APPENDIX A

[DO NOT PUBLISH]

In the

United States Court of Appeals

For the Eleventh Circuit

No. 22-11975

Non-Argument Calendar

ELIEZER TAVERAS,

Plaintiff-Appellant,

versus

US BANK NATIONAL ASSOCIATION,
US BANK NATIONAL ASSOCIATION,
as Trustee for the GSAMP Trust 2006-HE6 Mortgage
Pass-Through Certificates, Series 2006-HE6,
OCWEN LOAN SERVICING, LLC,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 1:22-cv-21134-RNS

Before BRANCH, ABUDU, and ANDERSON, Circuit Judges.

PER CURIAM:

This case is plaintiff-appellant Eliezer Taveras's third attempt to reverse foreclosure and repossession proceedings on real property he owned in Florida. The district court rejected Taveras's arguments that the defendants had improperly removed the suit to federal court and dismissed the action for claim-splitting. Taveras argues on appeal that (1) the defendants improperly removed the suit to federal court, (2) the district court lacked jurisdiction because of the *Rooker-Feldman* doctrine, and (3) the district court erred in dismissing the complaint for claim-splitting. After review, we conclude that the district court had jurisdiction, and we affirm the district court's order dismissing this case for the alternative reason that Taveras's claims are barred by *res judicata*.

I. Background

A. The Purchase and Foreclosure

In 2006, an individual named Maria Sanchez purchased real property in Florida, taking out a mortgage on the property with Ownit Mortgage Solutions, Inc. Sanchez eventually defaulted on the loan, and so defendant-appellee U.S. Bank National Association (by then the successor-in-interest to Ownit) commenced

foreclosure efforts in 2007. These foreclosure efforts apparently continued for years without success because, in 2014, Sanchez transferred the property to Taveras, as the Trustee of his family's trust.

U.S. Bank eventually filed another foreclosure action, this time against Taveras as trustee (and various other interested parties) in 2017. In 2018, Taveras entered into a settlement agreement with U.S. Bank. The settlement consisted of the following key terms:

> (1) Taveras consented to the entry of a consent final judgment of foreclosure;
>
> (2) Taveras agreed to a judicial sale of the property; and
>
> (3) Taveras released U.S. Bank, Ocwen Loan Servicing (the company that assigned U.S. Bank the mortgage), and their successors/assigns from any related claims.

The Florida state court entered judgment to that effect. U.S. Bank bought the property at a judicial sale in January 2019.[1]

B. *The Parties' Prior Litigation*

Taveras, apparently unhappy with the settlement agreement, sought post-judgment relief from the consent judgment on the foreclosure and sale in May 2019 from the Florida

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[1] We note that, after the January 2019 judicial sale, Taveras (as trustee) purported to transfer the property to himself in his individual capacity.

state courts. The state court denied relief and Taveras appealed, but then he later voluntarily dismissed the appeal on August 12, 2019.

Just before Taveras dismissed his appeal in that state court case, however, he filed a lawsuit in the U.S. District Court for the Southern District of Florida ("*Taveras I*") against U.S. Bank and Ocwen Loan Servicing. In relevant part, Taveras argued that U.S. Bank and Ocwen improperly induced him to sign the 2018 consent judgment and that the assignment of the mortgage from Ocwen to U.S. Bank was fraudulent; he therefore sought a declaratory judgment that the 2018 consent judgment was void. The district court dismissed Taveras's fraud claims as barred by *res judicata* in connection with the state foreclosure proceedings on December 3, 2019. *Taveras v. Ocwen Loan Servicing*, LLC, No. 19-cv-23358, 2019 WL 6497367 (S.D. Fla. Dec. 3, 2019).

About two years later, Taveras filed a second federal suit against U.S. Bank and Ocwen ("*Taveras II*"). This second suit asserted nine causes of action but, once again, the core claims were that (1) U.S. Bank and Ocwen had deceived him into signing the 2018 consent judgment and (2) the assignment of the mortgage from Ocwen to U.S. Bank was fraudulent. But, this time, Taveras further asserted that the State Court lacked jurisdiction and he therefore had a "right to have the [consent final judgment] declared null and void *ab initio*." The district court granted the defendant-appellees' motion to dismiss, concluding that the *Rooker-Feldman*

doctrine barred Taveras's claims.[2] The district court also denied Taveras's motion to amend his complaint to add federal claims under the Racketeer Influenced and Corrupt Organizations Act ("RICO") and a request for injunctive relief. Taveras sought reconsideration, which was denied on May 10, 2021. He did not appeal.

