." *U.S. vs. Throckmorton*, 98 U.S. 61. documents"; ("Constitutions")

**On *Res Judicata***

Prosecutor also states, "The criminal judgment is *res judicata* and the claims to set it aside must be dismissed." This is not true for many reasons namely that Doctrines of *res judicata* do not apply to new issues being raised like those in this Complaint (fraud of the Birth Certificate, the fraudulent issuing of Bid/Performance/Payment Bonds by the Prosecutor, etc). Plaintiff's issues on Jurisdiction, thoroughly and overwhelmingly pled in this action, are also *res judicata.* McCullough is not seeking to argue if he was guilty or not based on the facts and evidence in his criminal conviction, nor if had a fair trial or not in the traditional sense. He is challenging Jurisdiction and raising brand new fraud allegations that have never been raised before. To deny him his day in court on these matters would not be in the interests on justice. "Fraud vitiates the most solemn contracts, documents, and even judgments." *U.S. v. Throckmorton*, 98 U.S. 61. documents"; ("Constitutions")

McCullough's action here is a collateral attack and thus an exception to the Prosecutor's claim of *res judicata.* "There are limited exceptions to *res judicata* that allow a party to attack the validity of the original judgment, even outside of appeals. These exceptions—usually called collateral attacks—are typically based on procedural or jurisdictional issues, based not on the wisdom of the earlier court's decision but its authority or on the competence of the earlier court to issue that decision." [https://en.Wikipedia.org/wiki/Res_judicata]

Prosecutor refers to a case *United States v. Hakim*, No. 1:18-cr-126, 2018 WL 10 6184796, at *2 (N.D. Ga. Aug. 22, 2018) and cites: "Merely spelling a name in uppercase letters or only lowercase letters, reversing

the order of one's name, or spewing Latin phrases, do not create a different person or create an "artificial entity" or a corporation under the law." McCullough partially agrees that "merely" spelling a name differently may not prove anything alone, but that punctuation is usually or often *indicia* of the type of entity (Corporation or human being, etc) or some other purpose for spelling or punctuating differently. However, the Prosecutor has admitted zero evidence to rebut or contradict the documented fact that there are 2 distinctly different Perry McCullough's: One being the "PERRY ADRON MCCULLOUGH"/Social Security Number Identification Entity (a Strawman/*ens legis* and Fiction-at-Law Trust); and the second being "Perry-Adron: McCullough" also known as "Perry Adron McCullough", an unnumbered and unregistered living human being adult male. This is documented in several places, namely Official State Records, and never formally disputed or rebutted with any degree of legal weight (affidavit, etc); of which is a considered fact under Federal Rules of Evidence of any/all of at least the following:

Rule 803. Exceptions to the Rule Against Hearsay

(7) Absence of a Record of a Regularly Conducted Activity.

(8) Public Records.

(14) Records of Documents That Affect an Interest in Property.

(15) Statements in Documents That Affect an Interest in Property.

Rule 902. Evidence That Is Self-Authenticating

(1) Domestic Public Documents That Are Sealed and Signed.

(2) Domestic Public Documents That Are Not Sealed but Are Signed and Certified.

(4) Certified Copies of Public Records.

(8) Acknowledged Documents.

(9) Commercial Paper and Related Documents.

(11) Certified Domestic Records of a Regularly Conducted Activity.

In Contrast, the Prosecutor has not submitted any third-party witness statements, certified domestic or foreign records, nor any other admissible evidence or statements under oath or that is admissible under the exception to hearsay rules. The Prosecutor has not rebutted any of McCullough's records/exhibits which are formal evidence under the Rules of Evidence; and according to the rules, the prosecutor's attorney cannot be a witness. It is legal and a duty for the Prosecutor's attorney herein to knowingly lie or assert a known lie with no consequence because they are not sworn statements under oath and admitted as part of Discovery. Therefore none of these unsworn statements have any weight in an evidentiary sense. McCullough has suffered for some 30+ years at the hands of the Prosecutors and is entitled to petition for redress. If the Prosecutor is right about his/their assertions, why not admit sworn and certified evidence that will actually carry legal weight?

