

CASE NO _____

IN THE SUPREME COURT OF THE UNITED
STATES

Michael Weiss, as Executor of
Estate of Jane L. Marsh
Petitioner

vs.

Peggy Pei-Lin, Yi-Ming Su, DOES 1-10
Respondents

ON PETITION FOR WRIT OF CERTIORARI TO
U.S. COURT OF APPEALS FOR THE NINTH
CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Law Office of Michael Weiss
63 Lakefront,
Irvine, CA 92604
949-654-9919
Michael-Weiss@msn.com

A. Questions presented for certiorari review:

(a) Has the 9th Circuit panel, and/or its clerk and staff attorney, used procedural or substantive springes unconstitutional under the 5th Amendment Due Process Clause, to deprive petitioners appeal of its \$640,000 contractually vested and executed right in property and to defend it plainly and reasonably made, in a way that conflicts with decisions of this court in more than one of its constitutionally grounded due process decisions and hence in need of guidance?

(b) Has the 9th Cir panel, and/or its clerk and staff attorney, sanctioned such a departure by the district court of the fundamental U.S. Constitutional principles of giving notice before it makes its decisions, and then after it made its decisions fail to give notice as to call for an exercise of this Court's supervisory power?

(c) Has the 9th Cir panel and/or its clerk and staff attorney derailed assignment to a panel by the 9th Cir court, as a court, in a way that has so far departed from F.R.A.P. 34 by using its summary disposition General Order (hereafter G.O.) 6.5(c) procedure in violation of 28 U.S.C. 46(a) and thereafter conducting proceedings that were not full and fair, regular and meaningful, as to call for an exercise of this Court's supervisory power and guidance?

(d) Because in 1994 only 11% of appellate opinions were on the merits and the rest of procedure, per Lawrence on Behalf of Lawrence v. Chater (U.S.N.C. 1996) 516 U.S. 163, 171 & FN 1 [116 S.Ct. 604, 133 L.Ed.2d 545]; and, today because the 12-31-23 report reveals that 60% of the appeals were terminated, can it

said that the 9th Cir Gen. Order 6.5(c), and its related other procedures, are a matter of significance to this country and court; and/or because the person who made the 9th Cir Dok #2 decision was never identified, and, as 9th Cir G.O.'s prohibited identification of panel judges who make Memorandum decisions, will the President be left in the dark as to whom he can enforce the federal law against as he is required to do under the U.S. Constitution, if this court is unwilling or unable to guide and clean up its own department?

(e) Has this court left open in other cases any issue that this case may be used to answer?

B. Related Proceedings

Weiss v. Lin #22-55877 (1-10-24, 9th Cir) Order Deny
Rehearing Petn and for Summary Reversal;

Weiss v. Lin #22-55877 (9-21-23, 9th Cir)
Memorandum Affirming Dismissal and Reconsider
Motions;

Weiss v. Pei-Lin (7-5-2022, U.S. District Ct C.D. Cal)
#8:22-cv-00972-CBM Order to Deny
Motions Under FRCP 59 & 60;

Weiss v. Pei-Lin (9-20-22) Order to Deny Motion for
Revision;

Weiss v. Pei-Lin (4-22-2022, U.S. District Ct C.D. Cal)
#8:22-cv-00972-CBM Order to Dismiss Action and Deny
Default Judgment;

Weiss v. Pei-Lin (7-15-2021, U.S. District Ct C.D. Cal)
#8:22-cv-00972-CBM Order to Deny Default Judgment;

Weiss v. Pei-Lin (5-10-2021, U.S. District Ct C.D. Cal)
#8:22-cv-00972-CBM OSC re Set Aside Default and
Default Judgment.

C. Table of Contents

A. Questions Presented for Certiorari	-i-
B. Related Proceedings	-iii-
C. Table of Authorities	-iv-
D. Citation To Unofficial Reports	-ix-
E. Basis of Supreme Court Jurisdiction	10
F. Constitution, Statutes etc Involved	11
G. Statement of the Case	11
H. Reasons Why Writ Should be Granted	21
I. 9th Cir. Due Process Violation	21
II. Supreme Court Supervisory Power Sought	35

III. Unconstitutional Use of 9th Cir Panel	37
Stare Decisis	
Conclusion	40
I. Appendix	41
Appx A. WL 6157401 Memorandum;	41
Weiss v. Lin (9-21-23, 9th Cir) #22-55877	
Appx B. Weiss v. Lin (1-10-24, 9th Cir)	43
#22-55877-Order Deny Rehear Petition	
Appx C. WL 4474935 Order to Deny Motions	44
Under FRCP 59 & 60; Weiss v. Pei-Lin (6-30-2022, U.S.	
District Ct C.D. Cal) #8:22-cv-00972-CBM	
Appx D. WL 4474939 Order to Dismiss Action	51
and Deny Default Judgment; Weiss v. Pei-Lin (4-22-2022,	
U.S. District Ct C.D. Cal) #8:22-cv-00972-CBM	
Appx E. Constitutional Clauses	60
Appx F. Title 28 Statutes	61
Appx G. 9th Cir General Orders & Circuit Rules	63
Appx H. Cal Probate and Civil Code Statutes	65

TABLE OF AUTHORITIES

CASES

Adickes v. S.H. Kress & Co., 398 U.S. 144	50
BE & K Const. Co. v. N.L.R.B. (2002) 536 U.S. 516	
[122 S.Ct. 2390, 153 L.Ed.2d 499]	18
Barrett v. Belleque, 544 F.3d 1060	37
Behrens v. Pelletier (1996) 516 U.S. 299 [116 S.Ct.	
834, 133 L.Ed.2d 773]	24
Bell Silver & Copper Mining Co. v. First Nat. Bank	
(1895) 156 U.S. 470 [15 S.Ct. 440, 478 39 L.Ed.	
497]	19
Blackburn v. State of Alabama (1960) 361 U.S. 199	

[80 S.Ct. 274, 4 L.Ed.2d 242]	26
Brinegar v. U.S. (1949) 338 U.S. 160	33
Cervantes v. Countrywide Home Loans, Inc., 656 F.3d 1034	38
Cohen v. Beneficial Indus. Loan Corp.(1949) 337 U.S. 541 [69 S.Ct. 1221, 93 L.Ed. 1528]	24
Covey v. Town of Somers (1956) 351 U.S. 141 [76 S.Ct. 724, 100 L.Ed. 1021]	29
Davis v. Wechsler (1923) 263 U.S. 22 [44 S.Ct. 13, 68 L.Ed. 143]	5
Dickerson v. U.S. (2000) 530 U.S. 428 [120 S.Ct. 2326, 147 L.Ed.2d 405]	25
Dobbs v. Jackson Women’s Health Organization (2022) 597 U.S. 215 [142 S.Ct. 2228, 213 L.Ed.2d 545]	34
Estate of Marsh, 2014 WL 2667709 48, 51, 52, 53, 55	
Fogarty v. Sawyer (1861) 17 Cal. 589	19
Fuentes v. Shevin (1972) 407 U.S. 67 [92 S.Ct. 1983, 32 L.Ed.2d 556]	17
Garamendi v. Henin, 683 F.3d 1069.	38
George v. Pac.-CSC Work, 91 F.3d 1227 45, 49, 51, 54	
Hawaii Hous. Auth. v. Midkiff, 467 U.S. 229. . 45, 54	
Jones v. Flowers (2006) 547 U.S. 220 [126 S.Ct. 1708, 164 L.Ed.2d 415]	29
Kemp v. United States, 142 S. Ct. 1856.	40, 44
LLC v. City & Cnty. of San Francisco, 2020 WL 5232420	53
Lawrence on Behalf of Lawrence v. Chater (U.S.N.C. 1996) 516 U.S. 163	1
Lee v. City of Los Angeles, 250 F.3d 668	54
Lisenba v. People of State of California (1941) 314	

U.S. 219 [62 S.Ct. 280, 86 L.Ed. 166]	26
Lugar v. Edmondson Oil Co., 457 U.S. 922 . . .	49, 51
Lynch v. Household Finance Corp. (1972) 405 U.S. 538 [92 S.Ct. 1113, 31 L.Ed.2d 424]	33
Mathews v. Eldridge (1976) 424 U.S. 319 [96 S.Ct. 893, 47 L.Ed.2d 18]	27
McQuillion v. Duncan, 306 F.3d 895	49
Miller v. French (2000) 530 U.S. 327 [120 S.Ct. 2246, 147 L.Ed.2d 326]	24
Molski v. M.J. Cable, Inc., 481 F.3d 724	38
Monroe v. Pape (1961) 365 U.S. 167 [81 S.Ct. 473, 5 L.Ed.2d 492]	30
Norwood v. Harrison (1973) 413 U.S. 455 [93 S.Ct. 2804, 37 L.Ed.2d 723]	34
Oneida Indian Nation of N. Y. State v. Oneida County, New York (1974) 414 U.S. 661 [94 S.Ct. 772, 39 L.Ed.2d 73]	33
Padgett v. Wright, 587 F.3d 983	39
Pollard v. U.S. (1957) 352 U.S. 354 [77 S.Ct. 481, 1 L.Ed.2d 393]	31
Radiant Burners, Inc. v. Peoples Gas Light & Coke Co. (1961) 364 U.S. 656 [81 S.Ct. 365, 5 L.Ed.2d 358]	31
Sch. Dist. No. 1J, Multnomah County, Or. v. AcandS, Inc., 5 F.3d 1255	38
Schneider v. Cal. Dep't of Corr., 151 F.3d 1194 . . .	55
Sutton v. Providence St. Joseph Med. Ctr., 192 F.3d 826	37
Tulsa Professional Collection Services, Inc. v. Pope (1988) 485 U.S. 478 [108 S.Ct. 1340, 99 L.Ed.2d 565]	12

United Student Funds, Inc. v. Espinosa (2010)	559
U.S. 260 [130 S.Ct. 1367, 176 L.Ed.2d 158]	29
Vail v. Territory of Ariz. (1907)	207 U.S. 201 [28
S.Ct. 107, 52 L.Ed. 169]	33
Weiss v. Marsh, 139 S.Ct. 1558	48
Whitaker v. Garcetti, 486 F.3d 572	38
White v. New Hampshire Dept. of Employment Sec.	
(1982) 455 U.S. 455	41
Wilkinson v. Austin (2005) 545 U.S. 209 [125 S.Ct.	
2384, 162 L.Ed.2d 174]	20
Young v. U.S. ex rel. Vuitton et Fils S.A. (1987)	481
U.S. 787 [107 S.Ct. 2124, 95 L.Ed.2d 740]	31

STATUTES

28 U.S.C. § 1343, 28	44
28 U.S.C. § 2201	44
28 U.S.C. 46(a)	1, 5, 23, 57
28 U.S.C. 219	57
28 U.S.C. 223	57
28 U.S.C. 1254	57
28 U.S.C. 1254(1), 28	5
28 U.S.C. 1291	37
28 U.S.C. 1331, 1343(a)(3)(4)	5
28 U.S.C. 2071(a)	26, 58
28 U.S.C. 2101(c)	57
28 U.S.C. 2106	5, 58
42 U.S.C. 1983	6, 17, 32, 34, 37
Civil Code 954	61
Civil Code 1039	61
Civil Code 1039, 1040, 1044, 1069, 1085, 1107, 1458,	
1559, 2941(b)(1)(B)(i)	19