Meanwhile, Ocwen and U.S. Bank moved in the Florida state court for a writ of possession on the real property.[3] The state court granted the writ. Taveras, in addition to some other maneuvering not pertinent here, sought discretionary review[4] of

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[2] *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923), and *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983), formed the *Rooker-Feldman* doctrine, which precludes federal courts from reviewing state court judgments.

[3] While briefing was ongoing in this case, we granted a motion by U.S. Bank and Ocwen to take judicial notice of documents filed in the state and federal cases preceding this lawsuit.

Now, Taveras asks us to take judicial notice of three documents from the state court proceedings and two documents from *Taveras II*. These documents are relevant to the procedural history in the litigation related to this case, and so we **GRANT** the motion for the limited purpose of taking notice of what they purport to argue and hold. *See Lozman v. City of Riviera Beach*, 713 F.3d 1066, 1075 n.9 (11th Cir. 2013); *see also Dippin' Dots, Inc. v. Frosty Bites Distrib., LLC.*, 369 F.3d 1197, 1204 (11th Cir. 2004) (explaining that a court may take judicial notice of a fact "relevant to a determination of the claims presented in [a] case" if it is not subject to reasonable dispute and it can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned (citing Fed. R. Evid. 201)).

[4] Taveras denies initiating that review—a point we address in reviewing the preclusive effect that the prior litigation has in this case. *See* below at n.7.

the state court's order granting the writ of possession before the Florida Supreme Court on April 5, 2022—but the Florida Supreme Court denied his petition on May 18, 2022. *Taveras v. U.S. Bank, N.A.*, No. SC2022-0442, (Fla. May 18, 2022).

C. This Lawsuit

Before he filed the petition with the Florida Supreme Court, Taveras filed a *third* lawsuit—this lawsuit—against U.S. Bank and Ocwen in Florida state court. In his complaint, Taveras asserted federal RICO claims and reiterated his claims of fraud under Florida law related to the consent judgment. Once more, he asserted (among other things) that the state court lacked jurisdiction throughout the foreclosure proceedings for various reasons, including when it issued the writ of possession.

U.S. Bank and Ocwen removed the case to federal court, relying on Taveras's assertion of federal RICO claims. They then moved to dismiss, arguing in relevant part that (1) the district court lacked jurisdiction under the *Rooker-Feldman* doctrine; (2) *res judicata* barred Taveras's claims; (3) Taveras had released all his claims against them in the settlement agreement, and (4) Taveras failed to state a claim upon which relief could be granted.

Taveras responded by asking the district court to hold the defendants and their attorneys in contempt for "fraud on the court." He sought civil and criminal contempt sanctions against the parties because, according to Taveras, they essentially conspired to manipulate the system by removing the case to federal court to strip the court of jurisdiction and avoid having the case

heard on the merits. Relatedly, he also moved to remand the case back to state court because removal was part of the defendants' "fraudulent scheme" to obstruct the administration of justice.

The district court concluded that removal was proper and that it had subject matter jurisdiction over Taveras's claims. Thus, the district court denied Taveras's motions for contempt and remand as "wholly meritless."

The district court also, *sua sponte*, concluded that Taveras's claims had to be dismissed because he had engaged in improper claim-splitting.[5] The case involved the same parties as Taveras's previous federal cases, the district court noted, and arose out of the same nucleus of operative facts. And, despite any variation in Taveras's claims, Taveras (like in his previous cases) "attempt[ed]

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[5] The claim-splitting rule is an offshoot of claim preclusion principles, based on the notion that "related claims must be brought in a single cause of action." *Vanover v. NCO Fin. Servs.*, 857 F.3d 833, 840–41 (11th Cir. 2017) ("The rule against claim-splitting requires a plaintiff to assert all its causes of action arising from a common set of facts in one lawsuit. By spreading claims around in multiple lawsuits in other courts or before other judges, parties waste 'scarce judicial resources' and undermine 'the efficient and comprehensive disposition of cases.'" (quoting *Katz v. Gerardi*, 655 F.3d 1212, 1214 (10th Cir. 2011)); *cf. Dietz v. Bouldin*, 579 U.S. 40, 45 (2016) (district courts possess "inherent powers that are not governed by rule or statute but by the control necessarily vested in courts to manage their own affairs so as to achieve the orderly and expeditious disposition of cases"). The claim-splitting rule thus "ensures that a plaintiff may not split up his demand and prosecute it by piecemeal, or present only a portion of the grounds upon which relief is sought, and leave the rest to be presented in a second suit, if the first fails." *Vanover*, 857 F.3d at 841 (quotation omitted).