In addition, the Prosecutors Attorney's unsworn statements are in contrary to certified and authenticated records accepted, stamped, and filed with the Secretary of State of Colorado showing that the State

of Colorado says that there are Two Distinct entities one a Corporate Fiction and one a living breath human being. (*see:* Legal Notice & Demand (and especially Addendum Definitions), and Affidavit of Specific Negative Averment, Financing Statement, Affidavits, et al; on file and stamped by the Secretary of State of Colorado and with the originating "criminal" cause #2:89CR00251-01 USDC record called the "Affidavit of Notice" filing.) We all know that Unsworn Statements by Attorney's are just acts and utterances to protect their client; who have a duty to provide the best defense to their client even when it's a flat out lie. But within the Court's record are filed and unrebutted Affidavits (fitting all the Evidence Rules such as Rule 803 and 902); whose weight has not come into question by any evidence of equal weight or even any degree of weight to place on the scale. Thus Plaintiff has made a prima fade case sufficient to overcome an Attorney's "opening statements" and request for Dismissal. McCullough, not a lawyer, is the only one among the two parties who has actually followed the Rules of Evidence so far. It appears the Prosecutor's Attorney hopes to persuade the court with mere utterances in order to avoid the Government needs to respond to a highly expensive and unfavorable case. I hope this court will not fall into such obvious bias. The request for Article III truly unbiased judiciary has already been requested in Plaintiff's Complaint and so I'll expect that that is how this court is operating here.

As of now the weight of McCullough's evidence of his Exhibits outweighs the lack of any evidence admitted by the Prosecutor thusfar. Therefore for this Court to approve a Motion to Dismiss would be an incorrect application of the law.

Due Process provides that the "rights of pro se (Sui Juris) litigants are to be construed liberally and held to less stringent standard than formal pleadings drafted by lawyers; if a court can reasonably read pleadings to state valid claim on which litigant could prevail, it should do so despite failure to cite proper legal authority, confusion of legal theories, poor syntax and sentence construction, or litigants unfamiliarity with pleading requirements" (*Spencer v Doe*, 1998; *Green v. Bransou*, 1997; *Boag v McDougall*, 1998; *Haines v. Kerner*, 1972)

**International Human Rights Law**

The Universal Declaration of Rights drafted in the year 1948 gave universal recognition to these rights including the right of 'access to justice' in the following manner:

Art.7: All are equal before the law and are entitled protection of the law.

Art.8: Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the Constitution or by law.

Art.10: Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations, and of any criminal charge against him.

McCullough hereby requests that he be entitled to his day in court, and that simply logic shall prevail that being—if Jurisdiction is so easy to prove, then come now forthwith with evidence and then shouldn't

the Government easily win this case in Summary Judgment?

Plaintiff pleads that to Dismiss this action clearly full of *prima facie* evidence would be an incorrect application of the law, not in the interests of justice, and a violation of McCullough's rights he is entitled to.

Executed by my own hand this 22nd day of November, 2021.

/s/ Perry-Adron McCullough
In Propia Persona Trade Name
Owner, Holder-in Due Course,
Secured Party Creditor Perry-
Adron: McCullough

## UNITED STATES' NOTICE OF MOTION AND MOTION TO DISMISS (MARCH 25, 2021)

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

PERRY ADRON MCCULLOUGH,

*Plaintiff,*

v.

DAVID F. LEVI, ET AL.,

*Defendants.*

Case No. 2:21-cv-00127-TLN-JDP

Before: Hon. Jeremy D. PETERSON. Judge.

TO PLAINTIFF:

PLEASE TAKE NOTICE THAT the United States will and hereby does move to dismiss this action with prejudice for failure to state a claim pursuant to Fed. R. Civ. P. 12(b)(6). This motion to dismiss is based on this notice and motion, the Memorandum of Points and Authorities, the Request for Judicial Notice and the other documents filed in this case. Parties are referred to the Standing Order in Light of Ongoing Judicial Emergency in the Eastern District of California for more information.

Opposition, if any, to the granting of the motion shall be in writing and shall be filed and served not less than fourteen (14) days preceding the noticed (or continued) hearing date. A responding party who has no opposition to the granting of the motion shall serve and file a statement to that effect, specifically designating the motion in question. No party will be entitled to be heard in opposition to a motion at oral arguments if opposition to the motion has not been timely filed by that party. *See* L.R. 135. A failure to file a timely opposition may also be construed by the Court as a non-opposition to the motion. Local Rule 230(c). The parties are required to comply with Local Rule 230 and all other applicable rules and notice requirements with respect to motions.