Civil Code 1040	61
Civil Code 1044	61
Civil Code 1069	61
Civil Code 1085	61
Civil Code 1107	62
Civil Code 1458	62
Civil Code 1559	62
Civil Code 2941(b)(1).....	62
FRAP 32.1	59
FRAP 34(a).....	59
FRCP 59.....	3, 4, 36, 39, 46
Fed. R. App. P. 4(a)(4)(B)(ii)	38
Fed. R. App. P. 34(a)(2)	37
Fed. R. Civ. P. 59(a).....	38
Fed. R. Civ. P. 59(e).....	38
Fed. R. Civ. P. 60(a).....	38
G.O. 4.5(a)	30
G.O. 6.2	23
G.O. 6.2(c)	58
G.O. 6.5(a)	59
G.O. 6.5(a)(2)	22
G.O. 6.5(c)	1, 22, 23, 30, 31
G.O. 6.5(c)(2)	22
G.O. 12	23
Gen. Order 6.5(c)	2, 24
Probate Code 44.....	60
Probate Code 48.....	45
Probate Code 7261.....	60
Probate Code 10314.....	61
Probate Code 10314(c)(1)	21
U.S. Const. Art 3 Sec 2	7

U.S.U.S. Const. Amend. § XIV. Section 1	56
U.S.U.S. Const. Art. 3 § 1	55
U.S.U.S. Const. Art. 3 § 2, Clause 1	56
U.S.U.S. Const. Art. 3 § 2, Clause 2	56

D. Citation To Unofficial Reports

WL 6157401 Memorandum; Weiss v. Lin
(9-21-23, 9th Cir) #22-55877

WL 4474935 Order to Deny Motions Under FRCP
59 & 60; Weiss v. Pei-Lin (7-5-2022, U.S. District Ct
C.D. Cal) #8:22-cv-00972-CBM

WL 4474939 Order to Dismiss Action and Deny
Default Judgment; Weiss v. Pei-Lin (4-22-2022, U.S.
District Ct C.D. Cal) #8:22-cv-00972-CBM

WL 2302723 OSC re Set Aside Default and
Default Judgment; Weiss v. Pei-Lin (5-10-2021, U.S.
District Ct C.D. Cal) #8:22-cv-00972-CBM

WL 9181892 Order re Motion for Publication of
Summons; Weiss v. Pei-Lin (9-24-2021, U.S. District
Ct C.D. Cal) #8:22-cv-00972-CBM

WL 4735019 Order to Deny Default Judgment;
Weiss v. Pei-Lin (7-15-2021, U.S. District Ct C.D.
Cal) #8:22-cv-00972-CBM

E. Basis of Jurisdiction in Supreme Court

The 9th Cir panel denied petitioner's petition for rehearing on 1-10-2024 of its Memorandum dated 9-21-23. 28 U.S.C. 1254(1), 28 U.S.C. 2101(c),(e) and/or 28 U.S.C. 2106 in conjunction with the exceptions to finality thereto confer jurisdiction in this court, including this courts Rule 11 because no appellate court judgment was entered in the 9th Cir due to this courts constitutionally grounded decisions and violation of 28 U.S.C. 46(a). In this case district and appellate court jurisdiction was invoked by petitioner under Article 3 Sec 2 common law and inherent equity principles; as well as under 28 U.S.C. 1331, 1343(a)(3)(4), and 1367. The Article 3 Sec 2 jurisdiction was invoked because of this courts holding in Davis v. Wechsler (1923) 263 U.S. 22 [44 S.Ct. 13, 68 L.Ed. 143] that if the Constitution and laws of the United States are to be enforced the court cannot accept as final the decision of a state tribunal as to what the facts alleged to give rise to the right or to bar the assertion of it consist of even upon local grounds. Whatever springes the state may set forth for those who assert right to's state rights when it comes time to assertion of federal rights when plainly and reasonably made it shall not be defeated in the name of local practice. Petitioner contended that this reasoning be applied to federal springes, the point being that the U.S. 5th Amendment Due Process Clause protects substantial property rights against federal actor deprivation or taking. Property interests arise from "rights" in the property; not, the thing itself. Petitioner contended its substantive property right was worthy of

federal court U.S. 5th Amendment protection; and that, if the federal procedural or substantive law whether it be in a statute, rule, or order did not authorize entertainment of that right, then the U.S. Due Process clause did. That protection was guaranteed because the court made no finding of fault in petitioner to disentitle him from asserting it; and, also because the weight of all parties and government interests did justify assertion of it. Hence if a federal statute such as 42 U.S.C. 1983 would not protect the property right asserted, and no other federal statute would either, then the Due Process clause itself would. Additionally in the context of the California's probate statutes and its other statutes, rules and orders petitioners U.S. 14th Amendment constitutionally recognizable right in property would be protected against State action caused deprivation or taking.

F. Constitution, Statutes Etc Involved

See Table of Authorities under Statutes listed.

G. Statement of the Case

Plaintiff's original federal complaint (9th Cir ECF #15 @ DC ECF #1) regarding district court jurisdiction reasonable and plainly stated in part as follows:

"1. This plaintiff's complaint invokes the courts jurisdiction under U.S. Const. Art 3 Sec 2, this Courts inherent equity and/or common law jurisdiction re infringement of U.S. Constitutional rights, privileges and immunities as specified.

"23. Even in the absence of a U. S. Constitution Clause prohibiting taking of property without paying compensation, there was at common law, as

alternatively invoked herein, an implied limitation built into every state government prohibiting the same.

"28. Petitioner has no adequate remedy at law or in equity left in the California state courts due to unconstitutional hostility against plaintiff under the U.S. Due Process Clause; and, has no other source to seek relief from to prevent unconscionable miscarriage of justice nor uphold U.S. Constitutional rights and privileges to real property."

Plaintiff's original federal complaint, insofar as it shows the subsequent 9th Cir panel, its clerk, or staff attorney; and, district court failure to read it, stated in part as follows:

"36. The issue of Jane L. Marsh's and Weiss' lack of interest in Monroe's estate and hence lack of standing, are completely different issues because they were not claiming any right arising under the last Will of her deceased husband.

"37. In contrast the authority to sell the Irvine condo in the court sitting in probate sprang solely from Monroe F. Marsh's last will; not Monroe's trust deed."

Plaintiff's original federal complaint regarding state action stated in part as follows:

"27. Plaintiff has the right to complain of a violation of the U.S. Constitution 10th amendment state powers because he suffers an injury caused by State Actor action taken in excess of its authority directly by the California Courts; and, Monroe's co-executors had received substantial state actor assistance per *Tulsa Professional Collection Services, Inc. v. Pope* (1988) 485 U.S. 478 [108 S.Ct. 1340, 99 L.Ed.2d 565].

Under this pleading the injury is to the U.S. Constitutionally protected real property rights, privileges and immunities of Jane L. Marsh and plaintiff after her death.

"31. Monroe F. Marsh co-executors who accidentally, or mistakenly had the real property sold, which did not belong to Monroe F Marsh, and the defendant Yi's knowing participation in the ultra vires sale by not objecting to unilateral change of newspaper terms and accepting a defective deed, is the subject of this independent suit in equity to impose upon the Yi's title a declaration, or other remedy as may be appropriate.

"46. After MERS reconveyed title pursuant to the power of disposition clause in paragraph 10 and 16 of the trust deed neither Monroe F. Marsh, his co-executors, nor the Yi's could hold any interest under it as they never paid MERS to acquire it.

"55. As an actual and proximate cause and result of the above mentioned acts and omissions plaintiff pray for such relief and for such other incidental relief as the court deems necessary or proper."

Plaintiff's original federal complaint insofar as it shows the 9th Cir panel, clerk and staff attorney; and, district court caused collateral prejudice, is stated in part as follows:

"49. Under Code of Civ. Proc. 319 no action for title to real property shall be pursued unless commenced within 5 years of seisin or possession. This suit is brought within that limitation as above alleged and the conveyance of the Irvine condo to the defendant Yi's was

within that five-year period."

The undisputed facts with regard to taking of property by defendants participation in state action through California probate proceedings; and, denial of right to defend in that case, are shown by the defendants default in the district and appeals court; and, by plainly and reasonably Complaint pleading and evidence in the district court (see 9th Cir ECF #15 @ district court ECF #'s 1 (Complaint), #56 (Clerks default), and #95, #93 and #67 (Reporter Transcripts [RT] res gestae evidence) as follows:

Per Complaint Ex 1 on 10-20-03 Monroe F. Marsh executed and delivered his Deed of Trust which provided in part:

"The trustor is Monroe F. Marsh, a Widower, ("Borrower"). This debt is evidenced by the Agreement, which provides for a single payment due and payable in the ordinary course, upon the earliest to occur of any of the Maturity Events ...which are as follows: (a) the sale, conveyance, transfer or assignment of any part of the Property... or any of Borrower's rights in the Property, whether voluntarily or involuntarily, by operation of law or otherwise, to a person other than any of the original Borrowers, without Lender's prior written consent, (b) the Borrower's death...This Security Instrument secures to you ... (c) the performance of my obligations and agreements under this Security Instrument.

"I further covenant and agree as follows:

"1. I will promptly pay, or cause to be paid, to Lender

when due the principal of the debt [here due date was 11-2-2009 borrower's death, and/or 10-20-2003 date of borrower's last will because it operates by operation of law, and/or 10-20-2003 date this deed of trust was executed due to Monroe's false representation of being a Widower per para 4 below].

"4. ...I understand that I will also be in default if I gave materially false or inaccurate information or statements to you (or failed to provide you with any material information)... in connection with the Agreement, including, but not limited to, representations...

"6.1 If I fail to perform any of my material obligations contained in the Agreement or any of my obligations set forth in this Security Instrument, or if legal proceedings are commenced that may significantly affect your rights in the Property (such as proceedings in probate...then you may... do whatever is necessary to protect ...your rights in the Property.

"9. I understand that any extension of the time for payment of the amounts secured by this Security Instrument which you grant to me or to any of my successors in interest will not operate to release my liability or that of my successors in interest.

"10. The agreements of this Security Instrument and the Agreement shall bind and benefit you and your successors and assigns, and me and my executors, administrators, heirs, successors and assigns.

Borrower's agreements are and will be joint and several. [Here Jane L. Marsh is thus a 3rd party beneficiary who became Borrowers successor in interest by complying with para 16 below.]

"14. I understand that if an Event of Default occurs...you may require mandatory prepayment of the Loan ... If the default is not cured on or before the date specified in the notice, you may...invoke any other remedies provided by ... this Security Instrument or permitted by applicable law. Your exercise of this right will not cure or waive any default ...or invalidate any act done pursuant to such a notice. [Here see Complaint Exh 4 default mortgage repayment notice.]

"16. Upon payment of all amounts ...you will request the Trustee to reconvey the Property; provided, however, that if my Account balance is \$00.00 at any time prior to the occurrence of a Maturity Event or your demand for early repayment, you shall not request the Trustee to reconvey...**The Trustee will reconvey the Property ...at the charge agreed to in the Agreement, to the person or persons legally entitled to it.** (Italics added)

That person or persons will pay any recordation costs.

"19. All of your remedies under this Security Instrument are cumulative to any other right or remedy under this Security Instrument...which is afforded by law or equity, and may be exercised concurrently, independently or successively."