to avoid the consent final judgment, entered in state court, by claiming that . . . the state court lacked jurisdiction, that the assignment of mortgage in favor of U.S. Bank was fraudulent, and that U.S. Bank and Ocwen had . . . deceived him in order to obtain the consent final judgment." Accordingly, the district court concluded that Taveras engaged in improper claim-splitting when he filed this duplicative action, and it dismissed the case with prejudice. Taveras then filed a motion for reconsideration, requesting that the court vacate the dismissal because the action was improperly removed to federal court, and the court lacked jurisdiction under the *Rooker-Feldman* doctrine. The district court denied the motion.

Taveras timely appealed.

II. Standards of Review

This case involves three standards of review.

First, we review jurisdictional determinations *de novo*. *United States v. Weiss*, 467 F.3d 1300, 1307 (11th Cir. 2006). In conducting this review, we may look beyond the allegations of the complaint to ascertain our jurisdiction. *See McElmurray v. Consolidated Gov't of Augusta-Richmond Cnty.*, 501 F.3d 1244, 1251 (11th Cir. 2007). Thus, we may consider exhibits attached to the complaint, *McElmurray*, 501 F.3d at 1251–54, and matters of which we have taken judicial notice, *see Lozman*, 713 F.3d at 1075 n.9.

Second, we review a district court's decision to dismiss a complaint for claim-splitting only for abuse of discretion. *Vanover*, 857 F.3d at 837.

And third, because we may affirm on any basis supported by the record, *Club Madonna, Inc. v. City of Miami Beach*, 924 F.3d 1370, 1378 (11th Cir. 2019), we review questions of *res judicata de novo*. *See Ragsdale v. Rubbermaid, Inc.*, 193 F.3d 1235, 1238 (11th Cir. 1999).

III. Discussion

Taveras argues on appeal that the district court erred in dismissing his complaint for claim-splitting. His first two arguments contend that the dismissal was improper because the district court never had jurisdiction in the first place. But even if the district court had jurisdiction, he argues, we must still reverse the district court because it misapplied the claim-splitting rule. We address each argument in turn.[6]

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[6] Taveras also requests that we strike the Appellees' brief on judicial estoppel grounds because he maintains that they have improperly taken inconsistent positions concerning the application of the *Rooker-Feldman* doctrine. Even assuming Taveras is correct that the Appellees' positions taken in the course of these cases are inconsistent, there would be little point in judicially estopping the appellees on the *Rooker-Feldman* issue here. On the one hand, judicial estoppel is a discretionary tool. *See Slater v. U.S. Steel Corp.*, 871 F.3d 1174, 1180–81 (11th Cir. 2017). And on the other, this Court has an independent obligation to assess jurisdictional issues like *Rooker-Feldman*—regardless of whether the Appellees are in a position to argue them. *Scarfo v. Ginsberg*, 175 F.3d 957, 960 (11th Cir.1999) ("[P]arties cannot waive subject matter jurisdiction, and we may consider subject matter jurisdiction claims at any time during litigation."); *In re S.W. Bell Tel. Co.*, 535 F.2d 859, 861 (5th Cir. 1976) ("Whatever the scope" of judicial estoppel "may be, so far as we have been able to discover[,] it has never been employed to prevent a party from taking advantage of a federal forum when he otherwise meets the statutory requirements of federal jurisdiction . . . . A district court has no authority to negate that right simply because such a person has not observed the

A. The district court had subject matter jurisdiction.

Taveras first argues that the district court should not have dismissed his complaint for claim-splitting because the court did not have jurisdiction and the case was therefore improperly removed in the first place. But his complaint alleged that U.S. Bank and Ocwen violated the federal RICO statute. *See* 18 U.S.C. § 1961. That federal claim gave the district court original subject matter jurisdiction, *see* 28 U.S.C. § 1331, and the case was therefore removable, *see* 28 U.S.C. §§ 1441(a), (c) (providing that generally "any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant . . . to the district court," and this includes civil actions that contain both federal and state law claims).