Respectfully submitted,

Phillip A. Talbert
Acting United States Attorney

By: /s/ Jeffrey J. Lodge
Assistant United States Attorney

Dated: March 25, 2021

**UNITED STATES' MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO DISMISS (MARCH 25, 2021)**

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

PERRY ADRON MCCULLOUGH,

*Plaintiff,*

v.

DAVID F. LEVI, ET AL.,

*Defendants.*

Case No. 2:21-cv-00127-TLN-JDP

Before: Hon. Jeremy D. PETERSON. Judge.

## I. Introduction

Plaintiff Perry Adron McCullough filed this civil action seeking to reverse his criminal conviction in *United States v. McCollough*, No. 89-cr-002519 (E.D. Cal.) and to recover $17 billion in damages. In a nutshell, McCullough claims that the district court in his criminal case lacked personal and subject matter jurisdiction because the United States Attorney's Office charged him as a "corporate fictional government-created entity," not as a living man. This Court should dismiss the action because it consists of sovereign-

citizen gibberish and fails to plead anything close to a cognizable claim under Fed. R. Civ. P. 8(a).

## II. Procedural and Factual Background

### A. McCullough's Criminal Proceedings

In July 1990, a jury convicted McCullough of numerous drug-trafficking offenses, including a conspiracy count, and of conducting a continuing criminal enterprise. *See United States v. McCullough*, Case No. 89-cr-00251.[1] The jury also found that several pieces of his real and personal property were forfeitable. *Id.* The district court sentenced McCullough to 380 months' imprisonment and five years' supervised release. *Id.* At the time it imposed sentence, the court stayed the conviction and sentence on the conspiracy count. *Id.*

In 1994, the United States Court of Appeals for the Ninth Circuit reversed the conspiracy portion of the conviction, as well as the forfeiture judgment based on that conviction. *See United States v. McCullough*, 29 F.3d 636 (9th Cir. 1994). In all other respects, the Ninth Circuit affirmed the conviction against him. After further proceedings in the district court, McCullough appealed again, but the Ninth Circuit again affirmed.

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[1] This Court may take judicial notice of the court's own records in prior litigation related to the case before it. *No Cost Conference, Inc. v. Windstream Commc'ns, Inc.*, 940 F. Supp. 2d 1285, 1295 (S.D. Cal. 2013) ("Judicial notice is particularly appropriate for the court's own records in prior litigation related to the case before it.") (*citing Amphibious Partners, LLC v. Redman*, 534 F.3d 1357, 1361–62 (10th Cir. 2008)); *see also United States v. Howard*, 381 F.3d 873, 876 n. 1 (9th Cir. 2004) (taking judicial notice of court records in another case).

*See United States v. McCullough*, 108 F.3d 340 (9th Cir. 1997).

In 1996, McCullough sought post-conviction relief in the criminal case based upon ineffective assistance of trial counsel, ineffective assistance of appellate counsel, and prosecutorial abuse arising from the United States' use of McCullough's ex-wife as a witness. *See United States v. McCullough*, Case No. 89-cr-00251 at Dkt. Nos. 627, 676-1. This request for relief was combined with a civil habeas proceeding under 28 U.S.C. § 2255. *See id.* at Dkt. No. 688). On March 16, 2001, the Court denied the Plaintiff's request to set aside the sentence and found no prosecutorial abuse. *See id.* at Dkt. No. 763).

McCullough served his entire sentence (from June 9, 1989 to October 31, 2015) and his entire five years of supervised release. Complaint at 11.

**B. Plaintiff's Complaint**

In this action, McCullough claims that the United States, acting by and through two former United States Attorneys, charged Perry Adron McCollough© as a "governmentally created fiction," a "Corporate Fictional Government-created entity," instead of Perry Adron McCollough the individual. Dkt. 1, at 14, 20. He states:

> George L. O'Connell; and David F. Levi's and UNITED STATES OF AMERICA did, in fact, "charge" PERRY ADRON MCCULLOUGH©, a DEBTOR and governmentally created Fiction existing for Commercial purposes only.
>
> PERRY ADRON MCCULLOUGH© exists as an entity; and is not a living human.

