

22-7013

No. _____

FILED

MAR 16 2023

OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE SUPREME COURT OF THE UNITED STATES

CARL PUCKETT AND MARCELLA PUCKETT DBA DEVILDOGSTREASURE

PETITIONERS, PRO-SE

V.

AIN JEEM, INC.

RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO THE

UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

CARL PUCKETT "Pro-Se"

2170 Old Gardner Road

Martin, Tn. 38237

Ph. 731-281-3481

MARCELLA PUCKETT "pro-Se"

2170 Old Gardner Road

Martin, Tn. 38237

Ph. 731-281-4581

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

CARL PUCKETT AND MARCELLA PUCKETT DBA DEVILDOGSTREASURE

PETITIONERS, PRO-SE

V.

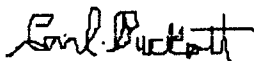
AIN JEEM, INC.

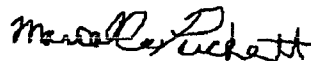
RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

The petitioner asks leave to file the attached petition for a writ of certiorari without prepayment of costs and to proceed in forma pauperis. Petitioner has not previously been granted leave to proceed in forma pauperis in any other court. Petitioner's affidavits or declarations in support of this motion are attached hereto.





Carl Puckett Petitioner "Pro-Se"

Marcella Puckett Petitioner "Pro-Se"

**AFFIDAVIT OR DECLARATION IN SUPPORT OF MOTION FOR LEAVE TO
PROCEED IN FORMA PAUPERIS**

We, CARL PUCKETT, "Pro-Se" and Marcella Puckett, "Pro-Se" state are the petitioners in the above-entitled case. In support of our motion to proceed in forma pauperis, we state that because of our poverty we are unable to pay the costs of this case or to give security therefore; and we believe we are entitled to redress.

1. For both you and your spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.

Income Source	Average monthly amount during the past 12 months		Amount expected next month	
	You	Spouse	You	Spouse
Employment	\$ 0	\$ 0	\$ 0	\$ 0
Self-employment	\$ 329	\$ 344	\$ 116	\$ 0
Income from real property (such as rental income)	\$ 0	\$ 0	\$ 0	\$ 0
Interests and dividends	\$ 0	\$ 0	\$ 0	\$ 0
Gifts	\$ 0	\$ 0	\$ 0	\$ 0
Alimony	\$ 0	\$ 0	\$ 0	\$ 0
Child support	\$ 0	\$ 0	\$ 0	\$ 0
Retirement (such as Social Security, pensions, annuities, insurance)	\$ 2560	\$ 0	\$ 2560	\$ 0
Disability (such as Social Security, insurance payments)	\$ 0	\$ 0	\$ 0	\$ 0
Unemployment payments	\$ 0	\$ 0	\$ 0	\$ 0
Public-assistance (such as welfare)	\$ 0	\$ 0	\$ 0	\$ 0
Other (specify): _____	\$ 0	\$ 0	\$ 0	\$ 0
Total monthly income:	\$ 2889	\$ 0	\$ 2670	\$ 0

3. List your employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross Monthly Pay
N/A	N/A	N/A	N/A
_____	_____	_____	_____
_____	_____	_____	_____

4. List your spouse's employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

N/A	N/A	N/A	N/A
_____	_____	_____	_____

5. How much cash do you and your spouse have? \$112

2. List Employers for the past two years for carl puckett.

None on disability

3. List employers for spouse Marcella Puckett.

None disabled

4. How much cash do you and your spouse have? \$ 60.00

Below, state any money you or your spouse have in bank accounts or in any other financial institution.

Regions bank joint checking account 112.00

5. List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishings.

HOME VALUE 44,900

VEHICLE 1 2018 TOYOTA TUNDRA 31,400

VEHICLE 2 2003 HONDA PILOT 750.00

6. State every person, business, amount owed. or organization owing you or your spouse money, and the amount owed.

NONE

7.State the persons who rely on you or your spouse for support.

NONE

8. Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, or annually to show the monthly rate.

	You	spouse
Mortgage Payment	\$ <u>846</u>	<u> </u>
Real Estate taxes are not included		
Property Insurance is not included		
Utilities	\$ <u>633</u>	<u> </u>
Home Maintenance	\$ <u>88</u>	<u> </u>
Food	\$ <u>640</u>	<u>590</u>
Clothing	\$ <u>10</u>	<u>10</u>
Laundry and Dry Cleaning	\$ <u>36</u>	<u> </u>
Medical and Dental Expenses	\$ <u>84</u>	<u>323</u>
Transportation	\$ <u>280</u>	<u> </u>
Recreation, entertainment, newspapers,, etc.	\$ <u>16</u>	<u>15</u>
Home owners Insurance	\$ <u>315</u>	<u> </u>
Vehicle Insurance	\$ <u>170</u>	<u> </u>
Installment Payments Medical	\$ <u>46</u>	<u>524</u>
Credit Card Capital One	\$ <u> </u>	<u>104</u>
Department Store Wards	\$ <u> </u>	<u>120</u>
Student Loan Debt	\$ <u> </u>	<u>1100</u>

Total monthly expenses:

\$ 3032 2244

9. I do not expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months.

10. I Have you paid and will be paying money for services in connection with this case pacer online filing and fees and other expenses \$ 2670.

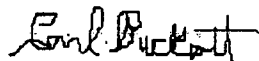
11. I will not be paying—anyone other than the Pacer account and my own costs in connection with this case, including the completion of this form.

12. Provide any other information that will help explain why you cannot pay the costs of this case.

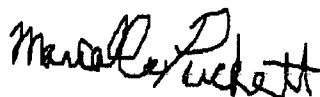
I am still paying on my previous wife Lynn Puckett's medical bills who died during Covid 2020 from complications of Parkinsons.

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

Executed on: January 20, 2023.



Carl Puckett Petitioner "Pro-Se"



Marcella Puckett Petitioner "Pro-Se"

PAC66

QUESTIONS PRESENTED

1. Whether the reviewing court failed to rule on the petitioner's constitutional claims, and was required to review the D.C. Court's Order Granting Plaintiff's Motion to Voluntarily withdraw of its complaint over the petitioner's objection for an abuse of discretion, prior to determining if it affected the Petitioner's standing?
2. Whether the lower courts expanded application of the Sherman's Act Noerr-Pennington Doctrine to Lanham Act cases as an immunity doctrine to wrongful seizures sought by Plaintiffs defeats the Intent of the Congressional statute 15 U.S.C. 1116(d)(11) for a defendant's rights to seek damages from wrongful seizure denies equal protection under the law?
3. Whether judicial recusal by review upon writ of mandamus, is of great public interest in maintaining trust and confidence in the effective administration of the judicial system and protecting First Amendment Constitutional Rights and rights to procedural due process of litigants?
4. Whether actions and rulings are null and void where the court has no jurisdiction over the parties and was procured by fraud can be collaterally attacked by writ of mandamus as the immediate appropriate remedy?
5. Whether the reviewing court was required to grant petitioner's mandamus relief for mandatory recusal and vacatur where the facts supported a finding of repeated willful misconduct to prevent petitioner's right to notice and opportunity to be heard constituted a pervasive pattern of prejudice and bias to an intolerable unconstitutional level?

LIST OF PARTIES

All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

AIN JEEM, INC.-PLAINTIFF

DEFENDANTS ON PLAINTIFF'S SCHEDULE "A"

1. Hall of Fame Sports Memorabilia
<https://www.amazon.com/sp?seller=A2140970SDYD74>
2. sportsactionshots
<https://www.amazon.com/sp?seller=A2MESHSHHWEEYOY>
3. Zap on the Go
<https://www.amazon.com/sp?seller=A1VTE8L7M6YAGK>
4. Posters Forever
<https://www.amazon.com/sp?seller=A219COMKHOCM03>
5. Alextubaka
<https://www.amozon.com/sp?seller=A1L0WCDD1QN6CS>
6. Body-Soul-n-Spirit
https://www.bonanza.com/booths/Body_Soul_n_Spirit
7. redtigris11
<https://www.ebay.com/usr/redtigris11>
8. Josad_2882
https://www.ebay.com/usr/josad_2882
9. dotrixart
<https://www.ebay.com/usr/dotrixart>
10. wrestlingfigsmaniacandthings
<https://www.ebay.com/usr/wrestlingfigsmaniacandthings>

11. mavoobars
<https://www.ebay.com/usr/mavoobars>
12. mancaveprints
<https://www.ebay.com/usr/mancaveprints>
13. cali_69
https://www.ebay.com/usr/cali_69
14. sand80502
<https://www.ebay.com/usr/sand80502>
15. printsbycass
<https://www.ebay.com/usr/printsbycass>
16. billdanielsports
<https://www.ebay.com/usr/billdanielsports>
17. linbea81
<https://www.ebay.com/usr/linbea81>
18. jrstuvwxy
<https://www.ebay.com/usr/jrstuvwxy>
19. westcoastwildlife
<https://www.ebay.com/usr/westcoastwildlife>
20. duds_dude
https://www.ebay.com/usr/duds_dude
21. chrut_72
https://www.ebay.com/usr/chrut_72
22. deetzshirts2
<https://www.ebay.com/usr/deetzshirts2>
23. arkindustries
<https://www.ebay.com/usr/arkindustries>
24. subliworks
<https://www.ebay.com/usr/subliworks>