Per Complaint Ex 4 on 12-28-09 Financial Freedom issued its default Mortgage Repayment Notice which provides in part:

"FINANCIAL FREEDOM December 28, 2009

"Estate of the Monroe Marsh

"Dear Marsh: Cash Account Reverse Mortgage
Repayment Notice

"We are saddened to have recently learned of the

passing of Monroe F Marsh and wish to convey our deepest sympathy to you and all family...Upon the occurrence of a maturity event, of which the borrower's passing is one, the loan becomes due and payable. ... The first step that we ask of you is to please provide us with the details of your plans for paying off the loan by filling out the enclosed "Repayment Questionnaire" form and returning it to us immediately. Once we have this information, we will contact you to schedule repayment of the loan.

Lisa Harkness

Per Complaint Ex 5 on 9-24-09 lender beneficiary Financial Freedom executed and recorded its Assignment of the Deed of Trust to MERS.

Per Complaint Ex 6 on 2-4-10 Michael Weiss purchased a cashier's check in the amount of \$638,963.86 payable to Financial Freedom Acquisition LLC which was loaned to his mother Jane L. Marsh to acquire the Irvine condo for herself. It provides in part: "Cashier's Check Serial #: 0098303959 February 04, 2010 Purchaser: Law Offices of Michael Weiss Pay to the Order of *** Financial Freedom Acquisition, LLC *** *** Six hundred thirty-eight thousand nine hundred sixty-three dollars and 86 cents **\$638,963.86**"

Per Complaint Ex 7 on 2-4-10 Jane L. Marsh executed her Simple Promissory Note to repay the \$638,963.86.

Per Complaint Ex 8 & 9 Michael Weiss sent a letter to Lisa Harkness of Financial Freedom which provides in part:

"Michael Weiss Attorney at Law 2030 Main Street #

1300 Irvine, California 92614

"To Lisa Harkness 3-11-10

"Where Is My Reconveyance on Monroe Marsh Payoff?
Why Did You Not Record a Reconveyance. As You
Requested I Sent by Fed Ex a Cashiers Check Weeks
Ago. Enclosed Is Affidavit of Surviving Spouse for Your
Records."

"Title of Document: Affidavit of Surviving
Spouse State of California) County of Orange) s.s.
"Jane Lucille Marsh of legal age, being first duly
sworn, deposes and says: 1. Monroe F. Marsh, the
decedent mentioned in the attached certified copy of
Certificate of Death, was married to Affiant at the
time of decedent's death [11-22-2009].... 3...Monroe
Franklin Marsh married me on 2-6-2003 in the
Beverly Hills, California courthouse; and we took up
our family residence at 51 Lakefront, Irvine, CA...I
paid off the @ \$633,061 balance just after his death
by way of ...a loan from my son. ...I therefore claim
full ownership of the 51 Lakefront, Irvine property,
am recording a Homestead Declaration on it; and,
then dispose of it by conveyance to my son while
reserving a life estate in it for myself. Dated: March
3, 2010."

Per Complaint Ex 10 on MERS executed a
Reconveyance deed which was recorded on 3-17-10, and
provides in part:

"[Requested By] Nationwide Title Clearing
[When Recorded Mail To] Monroe F Marsh 51
Lakefront Irvine, Ca 92604 (Trustor) Re: Loan:
1402898

"Substitution of Trustee and Full Reconveyance

"Whereas Monroe F. Marsh was the original Trustor under that certain Deed of Trust recorded on 10/27/2003 in the office of the County Recorder of Orange County, California, as Instrument Number 2003001315135 in Book, Page...Whereas, the undersigned, as the present Beneficiary(s) under said Deed of Trust desires to substitute a new Trustee under said Deed of Trust in place and stead of original Trustee, now therefore, the undersigned hereby substitutes himself (themselves) as Trustee under said Deed of Trust and does hereby reconvey without warranty to the persons legally entitled thereto all Estate now held by it under said Deed of Trust.

Dated: 02/23/2010 Mortgage Electronic Registration Systems, Inc. ('Mers') as Nominee for Financial Freedom Acquisition LLC."

Per Complaint Ex 18 on 8-12-15 a Grant Deed to the Irvine condo following a probate sale to defendants provides in part:

"Recording Requested by Mail Tax Statement To: Peggy Pei-Yi Lin 20 Whispering Wind, Irvine, Ca 92614

"Grant Deed

"Stephen D. Marsh, and Damon Marsh, Co-Executors of the Estate of Monroe F. Marsh, also known as Monroe Franklin Marsh, deceased hereby Grant(s) to Peggy Pei-Yi Lin and Yi-Ming Su, Wife and Husband....[the Irvine real property]"

Per evidence offered and received at and before the District Court default judgment proceeding neither Jane

L. Marsh nor her executor ever received any notice, full and fair hearing, standing to object, nor compensation for the taking of her executed contract right to receive the MERS reconveyance deed to the Irvine condo. Although the District Court had no authority on its own to dismiss for lack of pleading plausibility re state action under F.R.C.P. 12(b)(6) (See 12(f)(1)), it was expressly administratively closed (see Appx D and Appx C) or Weiss v. Pei-Lin (2021) WL 4735019, also found at 9th Cir ECF #15@ district court ECF #66); and, it purported to deny motions to file an amended complaint, and for relief from dismissal and for entry of a final judgment under F.R.C.P. 52, F.R.C.P. 59, F.R.C.P. 60 and under its inherent equity jurisdiction, (see 9th Cir ECF #15 @ district court ECF #'s 90 and 81. All of same was purportedly summarily affirmed by the 9th Circuit panel, which also purported to summarily deny a petition for rehearing on 1-10-2024. The 9th Circuit clerk and the district court clerk failed to serve notice of entry of these orders and opinion which was in contravention of F.R.C.P. 77 which provides: "Conducting Business: Advisory Committee Notes 1991 Amendment: The revised rule lightens the responsibility but not the workload of the clerk's offices, for the duty of that office to give notice of entry of judgment must be maintained. Changes Made After Publication and Comments: Rule 77(d) was amended to correct an oversight in the published version. The clerk is to note "service," not "mailing," on the docket." Same per F.R.A.P. 36. In this case both federal courts directed and threatened petitioner not to file any more papers in their courts,

inconsistently with 1st amendment Free Speech and Petition clause rights.

(H) Reasons Why Writ Should be granted.

I. 9th Cir. Due Process Violation

The 5th Amendment Due Process clause authorizes no broadside stare decisis application; rather, when challenged it goes beyond that judicially created doctrine and requires analysis on a case-by-case determination due to the fact that the interests of the parties to be weighed may be different, just as the circumstances existing at the time of the court's ruling on them may be different one from the other; and likewise that the procedures authorized by Congress may be different depending upon the area of law involved or the stage of the case. The 9th Cir panel did not even give lip service in its Memorandum or its denial of rehearing Order, to say that its precedents were consistent with the relative weights of the interests involved in this case; nor, gave any justification why the balancing of competing interests already performed by the Congress when it enacted 42 U.S.C. 1983 was constitutionally insufficient. That the governing documents today in this petition are not merely the 9th Cir memo opinion and its order denying rehearing is due to the fact of such extrinsic matters.

Fuentes v. Shevin (1972) 407 U.S. 67, 97 [92 S.Ct. 1983, 32 L.Ed.2d 556] echoed the fundamental constitutional principle regarding the procedural, evidential, and substantive complaints made against the 9th Cir panel and district court herein that the Due Process clause requires notice of hearing and

opportunity to be heard before adjudication. In this case the 9th Cir Court, as a court, never assigned the appeal to any panel nor gave notice of same. It misidentified petitioner as a pro se litigant pursuing his own action because he was an attorney pursuing the interests of the Estate of Jane L. Marsh as its executor and personal representative. It sent its Mandate to the wrong branch of court the Orange County branch, because the decision came from the Los Angeles branch. The district court never gave F.R.C.P. 5(b) notice of its order dismissing the action (see 9th Cir. ECF #15 @ district court ECF # 66), nor its orders denying reconsideration and for other relief from that decision (see 9th Cir ECF #15 @ district court ECF #'s 79, 78, 70, 59, 50, and 49.) This court held that without prior notice that the same results anyway standard of the harmless doctrine was not applicable (Id. p. 87 citing its Coe case) and this was because no later post deprivation notice and hearing could undo the fact that an arbitrary deprivation and taking had already occurred (Id. p.82). This court concluded that the only truly effective safeguard against arbitrary deprivation is afforded by the giving of notice and a hearing that were aimed at establishing the validity, or at least the probable validity, of the underlying claim and that it must listen to what the party is saying (Id. p. 97). The Due Process clause was intended to protect the substantial rights of persons whose possessions were taken or threatened to be taken from them by government action. Those substantial rights include fairness procedurally and substantively in terms of the right to appeal to the 9th Cir as a court, the time of

hearing, protection against arbitrary decision, a full and fair use of the evidence, as well as every other applicable right, privilege or immunity guaranteed under the Constitution. None of those protections were fully and fairly provided by the 9th Cir nor the district court in this case.

BE & K Const. Co. v. N.L.R.B. (2002) 536 U.S. 516, 525 [122 S.Ct. 2390, 153 L.Ed.2d 499] echoed this courts previous constitutionally grounded decision that the right to petition includes the right of access to court. But here the 9th Circuit panel order denying the rehearing petition directed petitioner not to file any more papers therein even though it never gave notice of either its memo opinion or its order denying rehearing nor its mandate. The District Court did the same, save and except for papers related to an appeal. This Court said it has never held that an entire class of objectively baseless litigation may be enjoined; instead, requiring such litigation be not only objectively but also subjectively baseless (Id. p. 534.) In this case Tulsa, supra could be read as already determining that sale in probate to joint participant defendants with state actor assistance was not objectively baseless. Neither the 9th Circuit nor the district court in this case made any finding of subjective or objective fault in petitioner. The Bell and Fogarty cases next cited, along with Civil Code 1039, 1040, 1044, 1069,1085, 1107, 1458, 1559, 2941(b)(1)(B)(i), could be read as having provided the governing authority that Jane L. Marsh owned a contract right to the reconveyance deed on the Irvine condo.

Fogarty v. Sawyer (1861) 17 Cal. 589, 592, held that a lien can only be enforced by judicial proceedings, except by the authority of the owner of the property; and that the existence of a lien does not prevent the owner from authorizing the lender to collect by other means than just enforcement under the statutory lien enforcement authority; and further, that if the lender and trustee agree with the owner to be governed by contract rights, duties, and powers which are independent of the statutory lien remedies, such independent power, rights or duties are separate from statutory enforcement power and that good title will pass upon consummation by a reconveyance deed from the trustee. The district court and 9th Cir refused to be governed by this decision.

Bell Silver & Copper Mining Co. v. First Nat. Bank (1895) 156 U.S. 470, 447-478[15 S.Ct. 440, 478 39 L.Ed. 497] agreed with the California case of Fogarty, *supra* by stating that there is nothing in the law of mortgages or trust deeds in the nature of mortgages, which prevents the mortgagor-trustor from granting additional power, right, or security to his mortgagee-trustee in addition to holding the security device, such as a power of sale. This is because the owner has a right to dispose of his property and the lender and trustee have a right to the accept the additional right, duty, power, or security over and above recourse to the real property itself. This court and the California Supreme Court hence both held that the additional right, duty, security or power did not change the nature and character of the security device; but, conferred upon the

mortgagee-trustee additional means of collecting the debt. In this case the lender beneficiary exercised such additional right and duty under paragraphs 10 and 16 of the trust deed.