> George L. O'Connell; and David F. Levi's and UNITED STATES OF AMERICA did fail to present the Proper Party, the Secured Party who is a living human, with service of process or presentment of Indictment of and by a duly constituted Grand Jury empowered and conducted according to the common law.
>
> Instead, George L. O'Connell; and David F. Levi acted on behalf of UNITED STATES OF AMERICA; et al; to proceed against the Secured Party whilst formally charging the Corporate Fictional Government-created entity, PERRY ADRON MCCULLOUGH©, instead of the Proper Party.

Complaint at 14.

> The Complaint further alleges that the district court had no jurisdiction over him:
>
> The claim is that the UNITED STATES DISTRICT COURT EASTERN DISTRICT OF CALIFORNIA did not have personal jurisdiction and subject-matter jurisdiction to precede against Perry-Adron: McCullough . . . from the beginning and said claim can be granted a relief in which is outlined throughout this jurisdictional federal question.

*Id.* at 20; *see also id.* at 27.

Although McCullough names two former United States Attorneys in their private and personal capacities, the Complaint chiefly challenges the conduct of the government, and the docket does not indicate

that either of them were served personally with the summons and Complaint.[2] Dkt. 1 at 1.

## III. Legal Standards

Rule 12(b)(6) of the Federal Rules of Civil Procedure provides that a complaint may be dismissed for "failure to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). Dismissal under Rule 12(b)(6) can be based on the lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1988). The complaint must be construed in the light most favorable to the plaintiff. *Parks Sch. of Business v. Symington*, 51 F.3d 1480, 1484 (9th Cir. 1995). However, the Court need not accept as true conclusory allegations, legal characterizations or unreasonable inferences. *Sanders v. Brown*, 504 F.3d 903, 910 (9th Cir. 2007) ("[c]onclusory allegations and unreasonable inferences . . . are insufficient to defeat a motion to dismiss."); *see also Western Mining Council v. Watt*, 643 F.2d 618, 624 (9th Cir. 1981) (courts need not accept as true legal argument cast in the form of factual allegations). Nor need the Court assume that the plaintiff can prove facts different from those alleged. *Associated General*

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[2] David F. Levi was appointed as United States Attorney by President Ronald Reagan and served from 1986-1990. He was elevated to the bench by George H.W. Bush (who was sworn as President on Jan. 20,1989) and sworn in as a federal district court judge in the Eastern District of California on Oct. 1, 1990. Judge Levi's successor as the United States Attorney was George L. O'Connell. As stated above, the undersigned represents neither of these individuals in their personal capacities. This motion is solely filed on behalf of them, and their successors, in their official capacities.

*Contractors of California, Inc. v. California State Council of Carpenters*, 459 U.S. 519, 526 (1983). Courts may consider matters of which they may take judicial notice under Federal Rule of Evidence 201(f) without converting the motion into a Rule 56 motion for summary judgment. *MGIC Indem. Corp. v. Weisman,* 803 F.2d 500, 504 (9th Cir. 1986).

To survive a motion to dismiss under Rule 12(b)(6), a complaint must contain "sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). "A pleading that offers 'labels and conclusions' or a 'formulaic recitation of the elements of a cause of action will not do.'" *Id.* (quoting *Twombly*, 550 U.S. at 555) ("Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice"). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* (quoting *Twombly* at 556). A complaint also must contain allegations giving defendants "'fair notice' of what the . . . claim is and the grounds upon which it rests.'" *Id.* at 1961 (quoting *Twombly* at 555).

The Ninth Circuit determined that "on a motion to dismiss a court may properly look beyond the complaint to matters of public record and doing so does not convert a Rule 12(b)(6) motion to one for summary judgment." *Mack v. South Bay Beer Distributors, Inc.*, 798 F.2d 1279, 1282 (9th Cir. 1986) (overruled on other grounds by *Astoria Fed. Sav. & Loan Ass'n v. Solimino*, 501 U.S. 104 (1991)).