Taveras's only argument to the contrary rests on the view that a case is only removable if the federal courts have "exclusive jurisdiction" over the claims at issue. Taveras's argument, however, is foreclosed by the removal statute. *See* 28 U.S.C. § 1441(a), (c).

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consistency in pleading that the forum state may demand. Judicial estoppel cannot conclusively establish jurisdictional facts."), *affirmed en banc by In re S.W. Bell Tel. Co.*, 542 F.2d 297, 298 (5th Cir. 1976), *vacated on other grounds by Gravitt v. S.W. Bell Tel. Co.*, 430 U.S. 723, 724 (1977); *see also Bonner v. City of Pritchard, Ala.* 661 F.2d 1206 (11th Cir. 1981) (adopting as binding precedent all decisions of the former Fifth Circuit handed down prior to October 1, 1981). In short, there is no sound reason to judicially estop the Appellees from arguing an issue related to subject matter jurisdiction. We therefore exercise our discretion to **DENY** the motion to strike.

Thus, we agree with the district court that removal was proper because it had federal question jurisdiction over this case.

B. *The* Rooker-Feldman *doctrine did not deprive the district court of jurisdiction.*

Taveras's other jurisdictional argument is that the *Rooker-Feldman* doctrine "strip[ped the district] court of jurisdiction over" his complaint, referencing the district court's prior conclusion in *Taveras II* that it lacked jurisdiction under *Rooker-Feldman*. We disagree.

The *Rooker-Feldman* doctrine bars federal district courts from reviewing or effectively reviewing state-court decisions, since lower federal courts lack subject matter jurisdiction over final state-court judgments. *Behr v. Cambell*, 8 F.4th 1206, 1208 (11th Cir. 2021). It applies to "cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments." *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005). For the doctrine to apply, the complained-of injuries must be caused by the judgment itself. *Behr*, 8 F.4th at 1212. Indeed, it is a pre-requisite that the federal action must be filed after the state proceedings have ended. *Nicholson v. Shafe*, 558 F.3d 1266, 1277–78 (11th Cir. 2009).

Taveras's claims here are not barred by the *Rooker-Feldman* doctrine because his state court proceedings were still pending at the time the case was removed to federal court. *Id.* Specifically,

Taveras filed this complaint in state court on February 22, 2022, asserting (among other things) that the state court lacked jurisdiction throughout the proceedings, including when it issued the writ of possession. The action was removed to federal court on April 13, 2022. Yet the Florida Supreme Court did not deny Taveras's petition for review of the order granting the writ of possession until more than a month later, on May 18, 2022. *Taveras v. U.S. Bank, N.A.*, No. SC22-442 (Fla. May 18, 2022).[7] So, with that petition for review still pending, the state proceedings had not ended—and Taveras's injuries could not have been caused by *the judgment itself*. *Nicholson*, 558 F.3d at 1275–76 ("[W]e agree with our sister circuits . . . that state proceedings have not ended for purposes of *Rooker–Feldman* when an appeal from the state court

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[7] Taveras insists, on reply, that the *Rooker-Feldman* still applies because he "did not cause the 'petition' for review," pointing to two documents (and we have taken judicial notice of both): (1) an email he wrote to the Appellees' counsel, saying that he was appealing to the U.S. Supreme Court, not the Florida Supreme Court, and (2) a notice he filed in the Florida Supreme Court in which he states that he had not sought review in that court, but was instead planning to seek review from the U.S. Supreme Court.

Taveras even goes so far as to accuse the Appellees of fraudulently causing that petition to be filed, precisely for the purpose of engineering the conclusion that the *Rooker-Feldman* doctrine does not defeat our jurisdiction because state proceedings were still pending when this suit commenced. Taveras does not point to any evidence for that claim—and we are skeptical of it, not least because the Appellees here argued to the district court that *Rooker-Feldman* in fact *did* thwart its jurisdiction.