Wilkinson v. Austin (2005) 545 U.S. 209, 224-225 [125 S.Ct. 2384, 162 L.Ed.2d 174] held that the U.S. Due Process clause proceeds upon a two-step determination (1) is there an existing liberty or property interest and (2) a balancing act analysis regarding (a) the private interest (b) the risk of an erroneous deprivation of that interest due to the procedures used and the probable value of additional or substitute procedural safeguards and (c) the government interest in fiscal and administrative burdens that any new procedural safeguards would entail. In this case the interests of Jane L. Marsh, and after her death petitioner as her executor, was her (1) fully executed contract right to receive and subsequent receipt of a reconveyance deed to the Irvine condo and (2) her 5th Amendment due process clause right to acquire, maintain, and defend that vested and executed contract right. These rights are constitutionally substantial because California law authorized it and it involves not only the loss of \$640,000 but the right of occupancy of the Irvine condo and the federal courts prior restraint on petitioner's right of further access to them. The interest of the defendants is shown by the Grant deed executed to them by the co-executors of Monroe Franklin Marsh found in the 9th Cir ECF # 15 @ district court ECF # 1 Complaint @ Exhibit 18. That interest is nil because California Probate Code 10314(c)(1) provided the defendants with

the title or possession which Monroe Franklin Marsh himself had in the Irvine condo on the day he died which was nothing because he defaulted out under his trust deed terms which required repayment before his death and prohibited him from having his property rights transferred by operation of probate law under his last will. Next, the interest in the Federal Government in its fiscal and administrative burdens is small, as it should take the lower federal courts but a few hours only to declare state action per Tulsa, supra and interest in property per Bell Silver, supra and Fogarty, supra. Further neither the 9th Cir nor the district court cited any fact regarding its fiscal or administrative burdens in this case; but, more importantly if the 9th Circuit had applied this courts constitutionally grounded decisions and the California Supreme Court decision in Forgarty, supra there would have been no new administrative or fiscal burdens to impose in the first place.

F.R.A.P. 47(a)(1) is cited for the contention that the G.O. 6.5(c) procedure is invalid; and that the 9th Cir G.O. at chapter 1 which says the G.O.'s conform to title 28 U.S.C., F.R.A.P. and its circuit rules is plain error of fact and law including the U.S. Constitution Due Process clause. In this case the 9th Cir clerk and its staff attorney and panel members have used the G.O 6.5(c) assignment to derail and dispose of the appeal because per G.O. 6.5(a)(2) "the result is clear and the applicable law is established in the 9th Circuit based on circuit precedent." This was a standardless delegation of authority insofar as to the result being clear; and, was in violation of the Supremacy Clause insofar as using

9th Cir precedent instead of U.S. supreme court precedent. Further if the result was clear then the clerk and staff attorney assignment to a panel should have been immediate and not one year later. The appeal was filed 9-26-22 but not assigned (submitted) until 9-12-23 per face of the Memorandum. G.O. 6.5(c)(2) says such summary dispositions will ordinarily be by memorandum; and, says that if the panel did not issue a separate order submitting the case, a footnote in the memorandum should state the panel unanimously agreed that the case should be submitted "on the briefs." But here the memorandum says the case was submitted "without oral argument". Under F.R.A.P. 34(b) the clerk failed to give notice to all parties whether oral argument would be scheduled; and, G.O.6.5(c)(2) appears to eliminate that clerk's duty by a prescribed footnote in the panel's memo. F.R.A.P. 34 (a)(2) was violated because the memorandum footnote fails to cite subdivision (A) (B) or (C) of F.R.A.P. 34(a)(2). F.R.A.P. 34 Advisory Committee Notes of 1998 amending subdivision (a) says it prescribes the national standard; and, that local rules are unnecessary instruments, yet G.O. 6.5(c) has been amended more than once after this 1998 national standard was prescribed including 9-17-2014, 7-1-2002 and 7-1-2003. 9th Cir. G.O. 12 says the orders pertain primarily to the court's internal functioning; and, that the clerk shall provide each member of the panel with a book containing them. Under F.R.A.P. 34 (a) the case may indeed have been eligible under Tulsa, supra, Bell, supra, and other constitutionally grounded decisions of this Court cited

in the petitioners opening brief and Fogarty, supra. F.R.A.P. 36(a) and (b) were violated because the clerk did not prepare or sign the judgment as any court instructed; and, because the clerk did not serve on petitioner a copy of the judgment and a notice of the date judgment was entered see its Docket #7. Orders of this Court creating the federal rules on December 4, 1967 paragraph one says they are not applicable if a court or judge thereof was not competent to give the relief it did. In this case the panel was not competent to dispose of the case under its G.O. 6.5(c) procedure; and, this is because the 9th Cir. Ct. as a court per 28 U.S.C. 46(a), never assigned the case to the panel-rather per G.O. 6.2 the court's clerk made the assignment to the panel. The 9th Cir Memorandum is incomplete because it never stated any facts to support the failure to respond to the multiple jurisdictions invoked by petitioner. The 9th Cir Memorandum is invalid because Article 3 Section 2 structurally distinguishes between dispositions of courts and its clerks or staff attorneys and unauthorized panels. The 9th Cir court never assigned a written screening panel and hence could not make a disposition. See Miller v. French (2000) 530 U.S. 327, 342 [120 S.Ct. 2246, 147 L.Ed.2d 326]. The district court **mootness order** and its pre-filing orders are separate from its plausibility order; and hence within the Cohen v. Beneficial Indus. Loan Corp.(1949) 337 U.S. 541 [69 S.Ct. 1221, 93 L.Ed. 1528] exception to finality. Insofar as the 9th Cir is concerned, its **Gen. Order 6.5(c) procedure brought it within the Cohen, supra collateral issue exception** to finality because such

procedure was separable from the merits of an appeal to the 9th Cir as a court, as was its order denying rehearing which imposed a prior restraint on petitioners free speech and petition access rights. See *Behrens v. Pelletier* (1996) 516 U.S. 299, 311 [116 S.Ct. 834, 133 L.Ed.2d 773].

Petitioner contends the final Mathews, *supra* determination is that the procedures, evidence, substantive law, and prior restraint on free speech used by the 9th Circuit clerk, staff attorney and panel created a constitutionally unacceptable risk of error. It failed to make a Logan, *supra* and BE & K, *supra* finding of subjective and objective fault regarding state action plausibility and failed to make a Matthews, *supra* balancing of interest analysis. Petitioners application for default judgment in the district court (see 9th Cir. ECF # 15 @ district court ECF # 57) made a balancing of interests analysis which was never considered due to being mooted out as was other evidence. The clerk's entry of default in the district court (see 9th Cir. ECF #15 @ district court ECF #56) remains intact as the district court acknowledged it never struck out the clerk's entry of default as it could have under F.R.C.P. 55; and, as it had done in petitioners prior motion for default judgment. All the 24 orders of this Court amending the F.R.C.P., F.R.A.P. and F.R.E. did not authorize their application unless consistent with the ends of justice and practicality, which in this case was ignored because petitioner cited them.

Dickerson v. U.S. (2000) 530 U.S. 428 [120 S.Ct. 2326, 147 L.Ed.2d 405] held that a Federal statute which

eliminated the Miranda "warning" requirement; and, replaced the warning with merely the existing totality of circumstances standard, was an attempt to overrule the Miranda case standard. In this case the 9th Cir panel makes the same attempt to eliminate the Logan, supra and BE & K, supra fault requirement and the Mathews, supra balancing act requirement as neither the district court nor it followed that prerequisite. In this case the 9th Cir panel by affirming the district court decisions without even mentioning or incorporating ROA facts, showed it never read the ROA due to the inconsistency in the district court's facts in its ECF #66, with the facts in complaint exhibits 1 through 10. Never once did the 9th Cir or the District Court quote one word from complaint exhibits 1 through 10, nor one word from the RT's res gestae evidence. The Fifth Amendment due process clause prohibits arbitrary rule making, arbitrary decision making, arbitrary punishment infliction, as well as arbitrary tactical decisions re ends of justice and practicability, and all other springes arbitrarily applied from pleadings to stare decisis. The purpose of the due process clause is to protect citizens from mistaken and arbitrary judicial adjudications. Here the mistake substantively lay in the state action and property interest determinations; and, procedurally in the unauthorized procedures for determination of same. In this case the district court unauthorized dismissal without judgment for implausibility, and the 9th Cir panel affirmance of it, is no substitute for what the Fifth Amendment due process requires about prior notice before adjudications, and hearings that are duly

authorized, full and fair, regular, and meaningful. 28 U.S.C. 2071(a) and (c) gave the lower federal courts power to make rules for the conduct of their business to remain in effect until abrogation by the judicial Council; but, it has been pushed over the constitutional line in this case.

Blackburn v. State of Alabama (1960) 361 U.S. 199, 206 [80 S.Ct. 274, 4 L.Ed.2d 242] and Lisenba v. People of State of California (1941) 314 U.S. 219, 236 [62 S.Ct. 280, 86 L.Ed. 166] both held that the due process clause forbids fundamental unfairness in the use of evidence. In this case 9th Cir panel and District court were unfair in the use of evidence because complaint exhs 1 through 10 show a vested and executed contract right to receive a reconveyance deed to the Irvine condo. This evidence was relevant and material, yet the 9th Cir panel and the district court misused such evidence by's refusing to duly recognize it. Although the 9th Cir affirmed the District court's ruling that the default judgment proceedings were mooted out, that did not eliminate such evidence from the case any more than a clerk's entry of default, as both were part of the ROA.

Mathews v. Eldridge (1976) 424 U.S. 319 [96 S.Ct. 893, 47 L.Ed.2d 18] held that the due process clause requires notice of the case; and, because evidence was taken by the court in the default judgment proceedings during which time attorney Widner appeared generally for defendants, see 9th Cir. ECF #15 @ district court ECF #65, the stage of the case moved past the pleading stage to the proof stage requiring a judgment. Attorney Widner had ordered an expedited reporter's transcript

of the default proceedings yet thereafter made no contest to the entry of a default judgment. Defendants chose not to further appear in the district court nor in the 9th Cir although served with notice of appeal and all the rest of the trial and appeal documents not only on its attorney Widner but on its agent Cecilia Chao as 9th Cir docket and district court dockets reveal, as did petitioner's proofs of service. This court has consistently held that the Fifth Amendment due process clause does not call for per se, mechanical, or inflexible standard; but, rather that it to be tailored in light of the decision to be made, and to the capacities and circumstances of those who are to be heard (*Id.* p. 399). The district court directed petitioner not to file any more papers in that court except for the purpose of appeal even though its ECF system failed to give notice to petitioner of its orders. Such notices were required before threat of enforcement of prior restraint. Just as oral argument in the district court included the right of petitioner to provide *res gestae* evidence regarding the complaint meaning, so it could have proven valuable in the 9th Cir regarding the appeal Representation Statement re attorney Widner (9th Cir EFC #15@ district court ECF #83), the petitioners brief to include an alternative request for a writ relief, and/or to get right any panel mistake or misunderstanding of the ROA and/or its background information. The 9th circuit rulings are unreliable in fact and law not only in this case but will be in the future in all cases in which its decision in this case may be referred to by others and as perceived by the world at large per circuit rule 36-3. The 9th Cir

memo opinion appears to be nothing more than a Microsoft robot 9th Cir. Shephardizing of the District Court's cases; and, the 9th Cir clerk worked with Microsoft teams to replace the PACER ECF # system with one created by Microsoft. The 9th Cir's failure to rule on the issue of Widner as attorney for the defendants, see 9th Cir ECF #'s 17 and 7, ignored the cited district court's local rule 5-4.1.2 and 5-4.3.4(c) as well as its own circuit rule 3-2 and its advisory committee note regarding Court's determination of who is counsel. (See Appx G). No reason was given for its refusal to rule on the motion. Petitioner was fair to the defendants by furnishing them with copies of the complaint Ex. 21 flash drive, requesting no rent damages, or double damages, attorney fees nor even costs of action-just the keys. Petitioners gave both the district court and the 9th Cir plenty of time to read the Complaint exhibit # 21 background information if it wanted to because it was lengthy. Petitioner awaited one year for the 9th circuit court to give notice of panel selection but it never did; so petitioner gave a conditional consent to a have a 9th Cir panel attorney orally present the appeal; and, then for a summary adjudication. But the 9th Cir panel had already 2 weeks prior made its summary disposition and no oral staff attorney presentation was noted in its denial of motion for summary reversal or for panel rehearing. Petitioners counsel irked the district court judge by submitting an ex parte application to which it responded it would have to drop everything it was doing to accomodate him; and, so petitioner did not want to likewise irk the 9th circuit

either.