## IV. Discussion

### A. The Plaintiff has failed to state a cognizable claim.

Plaintiff's largely incoherent and tedious Complaint is lifted directly from the debunked sovereign citizen script. *See Gravatt v. United States*, 100 Fed. Cl. 279, 282 (Fed. Cl. 2011) ("So-called sovereign citizens believe that they are not subject to government authority and employ various tactics in an attempt to, among other things, avoid paying taxes, extinguish debts, and derail criminal proceedings."). The federal courts uniformly dismiss such cases as frivolous and no more than inane gibberish. *See United States v. Studley,* 783 F.2d 934, 937 n. 3 (9th Cir. 1986) (rejecting sovereign immunity theory arguments as "utterly meritless"); *United States v. Schneider*, 910 F.2d 1569, 1570 (7th Cir. 1990) (describing the sovereign citizen theory as having "no conceivable validity in American law."); *Mackey v. Bureau of Prisons*, No. 1:15-cv-1934, 2016 WL 3254037, at *1 (E.D. Cal. June 14, 2016) ("Courts across the country have uniformly rejected arguments based on the sovereign immunity ideology as frivolous, irrational, or unintelligible"); *United States v. Hakim*, No. 1:18-cr-126, 2018 WL 6184796, at *2 (N.D. Ga. Aug. 22, 2018) ("Merely spelling a name in uppercase letters or only lowercase letters, reversing the order of one's name, or spewing Latin phrases, do not create a different person or create an "artificial entity" or a corporation under the law."). McCullough was not charged or convicted as a corporate or fictional entity–his "corporate fiction" did even exist until December 31, 2015. *See* [Jeff, please add cite].

Moreover, McCullough cannot state a cognizable claim to challenge his criminal judgment in this civil proceeding. "A judgment of conviction that includes a sentence of imprisonment constitutes a final judgment and may not be modified by a district court except in limited circumstances." *Dillon v. United States*, 560 U.S. 817, 824 (2010) (alterations in original) (quoting 18 U.S.C. § 3582(b)). Such circumstances must be "expressly permitted by statute or by Rule 35 of the Federal Rules of Criminal Procedure." *See* 18 U.S.C. § 3582(c)(1)(B); *see also Dillon*, 560 U.S. at 827, 831; *United States v. Penna*, 319 F.3d 509, 511 (9th Cir. 2003). None of those circumstances are present here. The criminal judgment is *res judicata* and the claims to set it aside must be dismissed.

Finally, McCullough fails to state a cognizable claim for civil damages because his criminal case has not been terminated in his favor. *Heck v. Humphrey*, 512 U.S. 477, 486 (1994) (recognizing the "principle that civil tort actions are not appropriate vehicles for challenging the validity of outstanding criminal judgments"). In order to recover damages for allegedly unconstitutional conviction or imprisonment or for other harm caused by actions whose unlawfulness would render a conviction or sentence invalid, a plaintiff must prove that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus, 28 U.S.C. § 2254. *Id.* at 487. A claim for damages bearing that relationship to a conviction or sentence that has not been so invalidated is not cognizable. *Id.*

### B. The Case Should Be Dismissed Without Leave to Amend

District courts are only required to grant leave to amend if a complaint can possibly be saved. Courts are not required to grant leave to amend if a complaint lacks merit entirely. *Cook, Perkiss and Liehe, Inc. v. N. Cal. Collection Serv. Inc.*, 911 F.2d 242, 247 (9th Cir. 1990); *Lopez v. Smith*, 203 F.3d 1122, 1124 (9th Cir. 2000) ("[A] district court retains its discretion over the terms of a dismissal for failure to state a claim, including whether to make the dismissal with or without leave to amend."); *see also Smith v. Pacific Properties and Development Corp.*, 358 F.3d 1097, 1106 (9th Cir. 2004) (citing *Doe v. United States*, 58 F.3d 494, 497 (9th Cir. 1995) ("a district court should grant leave to amend even if no request to amend the pleading was made, unless it determines that the pleading could not possibly be cured by the allegation of other facts.").

It would be futile to grant leave to amend. McCullough's allegations are based entirely on sovereign citizen theories, which have been universally dismissed as non-sensical, naïve, and frivolous.

## V. Conclusion

The United States requests that the entire complaint be dismissed with prejudice for failure to state any cognizable claims pursuant to Rule 12(b)(6).