25. shjac401
<https://www.ebay.com/usr/shjac401>
26. chricab15
<https://www.ebay.com/usr/chricab15>
27. fanaticposters
<https://www.ebay.com/usr/fanaticposters>
28. teambrinkz
<https://www.ebay.com/usr/teambrinkz>
29. bahralulu-0
<https://www.ebay.com/usr/bahralulu-0>
30. thebackcountrydreamer
<https://www.ebay.com/usr/thebackcountrydreamer>
31. goldrecordoutlet56
<https://www.ebay.com/usr/goldrecordoutlet56>
32. Sheddsh1rts
<https://www.ebay.com/usr/Sheddsh1rts>
33. Printingspace
<https://www.ebay.com/usr/Printingspace>
34. NickOfTimeStudioLLC
<https://www.etsy.com/shop/NickOfTimeStudioLLC>
35. HistoricalMedia
<https://www.etsy.com/shop/HistoricalMedia>
36. Filmtvscripts
<https://www.etsy.com/shop/Filmtvscripts>
37. Frippdesign
<https://www.etsy.com/shop/Frippdesign>
38. Poasid
<https://www.etsy.com/shop/Poasid>

- 39. InStyleDecals
<https://www.etsy.com/shop/InStyleDecals>
- 40. MidwestAuction
<https://www.etsy.com/shop/MidwestAuction>
- 41. JustOneVintage
<https://www.etsy.com/shop/JustOneVintage>
- 42. DailySuccessClub
<https://www.etsy.com/shop/DailySuccessClub>
- 43. VCMJoy
<https://www.etsy.com/shop/VCMJoy>
- 44. Weekend52
<https://www.etsy.com/shop/Weekend52>
- 45. Kmiseton
<https://www.etsy.com/shop/Kmiseton>
- 46. Stickerview
<https://www.etsy.com/shop/Stickerview>
- 47. Hollywoodfinds
<https://www.etsy.com/shop/Hollywoodfinds>
- 48. GinJointsArt
<https://www.etsy.com/shop/GinJointsArt>
- 49. NonquitStudio
<https://www.etsy.com/shop/NonquitStudio>
- 50. StarMemoriesShop
<https://www.etsy.com/shop/StarMemoriesShop>
- 51. DieHardFanArt
<https://www.etsy.com/shop/DieHardFanArt>
- 52. Yezindeed
<https://www.etsy.com/shop/Yezindeed>

53. HyperThanHype
<https://www.etsy.com/shop/HyperThanHype>
54. PostersbyFanatic
<https://www.etsy.com/shop/PostersbyFanatic>
55. Progostore
<https://www.etsy.com/shop/Progostore>
56. Devildogstreasure
<https://www.etsy.com/shop/Devildogstreasure>
57. DavidJBS
<https://www.etsy.com/shop/DavidJBS>
58. 1800PopCultureBling
<https://www.etsy.com/shop/1800PopCultureBling>
59. ONTHECOURTCLUB
<https://www.etsy.com/shop/ONTHECOURTCLUB>
60. Posterazzi
<https://www.wish.com/merchant/55c0deb64e650874f22b3167>
61. Hgbid1
<https://www.wish.com/merchant/5e8b28745a8fcc8a5c4a8a85>
62. SamHosier
<https://www.wish.com/merchant/5e71b4cdf31082507198e2e3>
63. Danielkk
<https://www.wish.com/merchant/5e9abb59da3ff2b88442bb86>
64. ChristineBelle
<https://www.wish.com/merchant/5e71afbdf31082478798actc>
65. Karla Bryant34
<https://www.wish.com/merchant/5eae932391714064e670cf15>
66. ThompsonEEee
<https://www.wish.com/merchant/5e94123d2522bc4acdc769a0>

67. Paul Runes
<https://www.wish.com/merchant/5e97d2bd7df4df1c619802c5>
68. HeEE
<https://www.wish.com/merchant/5e94188e4883f210043599c1>
69. SheriParker
<https://www.wish.com/merchant/5e71c4c427dee2055e1ac7fc>
70. StevenKKK
<https://www.wish.com/merchant/5e9abbe52aad6e7569e478b8>
71. EugeneClyburn
<https://www.wish.com/merchant/5e71b8391c5ae152c6b60a1f>
72. Unbeatablesale.com
<https://www.wish.com/merchant/5877e441ba35cef278491f32e>
73. DanielHuie
<https://www.wish.com/merchant/5e71c24129e7863cfa93f429>
74. Phantom Cardboard
<https://phantomcardboard.storenvy.com/>
75. LUYREQMI
<https://www.redbubble.com/people/LUYREQMI/shop>
76. GraphixDisplate
<https://www.redbubble.com/people/GraphixDisplate/shop>
77. Joseph-Stevens
<https://www.redbubble.com/people/Joseph-Stevens/shop>

RELATED CASES

- Ain Jeem, Inc. v. The Individuals, Partnerships and Unincorporated Associations Identified on Schedule “A,” Case No.: 1:21-cv-20963-FAM, in the United States District Court, Southern District of Florida, voluntarily dismissed without prejudice on May 3, 2021.

- Ain Jeem, Inc. v. The Individuals, Partnerships and Unincorporated Associations Identified on Schedule “A,” Case No.: 8:21-CV-01082-KKM-CPT in the United States District Court, Middle District of Florida, Final Judgment Entered 05/02/2022
- Ain Jeem, Inc. v. The Individuals, Partnerships and Unincorporated Associations Identified on Schedule “A,” Case No.: 8:21-CV-01261 in the United States District Court, Middle District of Florida, Judgment Entered 02/16/2022
- XYZ Corporation v. The Individuals, Partnerships, and Associations Identified on Schedule A Case NO.8:22-cv-02379-MSS-TGW , M.D. FL (EFC 10 page ID 238-239)Notice of Voluntary Dismissal 02/21/23
- Ain Jeem, Inc. v. The Individuals, Partnerships and Unincorporated Associations Identified on Schedule “A,Case No. 22-12572 UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT COURT Motion For Reconsideration Denied 12/14/2022
- Ain Jeem, Inc. v. The Individuals, Partnerships and Unincorporated Associations Identified on Schedule “A, Case No.22-12368 UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT COURT Motion For Reconsideration Filed
- Ain Jeem, Inc. v. The Individuals, Partnerships and Unincorporated Associations Identified on Schedule “A, Case No. 21-12364 UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT COURT Appeal Dismissed
- In the Matter of a Complaint Filed by Carl E. Puckett UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT COURT JUDICIAL COMPLAINT NO. 11-22-90100- pending
- In the Matter of a Complaint Filed by Carl E. Puckett UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT COURT JUDICIAL COMPLAINT NO. 11-22-90101-pending

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IN THE SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

OPINIONS BELOW

Petitioner respectfully prays that a writ of certiorari issue to review the judgment
Below;

1.The opinion of the United States Court of Appeals appears at Appendix A-5 page
93 to this petition and it is not known if the opinion has been reported or designated
for publication:

2.The Opinion of the United States District Court which appear at Appendix E- 48
Volume 3 and it is not known if the opinion has been reported or designated
for publication

3. The Opinion of the United States District Court which appear at Appendix E-58
Volume 4 and it is not known if the opinion has been reported or designated
for publication

4. The Opinion of the United States District Court which appear at Appendix E-64
Volume 4 and it is not known if the opinion has been reported or designated
for publication

5. The Opinion of the United States District Court which appear at Appendix E-
Volume 4 and it is not known if the opinion has been reported or designated
for publication

6. The Opinion of the United States District Court which appear at Appendix E-

Volume 4 and it is not known if the opinion has been reported or designated for publication

JURISDICTION

The date on which the United States Court of Appeals decided my case was 10/13/22. A timely petition for rehearing was denied by the United States Court of Appeals on the following date: 12/14/22 ,and a copy of the order denying rehearing appears at Appendix A-5 page 93. The jurisdiction of this Court is invoked under 28 U. S. C. § 2101(e) and 28 U. S. C. § 1254(1). This court has jurisdiction for review by writ of certiorari pursuant to 28 U.S.C 1651 and 28 U.S.C 1254, and the judiciary act of 1789. This court has jurisdiction in this case because of a serious claim that petitioner had been deprived of his first,fourth, and fourteenth amendment rights under the Federal Constitution. "Dixon v. Duffy, 344 U.S. 143 (1952) This court also has jurisdiction pursuant to the United States Constitution Article III, Judicial Department: Limitations on the exercise of judicial review and under the Constitution of the United States, and the fourteenth section of the Judiciary Act of 1789, to issue this writ, and to examine. the proceedings in the inferior court, so far as may be necessary to ascertain. whether that court has exceeded its authority, Ex Parte Lange, 85 U.S. 163. The United States Supreme Court has jurisdiction to ensure that the fundamental miscarriage of justice exception would remain "rare" and be applied only in the "Extraordinary case," while at the same time ensuring that relief would be extended to those who are truly deserving Schlup v. Delo, 513 U.S. 298 (1995) The Supreme

Court will review by certiorari cases of great public concern, gravity, and importance." *Frazier v. Southern R. Co.*, 200 Ga. 590, 592 (37 SE2d 774) (1946).