Jones v. Flowers (2006) 547 U.S. 220, 226 [126 S.Ct. 1708, 164 L.Ed.2d 415], United Student Funds, Inc. v. Espinosa (2010) 559 U.S. 260, 272 [130 S.Ct. 1367, 176 L.Ed.2d 158], and Covey v. Town of Somers (1956) 351 U.S. 141, 146 [76 S.Ct. 724, 100 L.Ed. 1021] all held that the Due Process clause does not require actual notice: but, rather notice reasonably calculated under all the circumstances to give interested parties notice of the pendency of the action and an opportunity to present their objection. Petitioner's complaint gave such notice to defendants. Even in the pleading context the Due Process clause required a reasonable notice of the facts, cause of liability, and the relief sought. Even though federal courts are presumed to act regularly in the performance of their duty, the evidence in this case as shown in the lower court decisions and in the ROA rebuts that presumption due to inconsistency between the facts and constitutionally grounded decisions of this court, and due to unauthorized dismissals. It is beyond cavil that opinions by justices and judges are not ROA evidence. Nothing in Article 3 Section 2 requires pleading of a theory; rather, pleading of a case or controversy and standing. Under Article 3 Section 2 it is the facts which must show a rational relationship to the jurisdiction invoked, the remedy, and the causation. Petitioner needed a declaratory relief remedy that Jane L. Marsh had the contractual right to a reconveyance deed and was the person entitled to it as the MERS made the deed out to "the person entitled" to it. That would prompt the defendants to turn over the keys to

the Irvine condo, seeing that they already placed Monroe's yellow strap chair and blue patio table in the back yard for petitioner to recover as well if he ever got such a judgment since prior tenants took the rest of the furniture.

II. Supreme Court Supervisory Power Sought

In *Monroe v. Pape* (1961) 365 U.S. 167 [81 S.Ct. 473, 5 L.Ed.2d 492] the district court dismissed for failure to state a claim and the Court of Appeals affirmed based on its own precedent. This Court granted certiorari due to a seeming conflict with its prior cases. In this case the 9th Cir panel acted under color of its G.O. 4.5(a) which required one of the panel to certify the opinion; but, no panel member ever did; and, application of G.O. 6.5(c), was a misuse of power by those who acted under it. This court (Id. p. 183 184) cited its Classic case for the principle that misuse of authority is a failure to perform its requirements; here the 9th Cir panel failed to comply with the national standard under F.R.A.P. 34(a)(2)(A)(B) or (C) and this courts constitutionally grounded decision regarding state action and property interest. See *Radiant Burners, Inc. v. Peoples Gas Light & Coke Co.* (1961) 364 U.S. 656, 660 [81 S.Ct. 365, 5 L.Ed.2d 358].

Pollard v. U.S. (1957) 352 U.S. 354, 358 [77 S.Ct. 481, 1 L.Ed.2d 393] was a collateral consequence fault exception case. In this case the fault in the 9th Cir for the one year delay in disposition was caused by the deliberate acts of delay by it, the clerk and staff attorney who assigned the appeal to the summary disposition panel under G.O. 6.5(c). Those deliberate acts are facts

going to the constitutional invalidity of the memorandum and subsequent order denying a rehearing which present collateral questions regarding the proper administration of the Federal appeal process.

Young v. U.S. ex rel. Vuitton et Fils S.A. (1987) 481 U.S. 787, 809 [107 S.Ct. 2124, 95 L.Ed.2d 740] held that when this court exercises its supervisory authority to ensure basic notions of fairness in proceedings, especially in the context of enforcement procedures employed by the lower courts orders, it is a subject that directly concerns the functioning of the federal judiciary. Here that enforcement concerns the prior restraint orders of the 9th Cir panel and the district court ordering petitioner not to file any more papers there. Whether this petition is analyzed in terms of stare decisis, or the U.S. Due Process clause in terms of procedure including evidence, or to substance, the 9th Cir panel memo decision is not correct under the Due Process and Free Speech clauses of the U.S. Constitution. It is penultimately unconstitutionally and fundamentally false, arbitrary, mistaken, and unfair, for the 9th Circuit panel to summarily affirm that the District court's substantive constitutional ruling that probate sales are not within the compass of 42 U.S.C. 1983 and defendants could not be liable as joint participants with state actors, see Appx C last para. The district courts concession of Jane L. Marsh's property interest, left failure to plead state action, as the only district court decision made. Exercising supervisory authority avoids the necessity of determining

constitutional issues. There was no final judgment in the District Court in this case, see Appx C para 4, and it was not dismissed for lack of fundamental jurisdiction per Appx C p. para 1. Nearly 4 years from 5-27-2020 to 1-10-2024 were consumed by the lower federal courts. Petitioner awaited a six month delay in the district court on one of its OSC's (see Weiss v. Pei-Lin (2021) WL 2302723 also found at 9th Cir ECF #15 @ district court ECF #33 and district court ECF # 30 (11-10-20 to 5-10-21). An error is fundamental if it undermines confidence in the integrity of the proceeding. The 9th Cir panel refused to give examination regarding the appearance of Attorney Widner even though its commissioner previously authorized it and so the resulting order create an appearance of judicial impropriety that diminishes the publics faith in the full and fair administration of the federal system (Id. p. 811). The district courts failure to recognize the general appearance under its Local Rule 5- 4.1.2 and 5-4.e.4(c) of Attorney Widner for the defendants was pervasive and affected the entire case and its appeal.

III. Unconstitutional Use of 9th Cir Panel Stare Decisis

Brinegar v. U.S. (1949) 338 U.S. 160, 171 & Fn 10 [69 S.Ct. 1302, 93 L.Ed. 1879] held that every U.S. Supreme Court constitutionally grounded decision is stare decisis even if neither the lower court or the parties ever raised or considered it unless it involved different ultimate facts or was sought to be overturned. This Court said that the same does not apply to lower federal court decisions because then the lower court would make the

supreme law of the land instead of it. In this case the ultimate facts of state action and right to acquire and defend real property are the same; but, the stare decisis doctrine was not cited correctly due to citation to only 9th Cir precedent and no California Supreme Court precedent. See *Vail v. Territory of Ariz.* (1907) 207 U.S. 201 [28 S.Ct. 107, 52 L.Ed. 169] in its stare decisis analysis regarding application of principles similar to those in *Bell*, *supra*, and *Fogarty*, *supra*.

Lynch v. Household Finance Corp. (1972) 405 U.S. 538, 544 [92 S.Ct. 1113, 31 L.Ed.2d 424] and *Oneida Indian Nation of N. Y. State v. Oneida County, New York* (1974) 414 U.S. 661, 678 [94 S.Ct. 772, 39 L.Ed.2d 73] both held that the U.S. Constitution Due Process Clause includes the right to acquire, possess, defend, enjoy, own and dispose of property. The 9th Cir panel denied *Jane L. Marsh* such rights by affirming the district court's denial of such rights without a judgment. *Norwood v. Harrison* (1973) 413 U.S. 455, 465 [93 S.Ct. 2804, 37 L.Ed.2d 723] held that any significant (*Id.* p. 467) or substantial state arrangement with a private racially discriminatory person whether it be through management of funds or property, produces an unconstitutional result, effect and consequence (*Id.* p. 466). The 9th Cir panel affirmed the District court's denial of such probate sale arrangement in the context of defendants conscious disregard of *Jane L. Marsh's* U.S. Constitutionally protected interests, as they had actual and constructive notice of the terms of the recorded trust deed and reconveyance deed; and, of all the facts in the court sitting in probate contained in its

files before purchasing as same were filed in Orange County Records Office and California Superior Court public files.

Dobbs v. Jackson Women's Health Organization (2022) 597 U.S. 215, 294 [142 S.Ct. 2228, 213 L.Ed.2d 545] is cited for the contention that the 9th Cir memo opinion may be characterized as precedent about precedent. As the Dobbs court recognized each precedent is subject to its own stare decisis analysis (Id. p. 295). Failure to comply with constitutionally grounded supreme court cases made the 9th Cir. decision extra constitutional (Dobbs, p. 279 citing its Thornburgh case). 42 U.S.C. 1983 created a cause of action as broad as Article III Section 2. It used the word "person" which includes joint participants with state actors and used the word "deprivation" which includes abusive taking of property. This is what happened here because Jane L. Marsh's separate property was no part of her deceased husband's probate estate over which probate subject matter jurisdiction could be taken in the first place. Hence no stare decisis, law of the case, nor preclusive effect by citation to the state law probate case either. The 9th Cir did not give any reason why it was the job for the district court to determine Jane L. Marsh's contract right to a reconveyance deed, rather than being the job of MERS as trustee. (See Dobbs p. 284). The district court thought petitioner was calling upon it to establish Jane L. Marsh's ownership according to her husbands last will. The federal court's job instead was to decide what the law means according to long-standing stare decisis and how it should apply (Dobbs p. 293-293)

consistently with the 5th Due Process clause.

CONCLUSION Based on totality of circumstances and in the interest of justice the Court should grant the petition and regard as done that which ought to have been U.S. Constitutionally done by the lower courts by directing entry of default against defendants; or, at least grant the petition, vacate, and remand for proceedings consistent with its determination that the Complaint was sufficient or be made sufficient under the F.R.C.P. and hence the default judgment motion was not mooted out, without having to make any constitutional determination.

Respectfully Submitted,

Michael Weiss
LAW OFFICE OF MICHAEL WEISS,
63 Lakefront, Irvine, CA 92604
949-654-9919 Michael-Weiss@msn.com
Counsel for Petitioner

I. Appendix Table of Contents

Appx A. WL 6157401 Memorandum; Weiss v. Lin (9-21-23, 9th Cir) #22-55877	41
Appx B. Weiss v. Lin (1-10-24, 9th Cir) #22-55877-Order Deny Rehear Petition;	43
Appx C. WL 4474935 Order to Deny Motions Under FRCP 59 & 60; Weiss v. Pei-Lin (7-5-2022, U.S. District Ct C.D. Cal) #8:22-cv-00972-CBM	44
Appx D. WL 4474939 Order to Dismiss Action and Deny Default Judgment; Weiss v. Pei-Lin (4-22-2022, U.S. District Ct C.D. Cal) #8:22-cv-00972-CBM	51
Appx E. Constitutional Clauses	60
Appx F. Title 28 Statutes	61
Appx G. 9th Cir General Orders & Cir. Rules	63
Appx H. Cal Probate and Civil Code Statutes	65

Appx A.