Respectfully submitted,

Phillip A. Talbert
Acting United States Attorney

By: /s/ Jeffrey J. Lodge
Assistant United States Attorney

Dated: March 25, 2021

## RESPONDENT'S COMPLIANCE WITH COURT'S ORDER TO SHOW CAUSE (MARCH 16, 1998)

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

In Re: PERRY ADRON MCCULLOUGH,

*Respondent.*

No. 98-80147

Before: Peter L. SHAW, Appellate Commissioner.

The Court Should Not Enter Pre-Filing Review Order

The Respondent, PERRY A. McCULLOUGH, fully recognizes that frivolous appeals and requests for extraordinary writs are a waste of the Court's time and resources. To the extent that Respondent has utilized the Court's time in reviewing his appeals and applications for writ, which have not resulted in the relief he had hoped for and thus did not constitute a valuable use of time and resources, the Respondent respectfully apologizes to this Court and to its members who have sat on Respondent's various panels. However, this respondent has never intentionally filed for relief which he did not believe had merit. None of the judges who have reviewed any of this Respondent's appeals or petitions has ever stated that the issues raised were "frivolous."

A review of the Court's order of March 4, 1998 shows that in the nine years of continuous litigation, arising from an extremely complex district court trial involving multiple criminal and civil forfeiture actions, the Respondent has sought relief from the Ninth Circuit on 27 occasions, or an of three (3) per year.

The Respondent has reviewed the cases cited by the Commissioner in the March 4, 1998 Order. Respondent believes that all of those cases are inapposite to his case because they either addressed a situation where a vexatious litigant had "engaged in a long and tortured history of litigation" in which each petition had been "rejected." *In Re Jessie McDonald*, 489 US 180, 103 L.Ed.2d 158, 109 S. Ct 993 (1989) involved a situation where the litigant had filed 73 petitions with the Supreme Court and ALL of them had been "rejected." The Court, in *McDonald*, *Id.*, only restricted McDonald to relief he paid for and limited his ability to proceed *in forma pauperis*. The Respondent, McCullough, has not only sought to proceed *in forma pauperis* since he prevailed at the *in rem* trial of his currency in the Central District of California on December 5, 1994. *See* CV 93-1971 AWT. (Respondent proceeded in that action, pro se, and Judge Tashima determined that there was no probable cause for the seizure six years earlier.) Since Respondent got that money back he has always paid the fees for his appeals and petitions. Unlike *McDonald* McCullough has had considerable success with his appeals. McCullough's direct appeal consolidated 90-10577, 91-10204, 91-10581, 92-10141, 92-10597 which resulted in the reversal of McCullough's primary conviction of Continuing Criminal Enterprise, and reversal of the related criminal forfeiture of all his assets under 21

USC § 853. Please see Court's December 30, 1992 order and Memorandum decision of July 14, 1994.

Appeal 92-15350 was a civil in rem forfeiture of an airplane which was part of the criminal forfeiture reversed by the Ninth Circuit on July 14, 1995, in the consolidated appeal. Respondent prevailed in 92-15350 initially based on double jeopardy following the decision in *United States v. $405,089.23 U.S. Currency et al.*, 33 F 3d 1210 (9th Cir. 1994) but when the Supreme Court reversed *$405* in *United States v. Ursery*, 116 S Ct. 762 (1996) the Ninth Circuit reheard 92-15350 [*United States v. One 1978 Piper Cherokee Aircraft*, 37 F.3d 489 1994] and remanded for a determination of the excessive fines issue. It remains at the District Court awaiting determination by the Court.

Appeal 94-55783 involved the government's failed attempt to forfeit McCullough's $16, 260 in U.S. Currency. The government failed to provide Constitutionally required notice and 94-55783 was an appeal from Judge Hatter's denial of McCullough proved the government had administratively forfeited his money, without providing notice, the government merely filed a judicial in rem action in District Court. As explained above, Judge Tashima determined that there was no probable cause for the seizure, but only after six years of litigation had ensured. CV 93-1971 AWT. Any waste of judicial resources lies at the prosecutor's doorstep—not McCullough's.