Regardless, it does not matter. Whatever the reason, the proceedings were still ongoing until the Florida Supreme Court denied the petition.

judgment remains pending at the time the plaintiff commences the federal court action.").[8]

Thus, the district court correctly concluded that it did not lack subject matter jurisdiction under the *Rooker-Feldman* doctrine.[9]

C. Taveras's claims here are barred by res judicata.

Finally, Taveras argues that the district court erred in dismissing the action for improper claim-splitting. U.S. Bank and Ocwen disagree but contend as a threshold matter that Taveras

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[8] Taveras also insists on reply that this logic is mistaken because the ongoing proceedings were related to the writ of possession—not the original foreclosure action. Taveras is incorrect. To begin with, both the foreclosure proceedings and the writ of possession proceedings were part of the same case in the Florida Courts. But even if the difference between foreclosure proceedings and writ of possession proceedings in the same case somehow made a difference, Taveras's complaint in this case also asserted that the Florida state court lacked jurisdiction to issue the writ of possession, as well. Since those proceedings were still ongoing at the time this case was filed and removed—at least some of the injuries alleged in this federal action would not be caused by the foreclosure judgment, and jurisdiction over those claims would therefore not be barred by *Rooker-Feldman.*

[9] Taveras makes a related argument that the district court's order violated his due process rights because it deprived him of an opportunity to be heard. Even assuming Taveras's opening brief was sufficient to preserve this issue, *see Greenbriar, Ltd. v. City of Alabaster*, 881 F.2d 1570, 1573 n.6 (11th Cir. 1989) (explaining that passing references to an argument do not suffice to preserve it), this argument fails because Taveras had notice of and the opportunity to respond to the motion to dismiss below. *See Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 546 (1985) ("The essential requirements of due process . . . are notice and an opportunity to respond[,]" including an opportunity to "present reasons . . . why [that] proposed action should not be taken[.]").

abandoned any challenge that portion of the district court's order because his brief only addresses the finding that Taveras had split his claims from those he asserted in *Taveras II*—leaving unchallenged the conclusion that he also improperly split his claims from those in *Taveras I*.

We need not resolve that debate, however, because we separately conclude that, even assuming Taveras had preserved the issue and that the district court's claim-splitting analysis was flawed, the district court's order must be affirmed because Taveras's claims are barred by *res judicata*. *See Club Madonna*, 924 F.3d at 1378 (explaining that "we [may] affirm on any basis supported by the record, regardless of whether the district court decided the case on that basis").

Res judicata will bar a subsequent action if: "(1) there is a final judgment on the merits; (2) the decision was rendered by a court of competent jurisdiction; (3) the parties, or those in privity with them, are identical in both suits; and (4) the same cause of action is involved in both cases." *Ragsdale*, 193 F.3d at 1238. "In determining whether the causes of action are the same, a court must compare the substance of the actions, not their form." *Id.* at 1239. "[I]f a case arises out of the same nucleus of operative fact, or is based on the same factual predicate, as a former action, . . . the two cases are really the same 'claim' or 'cause of action' for the purposes of res judicata." *Id.* (quotations omitted). This principle applies to all claims that were or could have been raised in the earlier proceeding. *Id.*

Those elements are all satisfied here. First, the district court issued a final order on the merits in *Taveras I.* Charles A. Wright & Arthur R. Miller, 18A Federal Practice & Procedure § 4435 (3d ed. August 2023 Update) ("Fittingly, dismissal of a second action on the ground that it is precluded by a prior action is itself effective as res judicata, and a judgment on the merits that forecloses further litigation of the preclusion question in a third action." (citing *United States v. Lee*, 695 F.2d 515, 519 (11th Cir. 1983)). Second, the U.S. District Court for the Southern District of Florida was a court of competent jurisdiction in *Taveras I. See Ragsdale*, 193 F.3d at 1238. Third, this case involves the same parties as *Taveras I*: Taveras, U.S. Bank, and Ocwen. Fourth, this case arises out of the same nucleus of operative fact as *Taveras I. Ragsdale*, 193 F.3d at 1238. Although Taveras based the present action, in part, on a federal RICO claim, which he did not advance in *Taveras I*, and added a claim related to the writ of possession proceedings, both cases involve the same dispute over the foreclosure and repossession of the property, as well as Taveras's attempts to void the final consent judgment entered by the state court. Indeed, both cases allege malfeasance in inducing Taveras to agree to the consent judgment and both cases assert that the assignment of the mortgage to U.S. Bank was fraudulent. Thus, both *Taveras I* and this case were based on the same factual predicates, so they both involve essentially the same "claims" or "causes of action" for the purposes of *res judicata. Id.* at 1239.