Not for Publication United States Court of Appeals
for the Ninth Circuit Filed Sep 21 2023 Molly C. Dwyer,
Clerk U.S. Court of Appeals No. 22-55877 D.C. No.
8:20-cv-00972-CBM-ADS Michael Alan Weiss, as
Executor of Estate of Jane L. Marsh. Plaintiff-Appellant,
v. Peggy Pei Lin; Yi Ming Su, YuYu Ming
Defendants-Appellants and DOES 1 through 10,
Defendant

MEMORANDUM* Appeal from the United States
District Court for the Central District of California
Consuelo B. Marshall, District Judge, Presiding.
Submitted September 12, 2023**

Before: CANBY, CALLAHAN, and OWENS, Circuit
Judges.

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

Michael Alan Weiss appeals pro se from the district's order dismissing his 42 U.S.C. 1983 action alleging Fifth and Fourteenth Amendment claims. We have jurisdiction under 28 U.S.C. 1291. We review de novo a sua sponte dismissal for failure to state a claim. *Barrett v. Belleque*, 544 F.3d 1060, 1061 (9th Cir. 2008). We affirm.

The district court properly dismissed Weiss's action because Weiss failed to allege facts sufficient to show that defendants were engaged in state action. See *Sutton v. Providence St. Joseph Med. Ctr.*, 192 F.3d 826, 835-37 (9th Cir. 1999) (describing factors for evaluating whether private individuals were engaged in state action).

The district court did not abuse its discretion in denying leave to amend because amendment of Weiss's claims would have been futile. See *Cervantes v. Countrywide Home Loans, Inc.*, 656 F.3d 1034, 1041 (9th Cir. 2011) (setting forth standard of review and explaining that leave to amend may be denied when amendment would be futile).

The district court did not abuse its discretion in denying Weiss's May 20, 2022 and July 29, 2022 motions because Weiss failed to demonstrate any basis for relief. See *Garamendi v. Henin*, 683 F.3d 1069, 1077 (9th Cir.

2012) (setting forth standard of review and grounds for relief under Fed. R. Civ. P. 60(a)); *Molski v. M.J. Cable, Inc.*, 481 F.3d 724, 728-29 (9th Cir. 2007) (setting forth standard of review and grounds for relief under Fed. R. Civ. P. 59(a)); *Sch. Dist. No. 1J, Multnomah County, Or. v. ACandS, Inc.*, 5 F.3d 1255, 1262-63 (9th Cir. 1993) (setting forth standard of review and grounds for reconsideration under Fed. R. Civ. P. 59(e) and 60(b)). We lack jurisdiction to review the district court's November 3, 2022 order because Weiss failed to file an amended or separate notice of appeal. See Fed. R. App. P. 4(a)(4)(B)(ii); *Whitaker v. Garcetti*, 486 F.3d 572, 585 (9th Cir. 2007) (discussing the requirement to file an amended or new notice of appeal in order to contest an issue arising after filing an earlier notice of appeal). We do not consider matters not specifically and distinctly raised and argued in the opening brief, or arguments and allegations raised for the first time on appeal. See *Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009).

All pending motions and requests are denied.

AFFIRMED.

Appx B.

United States Court of Appeals For the Ninth Circuit

Filed: Jan 10 2024 Molly C. Dwyer, Clerk U.S. Court
of Appeals No. 22-55877 D.C. No. 8:20-cv-00972-CBM
-ADS Central District of California, Santa Ana Michael
Alan Weiss, as Executor of Estate of Jane L. Marsh.
Plaintiff-Appellant, v. Peggy Pei Lin; Yi Ming Su, YuYu
Ming Defendants-Appellants and DOES 1 through 10,
Defendants

ORDER Before: CANBY, CALLAHAN, and OWENS, Circuit Judges.

Weiss's petition for panel rehearing (Docket Entry No. 19) and motion for summary reversal (Docket Entry No. 18) are denied. No further filings will be entertained in this closed case.

Appx C.

UNITED STATES DISTRICT COURT CENTRAL DISTRICT OF CALIFORNIA Michael Weiss as Executor of Estate of Jane L. Marsh, Plaintiff, v. Peggy Pei-Lin, Yi Ming Su, Defendants. Case No.: CV 20-0972-CBM-(ADSx)

ORDER RE: PLAINTIFF'S "MOTIONS UNDER FRCP 59 & 60 [69]

The matters before the Court are Plaintiff's "Motions Under FRCP 59 & 60," noticed for hearing on June 27, 2022. (Dkt. No. 69 (the "Motions")). FN.1 The matter was heard on June 28, 2022. FN.2 This is "an action to recover real property" filed on May 27, 2020 by Plaintiff Michael Weiss as Executor of Estate of Jane L. Marsh, against Defendants Peggy Pei-Lin and Yi-Ming Su who allegedly purchased the real property at issue through probate proceedings. Plaintiff asserts two claims for...

FN 1 After filing the Motions, Plaintiff filed a notice of lodging of a proposed order (Dkt. No. 71) and notice of lodging regarding *Kemp v. United States*, 142 S. Ct. 1856 (2022) (Dkt. No. 73), which the Court has reviewed.

FN 2 In the Motions, Plaintiff stated he would bring "original" copies of documents to the hearing. At the hearing, Plaintiff informed the Court he had previously filed the documents he brought to the hearing in connection with the instant Motions. The Court has

reviewed Plaintiff's filings and therefore further review of the "original" copies of documents previously filed by Plaintiff is unnecessary.

...violation of the Fourteenth Amendment Due Process Clause and the Fifth Amendment Takings Clause against Defendants Peggy Pei-Lin and Yi-Ming Su. On December 31, 2021, Plaintiff filed a **motion for default judgment** (Dkt. No. 57), and the motion **was heard on February 8, 2022 (Dkt. No. 61). On February 9, 2022, the Court issued an order to show cause why the action should not be dismissed for lack of jurisdiction and failure to state a claim.** (Italics added) (Dkt. No. 62 (the "OSC").) **The Court reviewed Plaintiff's response to the OSC (Dkt. No. 63), and issued an order on April 22, 2022 dismissing the action based on Plaintiff's failure to state a claim** for violation of the Fourteenth Amendment Due Process Clause and the Fifth Amendment Takings clause, **and denying Plaintiff's motion for default judgment as moot.** (Italics added) (Dkt. No. 66 (the "Order").) Plaintiff now moves for reconsideration of the Order pursuant to Federal Rules of Civil Procedure 59(a)(1)(B) & (e) & 60(a), (b)(1), (5) & (6).

Plaintiff moves for reconsideration of the Order under Rule 59(a)(1)(B) "in equity for a rehearing including ends of justice [sic] the prevention of miscarriage and prejudice to substantial rights of party, or other mistake of fact, law." However, Federal Rules of Civil Procedure 59(a)(1)(B) is inapplicable because no trial took place in this action.

Plaintiff also seeks reconsideration pursuant to Rule

59(e) "to alter or amend judgment to allow court [sic] to reconsider matters and correct its own mistakes encompassed in its decision on the merits per *White v. New Hampshire Dept. of Employment Sec.* (1982) 455 U.S. 455, 450," which states "[a]ccording to the accompanying advisory Committee Report, [Federal Rule of Civil Procedure 59(e)] was adopted to mak[e] clear that the district court possesses the power "to rectify its own mistakes in the period immediately following the entry of judgment." **However, no judgment was entered in this action.** (Italics added) Therefore, Rule 59(e) is inapplicable.

Plaintiff also moves for reconsideration pursuant to Rule 60(a) based on "clerical, not judicial, mistake, oversight or omission in judgment" because he contends the Court Reporter's transcript of the February 8, 2022 hearing "indicated court would order two more OSC's to get further res gestae evidence after the present one but did not and plaintiff could have persuaded the court not to dismiss if provided that opportunity," and "[t]his court indicated at the 2-8-22 hearing that it would issue three OSC's; but, did not." (Motions at 2, 17.) During the February 8, 2022 hearing, the Court stated: "[I]n addition to the service issue that we have discussed, this Court is also concerned as to whether this Court has jurisdiction. I am not going to ask you to address that today, but I am likely to issue an order to show cause as to why this case should not be dismissed for lack of jurisdiction by the federal court. . . Now, when I issue that order to show cause, I'll give you time to respond to it. And once I receive your response, I will then issue an

order that addresses the merits of the case as well as whether service was proper...As I said, the first order that I am going to issue is the order to show cause as to why this Court has jurisdiction based upon two causes of action that are indicated. I will give you time to respond. And once I receive your response, then I'll issue another order addressing both service as well as the jurisdictional issue that I'm concerned about."

(February 8, 2022 Transcript at 28, 29, 34.) The minutes of the February 8, 2022 hearing re Plaintiff's motion for default judgment state "the Court advises counsel that the motion is taken under submission and a written order will issue, along with an Order to Show Cause why case should not be dismissed. Plaintiff will be given a chance to [file a] response." (Dkt. No. 61.)

Following the February 8, 2022 hearing, the Court ordered Plaintiff to show cause in writing why the action should not be dismissed for lack of jurisdiction and failure to state a claim. (Dkt. No. 62 (the "OSC").)

Plaintiff filed a response to the OSC. (Dkt. No. 63.) After reviewing Plaintiff's response to the OSC, the Court issued the Order dismissing the action based on Plaintiff's failure to state a claim, and denying Plaintiff's motion for default judgment as moot. (Dkt. No. 66.)

Because the Court found Plaintiff failed to state a claim and dismissed the action on that basis after considering Plaintiff's response to the OSC, the Court determined that a further order addressing jurisdiction, service issues, and the merits of the case was unnecessary. Plaintiff was given an opportunity to address whether the Complaint stated a claim for relief and did so in his

response to the OSC. Plaintiff thus fails to identify any "clerical" error which would warrant reconsideration of the Court's Order dismissing Plaintiff's claims for failure to state a claim. Plaintiff also moves for reconsideration under Rule 60(b)(5) "due to time considerations." FN.3 Federal Rule of Civil Procedure 60(b)(5) provides for relief from a final judgment or order where "the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable." No judgment was issued in this action, and there is no evidence that the probate judgment has been reversed or vacated. Therefore, Rule 60(b)(5) is inapplicable. Plaintiff further moves for reconsideration pursuant to Rule 60(b)(1) "[f]or mistake, inadvertence, surprise and/or excusable neglect," FN.4 and under Rule 60(b)(6) based on "any other reason that justifies relief including U.S. Constitutional reasons, common law or reasons in equity and/or statutory reasons." Plaintiff contends this Court has jurisdiction under 28 U.S.C. § 1343, 28 U.S.C. § 2201, and "directly under the U.S. Constitution 5th Amendment." **However, the Court's Order dismissed** Plaintiff's Fourteenth Amendment and Fifth Amendment claims for failure to state a claim, **not for lack of jurisdiction.** (Italics added) (See Dkt. No. 66.) Therefore, Plaintiff's jurisdictional arguments are not a basis for reconsideration of the Court's Order.

FN 3 The "time considerations" to which Plaintiff refers is unclear.

FN 4 In *Kemp v. United States*, 142 S. Ct. 1856 (2022), the case lodged by Plaintiff (see Dkt. No. 73), the

Supreme Court held a "mistake" under Federal Rule of Civil Procedure 60(b)(1) "includes a judge's errors of law."