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STATEMENT OF THE CASE

This case relates to the counterfeiting statutes of the Lanham Act. Petitioner, Carl Puckett, resides in Tennessee, and is an “in-House affiliate” for Etsy who is solely responsible for the offering, promoting advertising and selling of items on its e-commerce platform (App. E-21,22 Vol 1). In 2020 Petitioner listed a used sports collector’s plate with the artistic image of Kareem Abdul Jabbar, with the NBA trademark logo on it (App. E-22 P.240). The artistic expressive work is protected by the first amendment and barred from liability under the Lanham Act (App. D-6). Plaintiff accessed e-commerce platforms using the name Kareem Abdul Jabbar to create a web capture of any item results and reproduce the first page of each multiple page listing. They labeled them evidence retrievals identifying themselves as investigators (App. E-22 Vol. 1). The screenshots show Etsy.com as the owner of the domain/Url (App. E-22 P.240 Vol. 1). The web capture provides a link entitled INTEREST BASED ADS explaining algorithms developed by Etsy, Inc used in its advertising and promotion of items (App. E-22 P.240 Vol 1). June 18, 2021, the Petitioner was denied access to his store and received notice from Etsy that his account was suspended and his store removed from access on the internet. Petitioner’s personal paypal account, never affiliated with his Etsy store had been suspended and frozen from his access.

Plaintiff is incorporated in Delaware and domiciled in California for INTRASTATE COMMERCE (App. E-42, E-20, E-24 Vol. 1). Plaintiff had no standing in the state of Florida other than the convenience of counsel located in Florida (App. E-23 p10 vol.2). Plaintiff counsel asserted Florida State's long-arm statute for jurisdiction over defendants which also requires plaintiff to be a resident of Florida and requires a defendant's business transaction to be more than an isolated event where the claims against each of the 77 unrelated defendants was based upon an alleged isolated event. (App. D-1). Plaintiff first filed the shotgun complaint in the Southern District of Florida (App. E-3 Vol. 1). That court denied their ex parte motion for TRO so they withdrew refiled in the middle district after enlisting Attorney Fernandez, of Akerman Law, a personal friend of the judge (App. E-2,3 Vol. 1).

Plaintiff filed the single trademark registration but claimed a right to numerous marks which had been dead, abandoned, and/or canceled barring the court from subject matter jurisdiction over "Marks Collectively" asserted in Complaint (App. E-4 Vol. 1 App. E-32 P. 157-160, Vol. 2).. The complaint was without defendant specificity as to the 77 unrelated defendants on their schedule "A" (App. E-4,6 Vol. 1) The Judge refused to exercise the inherent duty of the court to dismiss the shotgun complaint *Davis v. Coca-Cola Bottling Co. Consol.*, 516 F.3d

955, 982 n.66 (11th Cir. 2008). Plaintiff filed multiple cases using the same documents that reflected the other cases and jurisdictions on documents in this case (App. E-9 Vol. 1, E-28, Vol.2). 15 U.S.C.1116 (D)(2) prohibits the court from accepting an ex parte application unless the applicant has first given notice to the United States Attorney. The Judge exceeded her authority and accepted the Ex Parte application. On 6/4/2021 Plaintiff filed a motion for leave to file under seal the defendants on Plaintiff's Schedule A and an Ex Parte Motion for TRO 15 U.S.C. 1116 (D) (8), (App. E-7 Vol. 1). 15 U.S.C. 1116 (b) is the governing authority for actions arising under counterfeit Claims (id.). On 6/4/21 the judge granted Plaintiff's Motion ordering the documents will only remain under seal until the Court has ruled on the request for a TRO. 15 U.S.C. 1116(D)(8) required the documents remain under seal until the defendant is given an opportunity to respond and to contest the order, a procedural due process right denied by the judge.

On 6/7/21 the Plaintiff filed an Ex Parte Motion for TRO with seizure provisions and a proposed order with the provision for setting a hearing pursuant to 15 U.S.C. 1116 (D)(10) and a request for expedited discovery permitted by to accompany the expedited hearing pursuant 15 U.S.C. 1116 (D)(10(b) (App. E-11 Vol.1). Plaintiff provided screenshot evidence retrievals of five defendants and no evidence as to petitioner, requesting the judge to apply the evidence of four to all 77 unrelated

defendants, (App. E-10 P.113 (footnote) p.117-121 Vol. 1) denying remaining defendants equal protection under the law. The judge was without authority to permit the exclusion of required evidence. The only similarity the few screenshots shared with the petitioner is that some portrayed an artistic image expressive work protected by the first amendment and barred from Liability under the Lanham Act, *H.R. Rep. No. 116-645, at 20 (2020)*. The ex parte TRO was supported with a photocopy declaration of Deborah Morales filed in case No. 8:21cv01082, (App. E-9 Vol. 1) It falsely declared the plaintiff to have rights to marks that had been canceled or abandoned (App. E-32, Vol. 2). The Plaintiff Attorney submitted his own “personal” declaration claiming Plaintiff’s rights to marks he knew had been abandoned (App. E-10 Vol.1, App. E-32, Vol. 2). Plaintiff’s ex parte motion sought to disable the “suspected” defendant URLS closing their businesses, and sought seizure and expedited discovery for all business records they could ascertain, a freeze of all financial accounts, and service upon third person non parties to the action (App. E-10 Vol. 1).

The Judge’s authority to grant an ex parte application under 15 U.S.C 1116 (d)(1)(a) strictly limits the seizure only to the goods alleged as counterfeit and records pertaining only to the sale, or receipt of things involved in such violation (Id)..Subsection (D)(5) requires the court to indicate a period during which the

seizure is to be carried out that may not exceed 7 days. 15 U.S.C.1116(D)(5)(9) further mandates the defendant to be personally served just before or at the time of the execution of the seizure to protect the constitutional rights of the defendants.15 U.S.C.1116 (D)(10) requires the court to set a post seizure date for hearing noticed upon defendants at the time the goods or records are seized no sooner than 10 days after the issuance of the order and no later than 15 to permit a defendant an opportunity to be heard and present evidence to dissolve the TRO (App. D-2,3). The judge again refused to exercise authority as required by statute and willfully denied the defendants lawful notice and opportunity to be heard violating their procedural due rights. Plaintiff counsel's proposed order did contain a provision for the court to set the hearing (App. E-11 Vol. 1). The judge in violation of the 15 U.S.C. 1116 (D)(10) and its own local rules 6.01- 6.02, removed the required provision for post seizure hearing and ordered the defendants to be served notice of a nonfunctioning dropbox address, previously used by the judge in a previous case for the same Plaintiff and counsel 8:21-cv-01261, via email associated with their seller ID's which the TRO order disabled, as the only means for defendants to receive notice (App. E-12 Vol. 1). The judge refused to set the hearing because it would require her personal presence in the court and interfere with her extra judicial engagements as she stated:

“Also, technology has made a huge difference for judges. Electronic filing through the Case Management /Electronic Case Files (CM/ECF) system changed our lives overnight. I can work from anywhere in the world, and I do. For somebody who travels the world teaching, you would think that I have to leave my docket, but I don’t. I’m able to use CM/ECF to issue orders from wherever I might happen to be”
Judicial profile THE FEDERAL LAWYER • July/August 2019 Author Alejandro Fernandez (Plaintiff Attorney close personal friend to the judge (Appendix D-7).

The Judge acted in violation of the Judicial Canons 1-4 (App. D-8) 15 U.S.C.1116 (D)(10)(B) permits the court to modify normal discovery to accommodate the expedited hearings scheduled; however the judge unlawfully removed the expedited hearing provision and was therefore without authority to modify the normal discovery process. 15 U.S.C.1116 (D)(7) requires that any records seized be placed in the protective custody of the court (app. D-2,3). The judge refused to require records seized to be placed into the court's custody, and permitted Plaintiff's counsel complete custody and control to publish at-will the confidential records of the petitioner. The judge refused to perform the required duty of the court violating the Petitioners constitutional rights to privacy over the confidential Records. The judge omitted the citing of statutory authority 15 U.S.C. 1116 and cited the sole statutory authority as F.R.C.P. 65 in conflict with the governing statute (AppD-3). No Summons had been issued yet by the court or served on defendants. FRCP 65 (D) is only binding upon a party upon personal notice and service and (E) prohibits the modification of the requirements of the federal statute (Appendix D-4). The judge

was without the authority of the court to order service upon third non party entities (App. E-12 vol.1). The judge failed to cite the statutory authority that permitted a freeze of all defendants' financial assets. 6/10/21, plaintiff motioned to extend the TRO(App. E-14 vol. 1) that did not comply with local rules of court 3.01(g), without notice or service upon defendants which the judge granted. On 6/17/21 the court issued a single summons directed to the unrelated defendants as listed on Plaintiff's schedule "A" (App. E-15 Vol. 1). On 6/18/21 Plaintiff motioned for alternative service on foreign defendants in non compliance with Local Rules 3.01(g) and without identifying which defendants were alleged as foreign (App. E-16 Vol.1).. The complaint (App. E-4 Vol. 1) alleged most defendants were foreign, the motion (App. E-14 Vol. 1) claimed at least 3 were foreign where during the preliminary injunction hearing Plaintiff contended again most were foreign (App. E-23, Vol 2) and in a subsequent case citing this case as a legal authority admitted to knowing all defendants were U.S. defendants (App. E-17 vol.1) Plaintiff was intentionally and clearly committing fraud upon the court as Plaintiff's own "evidentiary screenshots submitted to the court identified the defendants locations within the U.S. (App. E-22).On 6/21/21 the judge granted Plaintiff's motion Ordering the only means of service to defendants was via e-mail of their seller IDS that the restraining order disabled from use and contained a nonfunctioning dropbox as the only means by

which defendants were to be served (App E-1 EFC 17). On 6/19/21 plaintiff's counsel motioned for a preliminary injunction in non compliance with Local rules of court 3.01 and without service and notice as required (App. E-18 Vol.1)