Appeal 95-10380 is designated in the Court's OSC (3/04/98) as "affirmed," but a review of the record will show that the Ninth Circuit stated that the issues raised therein were not ripe for appeal and must be raised via Title 28 USC § 2255. That appeal and 95-10122 arose because the District Court allowed the jury

to convict McCullough of CCE and Conspiracy, but it held the Conspiracy sentence in abeyance pending outcome of McCullough's direct appeal of the CCE. (a practice disavowed by the Supreme Court in *Rutledge v. United States*, 134 L Ed 2d 419 (1996)) McCullough could not appeal the Conspiracy conviction while it was "in abeyance" so he filed a notice of appeal following the reversal of the CCE and the vacation of the "stay" on the Conspiracy sentence, creating 95-10122. Ultimately the Ninth Circuit determined it lacked jurisdiction to preside over an appeal filed over four years after the district court's order was entered. On a motion for reconsideration McCullough explained that it was fundamentally unfair for a district court to create a situation in which a defendant was convicted of "the same offense" twice but only appeal one of the convictions. The Ninth Circuit, on reconsideration, recalled the mandate in McCullough's consolidated appeal and ordered the District Court to reenter judgment and sentence on the Conspiracy conviction. This allowed McCullough to timely appeal the Conspiracy conviction, creating 95-10380. All the issues raised in 9510380 are presently in McCullough's § 2255 motion, which is pending.

Appeal 95-15230 is a Title 42 USC § 1983 (Bivens) action in which McCullough's former prosecutor and lead F.B.I. Case agent are named as defendants for the destruction of McCullough's seized assets one year before the trial commenced. The District Court granted the defendants' motion for summary judgment based on absolute immunity, but the Ninth Circuit vacated and remanded (*see* 95-15230). Following remand the District Court again granted defendant's motion for summary judgment based on "qualified immunity".

McCullough appealed the District Court's order creating 97-17291 have admitted they allowed third parties to intervene in the criminal forfeiture (21 USC § 853) of McCullough's property in order to "see McCullough walk out of jail flat broke". They only claim that they are immune from those egregious acts because of the positions they hold in the government—they should not prevail in 97-17291 because they acted outside the scope of their duties.

Appeal 97-10035 arose from the July 14, 1994 Memorandum decision of the Ninth Circuit reversing the CCE and related criminal forfeiture. When McCullough filed his 18 USC 2465 motion for return of his property, as the prevailing party, the government argued that it was not required to make McCullough whole, it was only required to return the monies the government had received from forced sales, not the replacement value of those properties. The district court awarded McCullough approximately $20,000.00 for nearly half-million dollars in equity in six properties. McCullough appealed, creating 97-10035, pending.

In 1995 McCullough prevailed in appeal 95-56394 because the government conceded the issue and asked McCullough to voluntarily withdraw the appeal to save judicial and prosecutorial resources. The issue in 95-56394 resource was whether McCullough was entitled to "interest" on the $16, 620.00 Currency which Judge Tashima had determined was illegally seized. While that appeal was pending the Ninth Circuit determined *United States v. $277,000.00 U.S. Currency*, 69 F.3d 1491 (1995) (government must disgorge benefit received while money illegally detained in United States Treasury). McCullough notified the Ninth Circuit that the government had conceded the

issue and voluntarily withdrew the appeal in order to conserve the Court's resources.

Admittedly, McCullough has not prevailed on all of his appeals, but what properly educated, highly skilled and court room experienced attorney can make that claim? (Well OK, Gerry Spence does) McCullough takes the Court's OSC very seriously. He believes his successes, limited though they are, far exceed the norm for incarcerated, pro se, litigants. No judge has ever ruled one his appeals "frivolous." Not even the district court which has presided over almost all of McCullough's lower court cases, who exhibits more than the "appearance" of bias and prejudice, has ever stated that any of McCullough's issues are "frivolous" or "manifestly abusive." *See Viser v. California*, 919 F.2d 113 (9th Cir. 1990) cited in the Court's OSC.