Plaintiff also argues he has standing because "the judgment has run against it [sic]" and states "plaintiff awaited 10 years to file in the federal court because under the 14th amendment due process clause plaintiff had to await the final' probate judgment." (Motions at 2, 16.) However, the issuance of a judgment in the probate court does not warrant reconsideration of the Court's Order dismissing Plaintiff's Fourteenth Amendment claim because the Complaint failed to plead sufficient facts regarding state action or a constitutionally protected property interest in the real property as required to state a claim for procedural due process under the Fourteenth Amendment, and dismissing Plaintiff's Fifth Amendment claim because the Complaint failed to allege the real property was taken by a federal government actor for public use and failed to plead sufficient facts regarding an interest in the real property as required to state a claim for violation of the Fifth Amendment Takings clause. Plaintiff further contends the Order "says the Fifth Amendment does not apply unless a federal government actor has been sued for a federal public use taking but, this is plain error of law because the Fifth Amendment is applied to state actors and their joint participants under the 14th amendment due process clause," and "it was Jane L. Marsh's property which was temporarily taken not just by California; but, rather by the defendants in integral joint participation accompanied by California's

enforcement." However, as the Court stated in the Order, "[i]ndividuals bringing actions against private parties for infringement of their constitutional rights, therefore, must show that the private parties' infringement somehow constitutes state action," and "**the probate court's enforcement of the sale** of the real property to Defendants, and the California Court of Appeal's affirmance of the probate proceedings . . . **do not constitute a taking by the state** for public use under the Fifth Amendment." (Italics added) (Dkt. No. 66 at 4 (citing *George v. Pac.-CSC Work Furlough*, 91 F.3d 1227, 1229 (9th Cir. 1996); *Hawaii Hous. Auth. v. Midkiff*, 467 U.S. 229, 240 (1984)).)

Plaintiff also argues "[t]his federal court misunderstands California probate administration procedure under Probate Code 48, as well as the preclusive effect of probate orders under Code of Civ. Proc 1909(a)(1) which lead [sic] it to believe that it is just like a court sitting generally; and that is where error lies," "[t]he fact that Monroe's last will had a no contest clause in it cannot be enforced in supremacy of the U.S. Constitution 5th and 14th due process clauses of the California law on contracts and transfer of rights to a reconveyance deed," and "all gratuitous opinions about Jane L. Marsh's property interests have preclusive effect only for probate administration purposes." In this Court's Order, this Court found Plaintiff failed to demonstrate and did not plead sufficient facts regarding a constitutionally protected property interest in the real property as required to state a claim under the Fourteenth and Fifth

Amendments and referred to probate court's ruling and state appellate court decisions regarding the no contest clause in Monroe's will. **Therefore, even if the probate court's rulings and state appellate court decisions had no preclusive effect** in this federal action, the Complaint nevertheless fails to plead facts regarding state action as required to state a claim under the Fourteenth and Fifth Amendments. (Italics added) Plaintiff thus fails to identify any proper basis for reconsideration of the Court's Order.

Accordingly, the Court DENIES Plaintiff's "Motions under FRCP 59 & 60." IT IS SO ORDERED.

DATED: June 30, 2022.

S
CONSUELO B. MARSHALL
UNITED STATES DISTRICT JUDGE

Appx D.

UNITED STATES DISTRICT COURT CENTRAL
DISTRICT OF CALIFORNIA. CIVIL MINUTES -
GENERAL Case No. SA CV 20-972-CBM-(ADSx) Date
April 22, 2022 Title: Weiss v. Pei-Lin et al. Present: The
Honorable CONSUELO B. MARSHALL, UNITED
STATES DISTRICT JUDGE YOLANDA SKIPPER Deputy
Clerk Attorneys Present for Plaintiff: NONE PRESENT
Court Reporter NOT REPORTED Attorneys Present for
Defendants: NONE PRESENT Proceedings: IN
CHAMBERS-

ORDER DISMISSING ACTION AND DENYING
PLAINTIFF'S MOTION FOR DEFAULT JUDGMENT
[34][[57] [JS-6]

This is "an action to recover real property" filed on

May 27, 2020 by Plaintiff Michael Weiss as Executor of Estate of Jane L. Marsh, against Defendants Peggy Pei-Lin and Yi-Ming Su who allegedly purchased the real property at issue through probate proceedings. Plaintiff asserts two claims for violation of the Fourteenth Amendment Due Process Clause and the Fifth Amendment Takings Clause against Defendants Peggy Pei-Lin and Yi-Ming Su.

Plaintiffs theory for recovery is that Jane L. Marsh, Plaintiffs mother, was entitled to her late husband Monroe F. Marsh's (hereinafter, "Monroe's") FN.1 property on Lakefront located in Irvine, California, because Jane Marsh (Monroe's wife) "elected to take her rights under law and not under Monroe's last will." (Compl. 14.) Plaintiff pursued this same theory in probate, state appellate, and California and United States Supreme Court proceedings. The probate court found, and the California Court of Appeal affirmed, that "[Jane L.] Marsh is not entitled to any distribution under [Monroe F.] Marsh's will because, without probable cause, she contested its validity and thereby violated the will's no contest clause." Estate of Marsh, 2014 WL 2667709, at *2, *7 (Cal. Ct. App. June 13, 2014) ("We conclude the probate court did not err in finding [Jane L. Marsh's] attacks on [Monroe's] will amounted to a violation of its no contest clause and resulted in her losing the benefits provided for her in that instrument."). (Italics added) Plaintiff filed four appeals arising challenging the probate proceedings which the California Court of Appeals found asserted "frivolous" claims against Monroe's estate. Id. at *1. Plaintiff filed

petitions for writ of certiorari which were denied by the United States Supreme Court.

FN 1 According to Plaintiff, Monroe Marsh was Plaintiff's stepfather.

See *Weiss v. Marsh*, 139 S.Ct. 1558, 203 L.Ed. 2d 714 (2019). FN.2 On February 9, 2022, the Court issued an order to show cause as to why this action should not be dismissed for lack of jurisdiction and failure to state a claim. (Dkt. No. 62 (the "OSC").) On March 11, 2022, Plaintiff filed a response to the OSC. (Dkt. No. 63 (the "Response").)

Fourteenth Amendment Claim

Plaintiff asserts a procedural due process claim under the Fourteenth Amendment. The Due Process Clause of the Fourteenth Amendment provides: "[N]or shall any State deprive any person of life, liberty, or property without due process of law" To prevail on a procedural due process claim under the Fourteenth Amendment, a plaintiff must establish: (1) a deprivation of a constitutionally protected liberty or property interest; and (2) a denial of adequate procedural protections. *McQuillion v. Duncan*, 306 F.3d 895, 900 (9th Cir. 2002). "Because the [Fourteenth] Amendment is directed at the States, it can be violated only by conduct that may be fairly characterized as state action." *Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 923-24 (1982); see also *George v. Pac.-CSC Work Furlough*, 91 F.3d 1227, 1229 (9th Cir. 1996) ("Individuals bringing actions against private parties for infringement of their constitutional rights, therefore, must show that the private parties' infringement somehow constitutes state

action.").

Here, the Complaint names Peggy Pei-Lin and Yi-Ming Su as defendants who are the individuals who allegedly purchased the real property at issue through probate proceedings. The State is not named as a defendant in this action and Plaintiff states he "sees no reason to burden this court by adding parties such as State court judges, justices." (Response at 5.) The Complaint does not allege facts demonstrating Defendants' Peggy Pei-Lin and Yi-Ming Su's purchase of the real property through probate proceedings constitutes state action.

Plaintiff contends that the Court should "deem the named defendants be regarded as engaged in state action and be deemed state actors" based on "[j]oint activity with state actor" because they were "willful participants in the probate judicial sale" which "was scrutinized by the state judge and Justices," and "State Appeals Ct. justices were also involved state actors who provided significant assistance to the named defendants in the joint agreement by affirming the lowers [sic] courts business and enforcing it." (Response at 5.) *Adickes v. S.H. Kress & Co.*, 398 U.S. 144 (1970), relied on by Plaintiff, is inapposite. In *Adickes*, the Supreme Court held that "a State is responsible for the discriminatory act of a private party when the State, by its law, has compelled the act." *Id.* at 170-71. In contrast, here, neither the Complaint nor Plaintiff's Response identify a law which compelled Defendants to purchase the real property at issue.

Plaintiff also relies on *Brentwood Acad. v.*

Tennessee Secondary Sch. Athletic Ass'n, wherein Supreme Court noted that "state action may be found if, though only if, there is such a close nexus between the State and the challenged action that seemingly private behavior may be fairly treated as that of the State itself," and held a state interscholastic athletic association's regulator enforcement of a rule prohibiting the use of undue influence in recruitment of student-athletes was "state action" for purposes of Fourteenth Amendment based on "the pervasive entwinement of public institutions and public...

FN2 Per the allegations in the Complaint, Plaintiff has appealed the probate court's judgment for over 10 years, but the California Court of Appeal declined to review the matter, and the United States Supreme Court denied Plaintiff's petition for certiorari. (Compl. 2, 3.)

...officials in [the association's] composition and workings." 531 U.S. 288, 295, 298 (2001). However, Plaintiff does not identify and the Complaint does not allege facts demonstrating a close nexus between Defendants and the State based on Defendants' purchase of the real property during probate proceedings, and the California Court of Appeal's affirmance of the probate proceedings. Therefore, Plaintiff does not demonstrate and the Complaint fails to plead sufficient facts regarding state action by the named Defendants to state a claim against Defendant for violation of procedural due process under the Fourteenth Amendment. See Lugar, 457 U.S. at 923-24; George, 91 F.3d at 1229.

Moreover, the Complaint does not sufficiently plead

facts that Jane Marsh or Plaintiff as executor of her estate have a valid property interest in the real property. The California Court of Appeal noted Monroe's will left the bulk of his assets to his children by blood, and granted Jane Marsh "the right to occupy" the Irvine home "for the balance of her life." Estate of Marsh, 2014 WL 2667709, at *2 (Cal. Ct. App. June 13, 2014). The Court of Appeal further noted that the will contained a no contest clause which "sought the greatest deterrence against interference with my estate plan that the law allows," and stated in relevant part: "If any ... beneficiary, or other interested person; or any person who is provided for under this Will, ... directly or indirectly ... institutes any legal proceeding that attacks or contests this Will ... or seeks to impair, nullify, void, or invalidate [it] or any of [its] provisions ..., I direct that person (the Contestant') and all persons conspiring with or assisting him or her shall take none of my property and nothing from my estate. All these persons are expressly disinherited. Any and all gifts or property that otherwise would have gone to these persons shall be forfeited and shall pass as if these persons had predeceased me without leaving living issue." Id. **The no contest clause also contained exceptions, one of which provided it "shall not be violated by .. . the exercise by my surviving spouse of any election granted by law."** Id. (Italics added) After Monroe died, the executors filed a petition to probate the will and for their appointment to administer his estate, which was granted by the probate court, but Jane Marsh objected to the request to probate the will and requested that the

will "be denied probate and that the "ineffective property dispositions pass to her by intestate succession . . . or otherwise under law." *Id.* The probate court sustained the executors' demurrers to Jane Marsh's pleading and will contests, and the Court of Appeal affirmed. As to the will's no contest clause, the Court of Appeal affirmed the probate court's finding that Jane Marsh was disinherited under Monroe's will because Jane "violated its no contest clause without probable cause to do so." *Id.* at *5. Here, the Complaint does not allege facts demonstrating the will is invalid or unenforceable, does not demonstrate that Jane Marsh did not violate the will's no contest clause, nor demonstrate Jane Marsh otherwise has a valid interest in the real property. Moreover, the state appellate courts have already adjudicated the issue of whether Jane Marsh was entitled to the property under Monroe's will and whether she had a valid interest in the property. See *Estate of Marsh*, 2014 WL 2667709, at *1 (noting Plaintiff filed four appeals arising challenging the probate proceedings which the California Court of Appeals concluded were "frivolous" claims against Monroe's estate); *id.* at *2 ("[Jane L.] Marsh is not entitled to any distribution under [Monroe F.] Marsh's will because, without probable cause, she contested its validity and thereby violated the will's no contest clause."); *id.* at *6 ("Jane also reasserts her claim that title to the Lakefront was reconveyed to her upon her payoff of the reverse mortgage, including her assertion that the principles of trust law apply to deeds of trust... [W]e rejected these arguments in the earlier appeals and the doctrine of the

law of the case bars Jane from reasserting them in this case.").