On 6/21/21 the judge referred the preliminary injunction hearing to the Magistrate (App. E-1 EFC 16 Vol.1). No notice of availability of a magistrate or request for consent was never provided to defendants in accordance with the law 28 U.S.C. 636 © *district court's local rule 1.02* . The judge exceeded her authority and ordered the preliminary injunction hearing to be set for 7/7/21 and heard before the magistrate which is prohibited by 28 U.S.C. 636 (B)(1)(A). The magistrate, without lawful authority to do so, ordered all defendants to be served pursuant to the judge's order on 6/21/21 (App. E-1 EFC 18) which was issued as to foreign defendants only in order to willfully prevent the defendants from receiving proper notice and opportunity to be heard. On 6/29/21 Plaintiff motioned to extend the TRO in non compliance with local rule 3.01(g) and without notice or service (App. E-1 EFC 27) the granted without requiring service or notice to defendants 6/30/21 (App. E-1, EFC 29).

On 7/1/21 Petitioner was first served notice consisting of a cover sheet a summons, complaint with the sole trademark filing and a copy of the ex parte TRO with no hearing date (App. E-1 EFC 108). On 7/6/21 the magistrate ordered a

rescheduling of the preliminary injunction hearing to 7/12/21 without notice to Defendants (App. E-1 EFC 33). On 7/7/21 a defendant's counsel filed a motion to dismiss for improper venue ,no plaintiff legal standing and lack of jurisdiction making reference to all defendants (App. E-20 Vol.1). The court ignored the contentions of improper plaintiff standing and lack of jurisdiction and permitted the Plaintiff to Voluntarily dismiss without prejudice as to that defendant and ordered the case to remain as to all other defendants (App. E-1,EFC 42 Vol.1).On 7/9/21 the magistrate rescheduled the preliminary injunction to be set for 7/14/21 without notice to defendants (App. E-1,EFC 49 Vol. 1).

On 7/14/21 Petitioner filed an answer contesting the court's personal jurisdiction over him and citing the incontestable defenses(App. E-21,Vol.1), that his item was an artistic expressive work protected by the first amendment of the U.S. Constitution from Lanham Act Liability citing the supporting legal authorities. Both the judge and the magistrate ignored Petitioner's claims.On 7/14/21 the magistrate presided over the preliminary injunction hearing . During the hearing the magistrate made findings contrary to the complaint, specifically that the majority of defendants items were posters and artistic images and were not similar to the specific goods as specified in the trademark registration (App E-23, p.19 Vol.2) The shotgun complaint created difficulty for the magistrate to ascertain

which item belonged to which defendant, why evidence as to each defendant was not present and stated;

“these defendants are not sharing the same platform”, “there is nothing in the record that demonstrates to me for each of the defendants what actual product they were selling. So how am I to determine a likelihood of success as to the infringing product” “but you just made the argument that there's a distinction in the litigation based upon the URL and the product, what am I to rely upon?” I have questions about the joinder, but I'm not going to resolve that today, I think that does raise an issue of venue. Well, I have to express then I'm frustrated as well because one of the reasons that is at issue is this venue. And what was suggested for venue is because Mr. Fernandez is here in the Tampa division in the Middle District of Florida. there is absolutely nothing, not even the nature of the investigation connected to this division. So why are they being filed here? Explain to me then the joinder issue. Why are we filing suit against 77 defendants that don't appear to be connected in any way? I think we are conflating the liability and jurisdiction “ (App.E-23, Vol.2).

Plaintiff's co-counsel stated “Attorney Alex Fernandez became involved because “it just made sense to use Mr. Fernandez's office in Tampa to just have things done smoothly” “it was just a convenience issue” That's why we submitted in the Middle District”. (App. E-23, P. 10 Vol.2) The magistrate disregarded judicial CANON 2B that forbids delegating the authority of his office, and delegated the requirements for his independent review and preparation of a report and recommendations to plaintiff's counsel. (App E-23 Vol. 2) On 7-19-21 plaintiff's counsel prepared and filed the magistrates report and recommendations (App. E-25,26, Vol 2). The report and recommendations contained misrepresentations opposite of the actual findings

of the magistrate (App E-26, Vol. 2). The magistrate rubber stamped the report and recommendations filed by Plaintiffs counsel despite the misrepresentations. On 7-19-21 the court acknowledged after the conclusion of the injunction hearing that a number of defendants had still never been served in the case and constituted the injunction hearing as unlawful ex parte communication(App. E-1, EFC 77, Vol.1).

On 7/19/21 Plaintiff motioned for continuance of the TRO without compliance with local rules of court 3.01(g) and without notice to defendants (App. E-1, EFC79, Vol. 1). On 7/19/21 the judge granted the motion for continuance without notice or service upon defendants ((App. E-1, EFC 81, Vol 1). On 7/22/21 Petitioner filed a motion for injunctive relief and for a TRO for plaintiff fraud upon the court under F.R.C.P60(B)(3)(6)(D)(App. E-32, Vol 2). On 7/26/21 another defendant's counsel filed a motion to dismiss the complaint for the courts lack of jurisdiction and plaintiff's lack of standing (App. E-24, Vol 2) On 7/26/21 the petitioner filed a motion for recusal and for injunctive relief to void and vacate all orders (App. E-1, EFC 138) On 7/27/21 the judge entered an order that " Because the claims against Jesus Diaz have been voluntarily dismissed Diaz's Motion to Dismiss Complaint for Lack of Personal Jurisdiction is denied as moot (App. E-1). On 7/27/21 the judge denied petitioner's motion for TRO and injunctive relief for failing to comply with local rules of court 3.01g which exempts motions for injunctive relief (App. D-5). the

judge arbitrarily and capriciously applied the rule, refusing to require plaintiff to comply with the same rule where exemption did not exist, denying petitioner equal protection under the law . On 7/28/21 petitioner filed an objection to the report and recommendations prepared and filed by Plaintiff(App. E-1 EFC 148). On 8/2/21 Plaintiff motioned for continuance of its TRO without any service and notice and without compliance with local rules of court 3.01(g) (App. E-1, EFC 150) On 8/3/21 the judge granted the motion to extend the TRO without mandating compliance with 3.01 (g) and without service or notice to defendants (App. E-1, EFC 153).

On 8/3/21 Petitioner filed a NOTICE OF APPEAL(App. E-1,EFC 158)and MOTION to Appeal In Forma Pauperis.On 8/14/21 Petitioner motion for injunctive relief pursuant to F.R.C.P. 60(b)(3)(6)(D)(3)(1) on the basis of fraud upon the court (App. E-32, Vol.2) On 8/15/21 Petitioner motioned for injunctive relief pursuant to the provisions of 15 U.S.C.1116 (D)(11) for wrongful seizure (App. E-33, Vol. 2) On 8/16/21 and 8/30/21, plaintiff motioned for continuance of its TRO without compliance with local rules 3.01(g) and without proper service or notice to defendants (EFC 180, 193) On 8/16/21 and 8/31/21 the judge granted the motion without permitting defendants notice or opportunity to respond (EFC 181, 196)

On 9/7/21 the Magistrate granted Petitioner's Motion to Proceed In Forma Pauperis (App. E-1, EFC 217) On 9/13/21 plaintiff motioned to extend the TRO

without compliance with 3.01(g) and without notice to defendants (EFC 220) On 10/4/21 Plaintiff motioned the court for reconsideration of granting the Petitioner's motion to appeal in forma Pauperous (App. E-1, EFC 228). .On 10-27-21 the magistrate ordered the IFP to be denied and stricken (App. E-1, EFC 236,237, 239) The Magistrate judge was without authority to enter an order denying Petitioner's IFP status *Donaldson v. Ducote, 373 F.3d 622, 623-25 (5th Cir. 2004)*.