The last case cited by the Court's OSC is *Sassower v. Sanverie*, 885 F.2d 9 (2nd Cir. 1989) (affirming injunction against filing of frivolous, vexatious and harassing suits without prefiling review), should not apply to the Respondent. As shown above, Respondent has not engaged in a manifestly abusive, vexatious, or harassing pattern of lawsuits, petitions and/or appeals. Respondent McCullough has merely resisted the government's attempts to overprosecute him for conduct which this Court has previously determined he should not have been prosecuted for. McCullough was not guilty of operating a continuing criminal enterprise, his money was untainted, his airplane was not used to transport drugs as claimed, his houses and his cars were untainted, and the multiplicitous prosecutions of those assets has created the bulk of the appeals filed by McCullough.

Ironically, the Court's OSC and the specter of an order severely limiting McCullough's ability to defend himself and his property comes at the end of McCullough's long battle with the government. Only an appeal of the District Court's decision following remand of *One Piper Cherokee* appears on the pro se horizon. McCullough's § 2255 motion, which will finally determine the validity of the remaining convictions is in the highly capable hands of Marcus Topel and Daniel Cook of the San Francisco law of Topel & Goodman. The remainder of McCullough's battle to regain his liberty will come to this Court through Messers Topel and Cook. McCullough, in pro se, will, assuming the good grace of this Court. Finish 97-10035 and 97-1729, which are fully briefed and awaiting Opinion.

McCullough foresees only one other issue which may require review by this Court: that is one more appeal involving *One Piper Cherokee, Supra.* The airplane forfeiture case is presently before the district court on a remand to determine if the civil forfeiture violates the Excessive Fines Clause of the Eighth Amendment. The District Court will, probably rule in the government's favor on the excessive fines issue, but, in McCullough's opinion, the courts have overlooked McCullough's six year old, and continuing, argument that the civil forfeiture of *One Piper Cherokee* is barred by *Res Judicata.* McCullough raised "issue and claim preclusion" in a rule 12 (d), Fed. R. Civ. Proc., motion in 1991 but the District Court denied it. On appeal McCullough raised those issues again but the Court did not address them because the double jeopardy issue raised in *$405, supra,* required reversal. When *$405* was reversed in *Ursery, supra,* the Court reheard One Piper Cherokee, without briefs and solely

upon *Ursery*. McCullough's *res judicata* issue has never been addressed by this Court and the District Court refuses to address it now. Appeal 97-15167 was an attempt by McCullough to conserve judicial resources by means of an interlocutory appeal. Unfortunately the Ninth Circuit stated that it had no jurisdiction. Therefore, McCullough will have to appeal the District Court's refusal to address *res judicata* to the Ninth Circuit, if the District Court rules in favor of the government on the excessive fines issue, because following the Supreme Court's decision in *Ursery*, *supra*, only parallel prosecutions, one *in personam* of the defendant and one *in rem* of his property, were allowed. In McCullough's case the government prosecute him criminally; *in personam*, for C.C.E. and Conspiracy (plus 8 other charges), and it prosecuted all his property *in personam* under 21 USC § 853; and, it prosecuted the airplane again, following the criminal forfeiture judgment, in a separate *in rem* proceeding. The *in rem* prosecution of *One Piper Cherokee* by res judicata but neither the District Court nor the Ninth Circuit has addressed McCullough's repeated attempts to raise that issue.

McCullough is not an attorney and he does not understand much of what has happened to him during his prosecutions, nut he believes that the government's multiplicitous prosecutions of him and his properties are not a model of prosecutorial restraint. In an effort to better understand what has happened in the past, and to craft better pleadings in the future, McCullough enrolled in the Juris Doctorate program offered by Kensington University College of Law, a correspondence school, in January, 1997. McCullough assures this Court

that his desire to provide the courts with well founded arguments is sincere.

Other than the two appeals now before the Ninth Circuit and the possibility of an appeal following remand in *United States v. One 1978 Piper Cherokee, supra*, McCullough can see no other issue remaining for review.

McCullough respectfully requests that this Court review the record to assure itself that McCullough's representations herein are accurate, and that the appeals and petitions filed between 1989 and 1998 were not frivolous, nor were they manifestly abusive or vexatious.

McCullough does not fall into the category of vexatious and frivolous, pro se, litigant who wishes to pursue manifestly abusive litigation at government expense, that the McDonald, Visser, and Sassower cases, cited by the Court, addressed.

McCullough respectfully requests this Court not enter the Prefiling Order against McCullough.

Dated this 16th day of March, 1998.

Respectfully submitted,

/s/ Perry A. McCullough