Therefore, Plaintiff fails to demonstrate and does not plead sufficient facts regarding a constitutionally protected property interest in the real property as required for Plaintiff's Fourteenth Amendment claim. See 49Hopkins, LLC v. City & Cnty. of San Francisco, 2020 WL 5232420, at *13 (N.D. Cal. Sept. 2, 2020) ("Where there is no constitutionally protected property interest, there can be no Due Process violation.").

Accordingly, the Court dismisses Plaintiff's Fourteenth Amendment Procedural Due Process claim. Fifth Amendment Claim

The Just Compensation Clause of the Fifth Amendment provides: "[N]or shall private property be taken for public use, without just compensation." Here, the Complaint names two individual defendants and does not allege the real property was taken by a federal government actor for public use. See Lee v. City of Los Angeles, 250 F.3d 668, 687 (9th Cir. 2001) (noting the Fifth Amendment "appl[ies] only to actions of the federal government" and finding the plaintiffs failed to state a claim for violation of the Fifth Amendment because the plaintiffs "do not allege any of the defendants are federal actors"); see also George, 91 F.3d at 1229 ("Individuals bringing actions against private parties for infringement of their constitutional rights, therefore, must show that the private parties' infringement somehow constitutes state action."). Plaintiff contends his "property was taken by California

for its own use in its probate administration scheme, it invaded plaintiffs Irvine condo physically by enforcing a sale and grant deed in probate to the named defendants who took possession, and prohibited plaintiff from seeking any constitutionality adequate pre or post-deprivation remedy in its courts through an ordinary action." (Response at 21-22.) The Complaint, however, does not name the State as a defendant nor allege facts demonstrating a close nexus between Defendants and the State. Moreover, the probate court's enforcement of the sale of the real property to Defendants, and the California Court of Appeal's affirmance of the probate proceedings are not an exercise of the State's police powers, and therefore do not constitute a taking by the state for public use under the Fifth Amendment. See *Hawaii Hous. Auth. v. Midkiff*, 467 U.S. 229, 240 (1984) ("The public use' requirement" of the Fifth Amendment for taking of private property is "coterminous with the scope of a sovereign's police powers.").

Furthermore, "[i]n order to state a claim under the Takings Clause, a plaintiff must first demonstrate that he possesses a property interest' that is constitutionally protected." *Schneider v. Cal. Dep't of Corr.*, 151 F.3d 1194, 1198 (9th Cir. 1998). As discussed above, Plaintiff fails to demonstrate and does not plead sufficient facts to show a valid property interest in the real property. Moreover, the state appellate courts have already adjudicated the issue of whether Jane Marsh had a valid interest in the property. See *Estate of Marsh*, 2014 WL 2667709, at *1, *2, *6. Therefore, Plaintiff fails to

demonstrate and does not plead sufficient facts regarding an interest in the real property as required for his Fifth Amendment claim.

Accordingly, the Court dismisses Plaintiff's Fifth Amendment Takings Clause claim. ***

Having dismissed Plaintiff's claims, Plaintiff's motion for default judgment (Dkt. No. 34) is DENIED as moot. IT IS SO ORDERED.

Appx E.

Constitutional Clauses

U.S. Const. Art. 3 § 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 Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

U.S. Const. Art. 3 § 2, Clause 1. "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.

U.S. Const. Art. 3 § 2, Clause 2. "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.

U.S. Const. Amend. § XIV. 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."

Appx F.

28 U.S.C. 46(a) "Circuit judges shall sit on the court and its panels in such order and at such times as the court directs. Historical Notes Revision Notes and Legislative Reports: 1948 Acts. The Supreme Court ...said in the Textile Mills case: "There are numerous functions of the court, as a court of record, with appellate jurisdiction', other than hearing and deciding appeals. Under the Judicial Code these embrace: the making of rules and regulations (28 U.S.C. 219); and the fixing of the times' when court shall be held (28 U.S.C. 223). Furthermore, those various sections of the Judicial

Code provide that each of these functions shall be performed by the court." This section preserves the interpretation established by the Textile Mills case..."

28 U.S.C. 1254 "Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods: (1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree.

28 U.S.C. 2101(c) "Any other appeal or any writ of certiorari intended to bring any judgment or decree in a civil action, suit or proceeding before the Supreme Court for review shall be taken or applied for within ninety days after the entry of such judgment or decree. (e) An application to the Supreme Court for a writ of certiorari to review a case before judgment has been rendered in the court of appeals may be made at any time before judgment.

28 U.S.C. 2106 "The Supreme Court or any other court of appellate jurisdiction may affirm, modify, vacate, set aside or reverse any judgment, decree, or order of a court lawfully brought before it for review, and may remand the cause and direct the entry of such appropriate judgment, decree, or order, or require such further proceedings to be had as may be just under the circumstances.

28 U.S.C. 2071(a) "The Supreme Court and all courts established by Act of Congress may from time to time prescribe rules for the conduct of their business. Such rules shall be consistent with Acts of Congress and rules of practice and procedure prescribed under section 2072 of this title... (c)(1) A rule of a district court prescribed

under subsection (a) shall remain in effect unless modified or abrogated by the judicial council of the relevant circuit. (2) Any other rule prescribed by a court other than the Supreme Court under subsection (a) shall remain in effect unless modified or abrogated by the Judicial Conference."

Appx G.

9th Circuit G.O. "Chapter I: General Definitions: Terms in these General Orders conform to Title 28 of the United States Code, the Federal Rules of Appellate Procedure ("FRAP"), and the Rules of the United States Court of Appeals for the Ninth Circuit ("Circuit Rules"), unless otherwise indicated.

9th Circuit G.O. 6.2(c) "Written Screening Panels. Such panels are selected at random by the Clerk's Office at the close of the calendar year, and shall serve together for the succeeding year.

9th Circuit G.O. 6.5(a) "Cases that are eligible for submission without oral argument under FRAP 34(a) may be assigned to screening calendars by the Clerk's Office. Additionally, they should meet all of the following criteria: (Rev. 9/17/14) (1) The result is clear. (2) The applicable law is established in the Ninth Circuit based on circuit or Supreme Court precedent. **After the Clerk assigns a case to the screening calendar,** the Clerk's Office forwards the case materials to the staff attorneys. The staff attorneys then place each screening case on either an oral screening calendar or a written screening calendar. c. Written Screening Panels. When a written screening panel indicates that it is ready for case assignments, staff shall send the requested number of

cases taken from the cases designated as those eligible for screening pursuant to G.O. 6.5(a). The authoring judge is responsible for forwarding the written disposition to the Clerk's Office for filing.... 2. Dispositions. Dispositions ordinarily will be by memorandum. If the panel has not issued a separate order submitting the case, a footnote should be included in the disposition indicating that the panel unanimously agrees that the case should be submitted on the briefs pursuant to FRAP 34(a).

Circuit Rule 36-3(b) "**Unpublished dispositions and orders** of this Court issued on or after January 1, 2007 **may be cited to the courts of this circuit** in accordance with FRAP 32.1.

Circuit Rule 3-2(b) "In all other cases, a party filing an appeal shall attach to the notice a Representation Statement that identifies all parties to the action along with the names, addresses and telephone numbers of their respective counsel, if known. Circuit Advisory Committee Note to Rule 3-2: **The representation statement is critically important** and should, to the extent possible, include appellate counsel for all parties, whether or not they were counsel in the lower court. **It is used by the Court to determine** the contents of the caption, which parties and counsel will be added to the appellate docket, who will receive notice of the appeal and initial schedule, and **who will be required or permitted to submit filings** in the appeal. When any party or counsel is not accurately listed in the docket, significant problems, such as lack of notice or waiver of arguments, can result. Because the representation

statement is filed by appellants (and none is required in pro se or criminal appeals), the Court expects and requires that all parties will carefully review the Court's caption and listing of counsel and parties at the outset of every appeal and will notify the Court immediately of any corrections or updates."

Appx H.

Probate Code 44. "Heir" means any person, including the surviving spouse, who is entitled to take property of the decedent by intestate succession under this code.

Probate Code 7261. If a transaction affecting real property in the estate is executed by the personal representative in accordance with the terms of a court order, the instrument shall include a statement that the transaction is made by authority of the order authorizing or directing the transaction and shall give the date of the order.

Probate Code 10314. Execution of conveyance or assignment of contract to purchase real property; copy of order to be recorded; rights vested by conveyance or assignment: (a) Except as provided in subdivision (b), upon confirmation of the sale, the personal representative shall execute a conveyance to the purchaser which shall refer to the order confirming the sale and directing the conveyance to be executed. (c) A conveyance made in compliance with the court order confirming the sale and directing the conveyance to be executed vests in the purchaser both of the following: (1) All the right, title, and interest which the decedent had in the property at the time of the decedent's death."

Civil Code 954. "A thing in action, arising out of the

violation of a right of property, or out of an obligation, may be transferred by the owner.

Civil Code 1039. "Transfer is an act of the parties, or of the law, by which the title to property is conveyed from one living person to another.

Civil Code 1040. "Voluntary Transfer: A voluntary transfer is an executed contract, subject to all rules of law concerning contracts in general; except that a consideration is not necessary to its validity.

Civil Code 1044. "Property of any kind may be transferred, except as otherwise provided by this article.

Civil Code 1069. "A grant is to be interpreted in favor of the grantee, except that a reservation in any grant, and every grant by a public officer or body, as such, to a private party, is to be interpreted in favor of the grantor.

Civil Code 1085. "A present interest, and the benefit of a condition or covenant respecting property, may be taken by any natural person under a grant, although not named a party thereto.

Civil Code 1107. "Every grant of an estate in real property is conclusive against the grantor, also against every one subsequently claiming under him, except a purchaser or encumbrancer who in good faith and for a valuable consideration acquires a title or lien by an instrument that is first duly recorded.

Civil Code 1458. "A right arising out of an obligation is the property of the person to whom it is due, and may be transferred as such.

Civil Code 1559. "A contract, made expressly for the benefit of a third person, may be enforced by him at any

time before the parties thereto rescind it.

Civil Code 2941(b)(1) "Within 30 calendar days after the obligation secured by any deed of trust has been satisfied, the beneficiary or the assignee of the beneficiary shall execute and deliver to the trustee the original note, deed of trust, request for a full reconveyance, and other documents as may be necessary to reconvey, or cause to be reconveyed, the deed of trust. (B) The trustee shall deliver a copy of the reconveyance to the beneficiary, its successor in interest, or its servicing agent, if known. The reconveyance instrument shall specify one of the following options for delivery of the instrument, the addresses of which the recorder has no duty to validate: (i) The trustor or **successor in interest**, and that person's last known address, as the person to whom the recorder will deliver the recorded instrument pursuant to Section 27321 of the Government Code." (Italics added)