On 11/3/21 petitioner motioned for recusal of the magistrate for bias and prejudice (App. E-35, Vol 2,) On 11/23/21 Petitioner motioned for recusal of the dist court judge (App. E-36, Vol. 2) On 2/1/22, the judge denied all the pending motions with leave to refile (App. E-1,EFC 260). Plaintiff filed a motion to dismiss appeal on the basis there was no final appealable order (App. C-10) On 2/3/21 the appellate court granted the plaintiff's motion (App. C-15) On 4/19/22 Petitioner refiled his motion for recusal as to the magistrate (App. E-38, Vol 3). On 4/21/22 petitioner refiled the motion for recusal as to the judge (App. E-39, Vol. 3). On 4/24/22 Petitioner refiled his petition for injunctive relief from wrongful seizure as permitted by 15 U.S.C. 1116(D)(11) (App. E-40, Vol. 3). Petitioner, was unconstitutionally denied hearing and procedural due process, subjected to wrongful seizure, denied the privacy protections over his confidential business records, was denied his first amendment protections and resigned to the filing of motions as a means to be heard. On 5/7/22

Petitioner filed a motion for summary judgment and for injunctive relief (App. E-41, vol.3). On 5/15/22 Petitioner filed a motion for injunctive relief under F.R.C.P 60 (B)(3)(6)(D) and to vacate all rulings as void on the basis of plaintiff's lack of standing, (App. E-42, vol. 3). ON 5/15/22 Petitioner filed a motion for injunctive relief for fraud at the inception of the action under F.R.C.P 60 (B)(3)(6)(D) as to the petitioner's contested personal jurisdiction and first amendment protection claims the judge disregarded (App. E-43, Vol.3) On 5/17/22 Petitioner filed a motion for injunctive relief under F.R.C.P 60 (B)(3)(6)(D) regarding the inadmissibility of the evidence, (App. E-44, Vol. 3). On 5/19/22 Petitioner filed a Motion for sanctions for litigation abuse and for injunctive relief under FRCP 60 (App. E-46, Vol. 3)

On 5/19/22 Plaintiff filed a motion for voluntary withdraw of his complaint without prejudice and to dismiss only the petitioner as a defendant (App. E-47, vol. 3) On 5/23/22 the magistrate denied the Petitioner's motion for recusal (App. E-48, Vol. 3) On 5/31/22 Petitioner filed opposing the Plaintiff's voluntary withdrawal of the complaint without prejudice because petitioner had not been given the opportunity to present evidence for adjudication as to his first amendment rights, to restore the goodwill and 5 star business reputation that had been irreparably harmed by the Plaintiff's fraudulent complaint and that such an order would permit a revictimization of the petitioner's constitutional rights App. E-49, Vol. 3.) On

6/1/22 The petitioner filed pursuant to F.R.CP. 52(A)(5) which permits a party may at any time to bring a motion to set aside the magistrates recommendations and report that were clearly erroneous and contrary to law (App. E-50, Vol. 3). On 6/15/22 Plaintiff requested the judge issue an order to label the petitioner a vexatious litigant and to deny all the petitioner's motions because they were "an inconvenience to Ain Jeem, Inc and the court" (App. E-1 EFC 332) On 7/6/22, the judge denied the petitioners motion for recusal" (App. E-1,EFC 345). The judge denied the Petitioner's motion to set aside the denial for recusal of the magistrate and that the court was not required to give notice and request the party consent for the magistrate under 28 U.S.C. 636 (App. E-1, EFC 345). The judge denied the Petitioner's motion to set aside the report and recommendations as untimely which denied the Petitioner's right to equal protection under the law (App. E-1, EFC 345). On 7/6/22 the judge dismissed the Petitioner's counterclaim, granting Plaintiff complete immunity under the Noerr-Pennington Doctrine to which congress intended to be inapplicable to defeat the purpose of the recovery statues for wrongful seizures, and ordered Petitioner to file an amended counterclaim by 7/19/22 (App. E-1 EFC 355),On 7/6/22 the judge granted the Plaintiff's motion to voluntarily withdraw its complaint as to the petitioner only without prejudice to subject the petitioner to a revictimization of his constitutional rights that barred the

action against him (App. E-1,EFC 356). On 7/6/22 the judge ordered the Petitioner's motion for injunctive relief and for wrongful seizure dismissed as moot in a clear abuse of discretion.(App. E-1, EFC 358) On 7/ 17/22 .The petitioner filed Notice of appeal raising constitutional question (App. B-1, B-5). On 7/19/22 the Petitioner filed the amended counterclaim as ordered by the judge requesting leave to amend once the issues on appeal were ruled upon (App. E-1, EFC 364). On 7/22/22 Petitioner Responded to a jurisdictional question issued by the U.S. Court of Appeals 11th Cir. (App B-5EFC 5) . On 8/3/22 The D.C. magistrate, prepared a recommendations and report recommending the court deny the petitioner's motion to appeal in forma pauperis. On 8/5/22 the Petitioner filed a petition for writ of mandamus relief in the 11th circuit court of appeals (App A-2).

The Petitioner also filed a judicial complaint against both the judge and magistrate which are still pending In the Matter of Carl Puckett Case NO. 11-22-90101 and NO. 11-22-90100- pending.On 8/29/22 the judge adopted the magistrates report and recommendations and denied the petitioner motion to appeal in forma pauperis and granted the Plaintiff's motion to dismiss the Petitioners amended complaint (App E-1, EFC 374, 375). On 8/31/22 the USDC filed its order denying IFP as to Appellant Carl Ellen Puckett, Jr. (App. B-3). On 9/7/22 the 11th circuit issued a jurisdictional question pertaining to petitioner's

motion to appeal in forma pauperis. On 9/16/22 and 9/19/22 the Petitioner filed responses to the 11th Cir. jurisdictional question request (App. B-1). On 9/21/22 Plaintiff atty responded to the jurisdictional question with incorporated motion to dismiss (App. B-6). On 9/27/22 the petitioner responded to the Plaintiff's motion to dismiss the appeal 11th Cir. (App. b-1, EFC 46). On 9/29/22 PLaintiff atty filed an additional response to Petitioner's reply to jurisdictional question 11th Cir. (App. B-1, EFC 47).

On 10/13/22 the 11th circuit appellate court denied the Petitioner's request for writ of mandamus relief (App. A-3). Petitioner filed a timely motion for reconsideration on 10/21/22 (App. A-4) On 11/28/22 Petitioner filed another motion for injunctive relief under F.R.C.P. 60 (B)(3)(6)(D) TO VOID OR VACATE ALL ORDERS BY THE COURT in the D.C. Court (App. E-1, EFC 380). On 12/14/22 the 11th Cir denied the Petitioners motion for reconsideration for relief by Petition for writ of mandate (App. A-5). On 12/14/22 the 11th Cir. Court of appeals granted the Plaintiff's motion to dismiss petitioner's appeal for lack of Jurisdiction (App. B,-11). On 12/20/22 the judge denied the petitioner's motion for injunctive relief (App. E-1, EFC 386). Petitioner filed a timely motion for reconsideration (App. B-1, B-12).

REASONS FOR GRANTING THE PETITION

ANSWER 1-2: Prior to determining whether the motion granted by the judge to

permit the plaintiff a voluntary dismissal of his complaint over the objection of the defendant under F.R.C.P 41(a)(2), affected the Petitioner's standing, the reviewing court was required to review the order for an abuse of discretion and for validity within the standards of law, *Applied Underwriters, Inc V. Lichtenegger NO.*

17-16815 (9th Cir. 2019) Where the lower court grants a voluntary dismissal of an action on its discretion the appeals court will review whether the order was an abuse of discretion, *Freedman V. Pacific Gas & Electric Co.* 196 Cal App. 3d. 969, 704 (1987). The court must take into account that 41 (a)(2) does not permit a party to voluntarily dismiss merely to escape an unfavorable or adverse ruling *Hamm V. Rhone-Poulenc Rorer Pharms, Inc.* 187 F. Rd. 941, 950 (8th Cir. 1999). A dismissal without prejudice is equivalent to no dismissal at all because the claim can be refiled at any time and the reviewing court must act as if the claim is still pending before the court, *ITOFCA, Inc, V. Mega Trans Logistics, Inc* 233 F. 3d 360 (7th Cir. 2000). Plaintiff attorneys could misuse the procedure in order to permanently bar a defendant from exercising any redress by appellate review by asserting the requirements of the finality rule creating an unconstitutional application of the finality doctrine. Courts have declined to permit a Plaintiff to dismiss without prejudice explicitly on the ground that it would deprive a defendant of a right to seek redress, *United States V. Outboard Marine Corp.,* 789 F, 2d. 497, 502 (7th Cir.

1986). The application of F.R.C.P. 41 (a)(2) specifically provides “the action shall not be dismissed against a defendant unless the counter claim can remain pending for independent adjudication” and the record shows the lower court dismissed the Petitioner’s counterclaims prior to granting the Plaintiff’s motion and dismissed Petitioner’s wrongful seizure action as moot at the time of granting plaintiff’s motion.. Removing a defendant is governed by F.R.C.P. 15(A), whereas 41 (a)(2) permits the dismissal of an action and not an individual defendant so the motion is deemed invalid, *Harvey Aluminum, Inc. et. al. V. American Cyanamid Co. 203 F. 2d 105, 108 (2nd Cir. 1963)*.

The court erred in granting the voluntary dismissal motion and denying defendants motions for mandatory dismissal and 60B motions to vacate all prior orders based upon Plaintiff lack of standing and contested defendant jurisdiction. Motions for Voluntary dismissal under F.R.C.P. 41 (A)(2) are committed to the courts discretion however it is an abuse of discretion to permit dismissal without prejudice where the defendant would suffer plain legal prejudice as a result. The reviewing court acknowledged the Petitioner’s counterclaims were dismissed at the time the judge granted the Plaintiff’s Voluntary dismissal over the Petitioner’s objections but failed to review the dismissal orders for an abuse of discretion by the court (App. A-3, A-5). The court did abuse its discretion in dismissing Petitioners

counterclaim and wrongful seizure claim under 15 U.S.C. 1116(D)(11) granting Plaintiff immunity under the Noerr-Pennington Doctrine in an act to sabotage the Petitioner's case for the favor of her friend Plaintiff's counsel. The Petitioner had already submitted in record the numerous acts of fraud and misrepresentation by Plaintiff and Plaintiff's counsel which preclude the application of Noerr-Pennington for immunity, *see Weifang Tengyi Jewelry Trading Co. Ltd v. The Partnerships and Unincorporated Associations Identified on Schedule "A" (N.D. Ill. 2018)*. Petitioner submitted facts showing the Plaintiff counsel intentionally misrepresented defendants as foreign while knowing and submitting their screenshots clearly showing U.S. defendants and in a subsequent action citing this case as a legal authority the same Plaintiff counsel submitted a declaration declaring knowledge that all defendants were in fact U.S. defendants and not foreign (App. E-17, Vol.1). Petitioner submitted evidence showing the "marks collectively" were in fact canceled dead and abandoned among the other fraudulent misrepresentations as presented in the facts (App. E-43, Vol 3). Noerr-Pennington exceptions for abuse of process and fraud and misrepresentation barred Plaintiff from immunity *Weifang Tengyi Jewelry Trading Co. Ltd v. The Partnerships and Unincorporated Associations Identified on Schedule "A" (N.D. Ill. 2018)* and the dismissal of Petitioner's counterclaims and wrongful seizure claims granting Plaintiff immunity

under Noerr-Pennington was a clear abuse of discretion by the judge. The Sham Pleading exception cited by the judge as the only exception to Noerr-Pennington is not the only Exception. Since petitioning courts to enforce the law is a protected right for all, applying the Noerr-Pennington in the situation described above would infringe on the defendant's right to petition the courts and to bar an abuse of process claim would deny a defendant equal protection under the Law see *DIRECTV, INC. v. Zink*, 286 F. Supp. 2d 873 (E.D. Mich. 2003).

Noerr-Pennington Doctrine arose from a trilogy of U.S. Supreme Court Antitrust cases involving the Sherman Act acknowledging a First Amendment right to freely petition the government, *United Mine Workers v. Pennington*, 381 U.S. 657, 85 S. Ct. 1585, 14 L. Ed. 2d 626 (1965). The Lower courts have since expanded its application as an immunity defense in Lanham Act cases see *Versatile Plastics, Inc. v. Sknowbest! Inc.*, 247 F. Supp. 2d 1098 (E.D. Wis. 2003) *Weifang Tengyi Jewelry Trading Co. Ltd v. The Partnerships and Unincorporated Associations Identified on Schedule "A"* (N.D. Ill. 2018). *Clorox Co. v. Inland Empire Wholesale Grocers, Inc.*, 874 F. Supp. 1065 (C.D. Cal. 1994) *Noerr-Pennington* does not in any way provide a defense to a statutory wrongful seizure claim, *Waco International, Inc., v. Khk Scaffolding Houston Inc.; et al.*...278 F.3d 523 (5th Cir. 2002). As a result the appellate courts have issued conflicting decisions as to its application in such

cases. Congress however, expressed their intent to forbid its application as a defense to wrongful seizure claims *Joint Statement on Trademark Counterfeiting Legislation* Making it an issue ripe for Supreme court interpretation and adjudication.

The Defendant whose constitutional rights were repeatedly violated, would face revictimization of those rights and plain legal prejudice by an order permitting Plaintiff dismissal without prejudice. The dismissal the defendant's counterclaim for injunctive relief under 15 U.S.C. 1116 (D)(11) for wrongful seizure AS MOOT should also be reviewed for an abuse of discretion after seizing and unlawfully retaining the defendants confidential business records in an action where his first amendment protections constituted an incontestable defense under 15 U.S.C. 1115(B) and violation of his fourth amendment rights has already occurred, *Raka V. Illinois*, 439 U.S. 128 (1978)

The reviewing court erred in determining in light of the dismissal of the claims against him, Puckett had not suffered an injury-in-fact from the judges' failure to recuse themselves from the case. (APP A-3,A-5) The United States Supreme Court requires standing to be determined by the U.S. Constitution Article III which requires the following proper legal analysis " to identify an injury in fact that is fairly traceable to the challenged conduct and to seek a remedy likely to redress that injury *Spokeo, Inc. v. Robins*, 578 U. S. 330, 338,(2016). Our contemporary

decisions have not required a plaintiff to assert an actual injury beyond the violation of his personal legal rights to satisfy the “injury-in-fact” requirement *Carey v. Piphus*, 435 U. S. 247, 266 (1978).

The injury petitioner alleged, in seeking relief by mandamus, was the denial of his first amendment rights as to an expressive artistic work and the Congressional statutory provision of the protection of incontestable defense 15 U.S.C. 1115 (b), *Univ. of Ala. Bd. of Trs. v. New Life Art, Inc.*, 683 F.3d 1266, 1278 (11th Cir. 2012). The First Amendment ensures freedom of speech, which includes protecting “[c]reative works of artistic expression,” such as music, poetry, films, and countless other types of art *H.R. Rep. No. 116-645, at 20 (2020)*, Joint Statement on Trademark Counterfeiting Legislation. Petitioner sought mandamus relief from a civil action that was null and void because the Plaintiff had no legal standing *Xymogen, Inc. v. Digitalev, LLC*, No. 6:17cv869-Orl, 2018 U.S. Dist.LEXIS 16147 at * 6 (*M.D. Fla. Feb.1, 2018*) the court lacked personal jurisdiction over the defendant. “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 *Melo v. U.S.* 505 F 2d 1026(8th Cir. 1974).” “There is no discretion to ignore lack of jurisdiction *Joyce v. U.S.* 474 2D 215 (3rd Cir.1973)” Where the question of jurisdiction has been raised, the court must take up the jurisdictional question

before it can consider whether a dismissal without prejudice is appropriate, *Thatcher V. Hanover Insurance Group, Inc* (8th Cir. 2011). The lower district court repeatedly ignored Petitioner's jurisdictional claims and was without authority to consider the Plaintiff's dismissal motion. ("The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury."). The judge who should have recused herself had no authority to grant the motion and the order was invalid. The Supreme court has found irreparable harm occurs whenever a constitutional right is deprived, even for a short period of time *Elrod v. Burns*, 427 U.S. 347, 373 (1976).

3. Answer: Judicial recusal by review upon writ of Mandamus is of great public importance. The Supreme Court stated: "public confidence in the courts requires that such a question be disposed of at the earliest possible opportunity *Valley v. Northern Fire & Marine Ins. Co.*, 254 U.S. 348, 41 S. Ct. 116, 65 L. Ed. 297 (1920). "This Court has frequently recognized that the policy underlying the exhaustion of remedies doctrine does not require the exhaustion of inadequate remedies. Mandamus provides "an appropriate vehicle for seeking recusal of a judicial officer during the pendency of a case, as 'ordinary appellate review' following a final judgment is 'insufficient' to" remove the insidious taint of judicial bias *Carson v. American Brands, Inc.*, 450 U.S. 79 (1981). To obtain the public trust in the

judiciary judges are required to adhere to high standards of conduct. The objective standard is required in the interests of ensuring justice in the individual case and maintaining public confidence in the integrity of the judicial process which "depends on a belief in the impersonality of judicial decision making *United States v. Nobel*, 696 F.2d 231, 235 (3d Cir.1982). The surest way to lose trust and confidence is failure to live up to established ethical standards and failure to hold judges and judiciary personnel accountable for misconduct. *American Bar Association Model Code of Judicial Conduct: Canon 1.2: Promoting Confidence in the Judiciary*. The delivery of justice and public confidence in the integrity of the judiciary necessarily rests on judicial officers adherence to the ethical standards prescribed in the code. The judicial canons are in place to provide ethical to judicial conduct and ensure that judges act in a way fitting of the judicial office and fulfill their crucial responsibility to protect the public trust of a system that is founded on the rule of law and funded by the public taxpayers. A case involving a motion for disqualification is clearly distinguishable from those where a party alleges an error of law there is a paramount public interest in the exercise of constitutional rights *N.Y. Times Co. v. United States*, 403 U.S. 713, 714 (1971). A court that ignores the merits of a constitutional claim cannot meaningfully analyze the public interest, which, by definition, favors the vigorous protection of First Amendment rights

Opulent Life Church v. City of Holly Springs, Miss., 697 F.3d 279, 298 (5th Cir. 2012). “Injunctions protecting First Amendment freedoms are always in the public interest.”) (citation omitted) *Gordon v. Holder*, 721 F.3d 638, 653 (D.C. Cir. 2013); “It may be assumed that the Constitution is the ultimate expression of the public interest the issue of judicial disqualification presents an extraordinary situation suitable for the exercise of our mandamus jurisdiction *In re Corrugated Container Antitrust Litig. v. Mead Corp.*, 614 F.2d 958, 961-62 (5th Cir. 1980). Waiting is not the prerogative of a federal court. It must act swiftly in the face of constitutional denial as it occurs, *United States v. Texas Education Agency*, 467 F.2d 848, 891 (5th Cir. 1972). The protection of the Fourth Amendment reaches all alike, whether accused of crime or not; and the duty of giving it force and effect is obligatory on all entrusted with the enforcement of Federal laws. Vacatur was a proper remedy for the § 455(a) violation in the circumstances of this case In determining whether a § 455(a) violation requires vacatur under Rule 60(b)(6) -- it is appropriate to consider the risk of injustice to the particular parties, the risk that the denial of relief will produce injustice in other cases, and the risk of undermining the public's confidence in the judicial process.

4.Answer A federal court's jurisdiction, is constitutionally limited by article III, extends only so far as Congress provides by statute. A federal court presumptively

lacks jurisdiction in a proceeding until a party demonstrates that jurisdiction exists. A party must affirmatively allege in pleadings the facts showing the existence of jurisdiction, and the court must observe the precise jurisdictional limits prescribed by Congress *In the Matter of an Application to Enforce an Administrative subpoena of the Commodity Futures Trading Commission v. Naji Robert Nahas, Appellant*, 738 F.2d 487 (D.C. Cir. 1984). "plaintiff must establish that this court has the statutory power to hear this case, pursuant to Florida's long-arm statute, as well as the constitutional right to hear this case because of defendants' minimum contacts' with the State of *Florida*." *Douglas v. Modern Aero, Inc.*, 954 F. Supp. 1206, 1210 (N.D. Ohio 1997).

Article III of the Constitution "limits the jurisdiction of federal courts *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 559 (1992). The requirement that a Plaintiff possess "standing to sue" emanates from that constitutional provision. Congress has provided simply and only that "a corporation shall be deemed to be a citizen of any State by which it has been incorporated and of the State where it has its principal place of business," §1332(c)(1). The jurisdictional rule governing here is **unambiguous and not amenable to judicial enlargement**. Mere conclusions or legal arguments that reiterate the allegations of the complaint relating to jurisdiction will not suffice for establishing that jurisdiction exists :*injury from trademark infringement occurs "where the holder of the mark resides"*); *Xymogen, Inc. v. Digitalev, LLC*, No. 6:17cv869-Orl, 2018 U.S. Dist. LEXIS 16147 at * 6 (M.D. Fla. Feb.1, 2018). "plaintiff must have standing to invoke the jurisdiction of the

federal courts *KH Outdoor, LLC v. City of Trussville*, 458 F.3d 1261, 1266 (11th Cir. 2006).”The burden upon a defendant of requiring a defense of a lawsuit in a far distant forum is always a primary concern *World-Wide Volkswagen Corp v. Woodson*, 444 U.S. 286, 292 (1980).” The court has no jurisdiction over a plaintiff who lacks lawful standing before it, *Melo v. US*, 505 F2d 1026 (8th Cir. 1974). “There is no discretion to ignore that lack of jurisdiction *Joyce v. US*, 474 F2d 215 (3rd Cir.1973). Courts cannot go beyond the power delegated to them. If they act beyond that authority their judgments and orders are regarded as nullities *Elliott v. Peirsol*, 1 Pet. 328, 26 U. S. 340(1828).

For Defendant Jurisdiction "plaintiff must establish pursuant to Florida's long-arm statute defendants' minimum contacts' with the State of Florida *Douglas v. Modern Aero, Inc.*, 954 F. Supp. 1206, 1210 (N.D.Ohio 1997). Florida courts have held the term "substantial and not isolated activity" used in § 48.193(2) means "continuous and systematic general business contact" with Florida, a term used by the Supreme Court to determine whether general jurisdiction was permissible. The Due Process Clause permits personal jurisdiction over a defendant in any State with which the defendant has "certain minimum contacts such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice *International Shoe Co. v. Washington*, 326 U. S. 310, 326 U. S. 316.(1945).”The canonical decision in this area remains *International Shoe Co. v. Washington*, 326 U. S. 310 (1945). and “does not offend traditional notions of fair play and substantial Justice *Burnham v. Superior Court*, 495 U.S. 604 (1990). The contacts must be the defendant’s own choice and not “random, isolated, or fortuitous. Plaintiff provided evidence that the contact with the state forum in this case was

based upon an isolated event as to each defendant . A court can exercise personal jurisdiction absent the minimum contacts requirement only upon proper notice and opportunity to be heard *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797 (1985), the judge intentionally removed the required provision to purposely prevent the petitioner notice and opportunity to be heard. Willful misconduct is failure to conduct himself in court proceedings in a manner that promotes public confidence in the impartiality of the judiciary *McCartney v. Commission on Judicial Qualifications* (1974). The judge was without authority to grant subject matter jurisdiction over “marks collectively” to include marks which had been dead canceled and abandoned", "A court has no jurisdiction to determine its own jurisdiction, a basic issue in any case before a tribunal is its power to act, *Rescue Army v. Municipal Court of Los Angeles*, 171 P2d 8; 331 US 549, 91 L. ed. 1666, 67 S.Ct. 1409. Courts are constituted by authority and they can not go beyond the power delegated to them. If they act beyond that authority, and certainly in contravention of it, their judgments and orders are regarded as nullities *Insurance Corp. of Ireland v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 702, 102 S. Ct. 2099, 2104, 72 L. Ed. 2d 492 (1982) "Where a court failed to observe safeguards, it amounts to denial of due process of law, court is deprived of jurisdiction *Merritt v. Hunter*, C.A. Kansas 170 F2d 739 (10th Cir. 1948). A void order or judgment is one which has no legal force or effect, invalidity of which may be asserted by any person whose rights are affected at any time and at any place directly or collaterally. *Reynolds v. Volunteer State Life Ins. Co.*, Tex.Civ.App., 80 S.W.2d 1087, 1092 (Tex.Civ.App.1935) Judgment is a "void judgment" if a court that rendered judgment lacked jurisdiction of the parties, or acted in a manner inconsistent with due process. *Klugh v. U.S.*, D.C.S.C., 610 F.Supp. 892, 901(D.S.C. 1985). Rule65(b)

restrictions 'on the availability of Ex parte temporary restraining orders reflect the fact that our entire jurisprudence runs counter to the notion of court action taken before reasonable notice and an opportunity to be heard has been granted to both sides of a dispute.' "Reed v. Cleveland Bd. of Educ., 581 F.2d 570, 573 (6th Cir.1978). Only an inspection of the record of the case showing that the judge was without jurisdiction or violated a person's due process rights, or where fraud was involved in the procurement of jurisdiction is sufficient for an order to be void.

5. Answer The judge willfully violated the U.S. Constitution Article III.

Congressional Limitation of the Injunctive Power. Some judicial dicta supports the idea of an inherent power of the federal courts sitting in equity to issue injunctions independently of statutory limitations, **neither the course taken by Congress nor the specific rulings of the Supreme Court support any such principle.**

Congress has exercised its power to limit the use of the injunction in federal courts.

Congress can instruct the federal courts to issue preliminary injunctions freezing assets pending final judgment, or instruct them not to, and the courts must heed

Congress' command *Guaranty Trust Co. v. York*, 326 U. S. 99, 105 (1945)

"Congressional curtailment of equity powers must be respected." Congress has restricted the equity jurisdiction of federal courts in a variety of contexts *Yakus v. United States*, 321 U. S. 414, 442, n. 8 (1944). Congress limits the injunctive power of the courts in Lanham Act cases involving artistic expressive works protected by the first Amendment *Fort Wayne Books, Inc. v. Indiana*, 489 U.S. 46 (1989)

expressive materials are protected by the First Amendment, that presumption is not rebutted until the claimed justification for 62-67. A party trying to proceed ex parte "must support such assertions by showing that the adverse party has a history of

disposing of evidence or violating court orders or that persons similar to the adverse party have such a history *First Tech. Safety Sys., Inc. v. Depinet* 11 F.3d 641, 650 (6th Cir. 1993). To obtain ex parte relief, there must be evidence demonstrating that Defendant is likely to conceal evidence or hide assets. See *First Technology* 11 F.3d at 652. *Joint Statement on Trademark Counterfeiting Legislation*, .

The judge acted with wilful misconduct in violating the congressional limits of injunctive power as regulated by the strict limitations of 15 U.S.C. 1116 and the strict requirements of notice and opportunity to be heard. The judge acted without the court authority to expand the congressional statutory provision to accommodate the Plaintiff's counsel, a close personal friend. It is wilful misconduct to intentionally act to prevent a party from receiving notice or opportunity to be Heard *Wenger v. Commission on Judicial Performance* (1981)

The magistrate, by digging through a complaint in search of a valid claim, gave the appearance of lawyering for one side of the controversy.” *Jackson v. Bank of Am., N.A.*, 898 F.3d 1348, 1355 n.6 (11th Cir. 2018)(App.E-23, Vol.2) . This casts doubt on the impartiality of the judiciary. Id. Such a result is plainly inconsistent with the oath each judge has sworn.

The judge applied the law arbitrarily and capriciously denying the petitioner of procedural due process rights and equal protection under the law *Natural Resources Defense Council, Inc. v. United States EPA*, 966 F.2d 1292, 1297 (9th Cir. 1992). The judge threatened sanctions against Petitioner displaying wilful impatience towards the petitioner and a deliberate effort to prejudice defendant's case while trying to influence the disposition of cases as a favor to friend *Wenger v. Commission on Judicial Performance*, *supra*, 29 Cal. 3d 615, 622-623, fn. 4.) this type of conduct can have serious impact on the public trust and confidence in the judicial system.

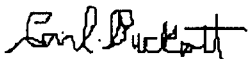
An unconstitutional failure to recuse constitutes structural error that is “not amenable” to harmless-error review *Puckett v. United States*, 556 U. S. 129,141 (2009). Recusal is required when, “the probability of actual bias on the part of the judge or decision maker is too high to be constitutionally tolerable *Withrow v. Larkin*, 421 U. S. 35, 47 (1975).”The Petitioners claims do not refer to a few unfavorable rulings but upon the wilful misconduct of the judge and magistrate in violation of congressional statutes, acting without authority, in excess of authority, and in an unlawful usurpation of the congressional limits of the judicial power of injunction under U.S. Constitution Article III .*Schlagenhauf v. Holder*, 379 U.S. 104 (1964) . The Due Process Clause may sometimes demand recusal *Aetna Life Ins. Co. v. Lavoie*, 475 U. S. 813, 825 (1986) . "(P)ublic confidence in the courts (requires) that such a question be disposed of at the earliest possible opportunity."When a judge acts intentionally and knowingly to deprive a person of his constitutional rights he exercises no discretion or individual judgment; he acts no longer as a judge, but as a " minister" of his own prejudices*Pierson v. Ray*, 386 U.S. 547 (1967).

Extra Judicial source is a common basis for a showing of prejudice and bias. *Liteky v. United States*, 510 U.S. 540 (1994)I but not the exclusive one courts have called the "pervasive bias" exception to the "extrajudicial source" doctrine *Davis v. Board of School Comm'rs of Mobile County*, 517 F.2d 1044, 1051 (CA5 1975), cert. denied, 425 U. S. 944 (1976). *Ex parte American Steel Barrel Co.*, 230 U. S. 35 (1913),and the reason we said in *American Steel Barrel* that the recusal statute "was to prevent his future action in the pending cause," 230 U. S., at 44..A case involving a motion for disqualification is clearly distinguishable from those where a party alleges an error of law See *United States-v. Kane*, 646 F.2d 4, 9-10 (1st Cir. 1981). The reviewing Court did not ask the question our precedents require:

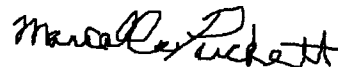
whether, considering all the circumstances alleged, the risk of bias was too high to be constitutionally tolerable, *Liljeberg v. Health Svcs. Acq. Corp.* 486 U.S. 847(1988), (McCartney v. Commission on Judicial Qualifications (1974) (Gubler v. Commission on Judicial Performance (1984) They concluded that prejudicial conduct for impatience or hostility toward an unrepresented defendant constituted wilful misconduct, failure to conduct himself in a manner that promotes public confidence in the impartiality of the judiciary. ."prejudicial to the administration of justice" and "[bring] the judicial office into disrepute."damaging to the esteem for the judiciary *Coca-Cola Co. v. Tropicana Products, Inc., supra*, 690 F.2d at 316.The Petitioner shows these injuries are fairly traceable to challenged actions of the judge. Repeated denial of the defendant's right to notice and opportunity to be heard constitutes willful misconduct and a pervasive pattern of prejudice and bias that rose to an intolerable constitutional level.. (McCartney v. Commission on Judicial Qualifications (1974)."

Conclusion The Writ of Certiorari should be granted.

Respectfully Submitted,



Carl Puckett Petitioner "Pro-Se"



Marcella Puckett Petitioner "Pro-Se"

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Certificate of Interested Persons

PETITIONER's discloses the following trial judge(s), and all attorneys, persons, associations of persons, firms, partnerships, or corporations that have an interest in the outcome of this case or appeal, including subsidiaries, conglomerates, affiliates and parent corporations, including any publicly held corporation that owns 10% or more of the party's stock, and other identifiable legal entities related to a party.

ACCEL IP LAW PLLC- Legal Group

ADAMS, GEORGIA- Plaintiff employee

AIN JEEM, INC.-Plaintiff

AKERMAN LLP.- Legal Group

ALEXTUBACA- Defendant

ALIEXPRESS-Defendant

ALIPAY-Defendant

AMAZON PAY-CE

AMAZON.COM , INC. ("ticker") CIK 0001018724 CE

ASDOURIAN, HOVIG- Defendant

ATTORNEY BROWN, JOYCELYN S. Defendant Counsel

ATTORNEY FERNANDEZ, ALEJANDRO J.- Plaintiff Lead co-counsel

ATTORNEY FONDURA, NICOLE- Plaintiff Counsel

ATTORNEY GUERRA, RICHARD- Plaintiff Lead co-counsel

ATTORNEY KRAMER, JESSICA SARAH- Defendant counsel

ATTORNEY LOCKTON, ANDREW DAVID- Defendant Counsel

ATTORNEY LOTTENBERG, GEOFFREY- Defendant Counsel

ATTORNEY MILBRATH, STEPHEN D.- Defendant Counsel

AXENCIS, INC - CE

BEASON, LINNEA BERNADETTE -Defendat

BELKNAP, WILLIAM - defendant

BERGER SINGERMANN LLP - Defendant counsel

BRICKELL IP GROUP PLLC. Plaintiff counsel

CALIFORNIA SECRETARY OF STATE- State Entity

CRABTREE, CHRISTINE - Defendant

DELAWARE SECRETARY OF STATE - State Entity

DHGATE - Defendant

DHPAY-Defendant

DIAZ, JESUS- Defendant

DUGAN, DEREK- Defendant

EBAY, INC. ("ticker") CIK 0001065088 CE

ETSY, INC. ("ticker") CIK 0001370637 CE

FISHER, ELI - Defendant

GUY, WILLIAM - Defendant

HALL OF FAME SPORTS MEMORABILIA, INC.- Defendant

HOLLAND AND KNIGHT LLP- Defendant Legal Group

HYPER THAN HYPE- Defendant

ICONOMY, INC- Plaintiff agent

IPS LEGAL GROUP, P.A. - Defendant Counsel

JABBAR, KAREEM ABDUL- Principal of Plaintiff

JOOM- Defendant

JUDGE HERNANDEZ-COVINGTON, VIRGINIA

JUDGE MAGISTRATE PORCELLI, ANTHONY E.

KAMINSKI, SPENCER- Defendant

KMISETON- Defendant

LEARY, PATRICK- Defendant

LEDO, JUAN- Defendant

LOVGREN, ANNE C.-Defendant

McHALE AND SLAVIN P.A.- Defendant Counsel

MIDWEST AUCTION- Defendant

MORALES, DEBORAH- Plaintiff agent

MULDROW, CHARLES- Defendant

MURPHY, JESSE- Defendant

NORSAVANH, NORAPINH- Defendant

PAY PAL, INC. (*Ticker) CIK NO.1103415 CE

PROGOSTORE- Defendant

PUCKETT, CARL- Defendant/Petitioner

PUCKETT, MARCELLA- Defendant/Petitioner

RANGEL II, PHILIP

ROISUM, WESLEY- Defendant

ROSS, RO MARTICORENA- Defendant

SANDERS, DONNA - Defendant

SCHOENFELDER, INGRID - Plaintiff employee

SCHOENFELDER, RALPH - Plaintiff Employee

SEAN, STEVEN- Defendant

SMITH, TERRENCE- Defendant

STAVRO, CHRIS- Plaintiff Employee

TAOBAO- Defendant

THOMPSON, STEPHEN -Defendant

TISDOL, CASSANDRA- Defendant

UBOM, KENNETH- Defendant

UNITED STATES FEDERAL ATTORNEY'S OFFICE- Government Entity

UNITED STATES TRADEMARK AND PATENT OFFICE- Government Entity

WATKINS, MIKE- Defendant

WISH (*Ticker) CIK NO. 1822250 CE

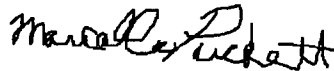
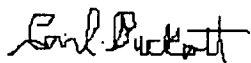
WISH PAY (*Ticker) CIK NO. 1822250 CE

YANG, ART - Defendant

Statement Certification

Petitioners, Carl Puckett "Pro-Se" and Marcella Puckett "Pro-Se" do hereby certify the identities that are publicly traded companies have been properly identified to the best of Petitioner;s knowledge and ability.

Executed this 28th day of February, 2023



Carl Puckett, Petitioner "Pro Se"

Marcella Puckett, Petitioner "Pro-Se"