Thus, any error in the district court's claim-splitting analysis is harmless because his claims are barred by *res judicata.*

IV. Conclusion

In sum, we reject Taveras's arguments that the district court lacked jurisdiction, and we affirm the dismissal on *res judicata* grounds.

AFFIRMED.

APPENDIX B

In the

United States Court of Appeals

For the Eleventh Circuit

No. 22-11975

ELIEZER TAVERAS,

Plaintiff-Appellant,

versus

US BANK NATIONAL ASSOCIATION,
US BANK NATIONAL ASSOCIATION,
as Trustee for the GSAMP Trust 2006-HE6 Mortgage
Pass-Through Certificates, Series 2006-HE6,
OCWEN LOAN SERVICING, LLC,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Florida

D.C. Docket No. 1:22-cv-21134-RNS

ON PETITION FOR REHEARING AND PETITION FOR REHEARING EN BANC

Before BRANCH, ABUDU, and ANDERSON, Circuit Judges.

PER CURIAM:

The Petition for Rehearing En Banc is DENIED, no judge in regular active service on the Court having requested that the Court be polled on rehearing en banc. FRAP 35. The Petition for Panel Rehearing also is DENIED. FRAP 40.

APPENDIX C

Case No. 22-11975
IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA
Lower Court Case No. 1:22-cv-21134-RNS

ELIEZER TAVERAS
Plaintiff – Appellant
v.
US BANK NATIONAL ASSOCIATION;
U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE, FOR THE GSAMP TRUST 2006-HE6 MORTGAGE PASS-THROUGH
CERTIFICATES, SERIES 2006-HE6;
OCWEN LOAN SERVICING, LLC
Defendants – Appellees

Excerpt from
APPELLANT OPENING BRIEF
(Entered on 07/20/2022)

. . .

STATEMENT OF ISSUES ON APPEAL

(1) Whether the trial court had jurisdiction to enter the Order; (2) whether the district court erred by dismissing this action for improper claims splitting; (3) Whether the Order was entered in violation of Taveras' due process rights.

. . .

STATEMENT OF THE CASE

I. SUMMARY

This is an action unproperly removed from state court. Because a previous action, filed by Taveras in the district

court, was dismissed **without prejudice** pursuant to *Rooker-Feldman*, this time the district court found that Taveras cannot refile his complaint in the right forum and dismissed the actual complaint with prejudice pursuant the claim-splitting doctrine.

On 2/22/2022 Taveras filed suit against Appellees in the Circuit Court of Miami-Dade, Florida (the "state court"). The litigation stems from the disposition of the foreclosure action filed by Appellees in the state court; Case No.: 2017-020857CA01 (the "foreclosure action"). Taveras seeks the avoidance of the foreclosure final judgment on the grounds that the state court lacked subject matter jurisdiction at all times during the pendency of the action. On 4/13/2022, Appellees caused the removal of this action to the district court and immediately filed their Motion to Dismiss, on the grounds that the district court lacks jurisdiction to grant relief pursuant to *Rooker-Feldman*. Although Taveras filed his motion to remand on the grounds that the action was improperly removed and the court's lack of jurisdiction to review a state court's judgment, the district court entered its Order. Taking advantage of the Order and the district court's final judgment in their favor, Appellees further caused the eviction of Taveras from his home, causing irreparable harm to him and his family.

II. UNDISPUTABLE FACTS

On 2/22/2022, Taveras filed suit against Appellees in the state court. Taveras seeks avoidance of final judgment of foreclosure, equitable relief pursuant to sections 86.011, 812.035, and 702.036 Florida Statutes, treble damages pursuant to Florida Statute 772, and federal RICO. In the alternative to equitable relief, under his cause of action for unjust enrichment, Taveras seeks a constructive trust for his benefits over the subject property. Finally, Taveras seeks injunctive relief pursuant to Fla. R. Civ. P. 1.610 [Appx Doc 1-2].

On 4/13/2022, Appellees jointly filed their notice of removal [Appx, Doc 1]. In addition, on 4/15/2022, they also filed their Motion to Dismiss [Appx Doc 7], asserting that the action should be dismissed due to the district court's lack of jurisdiction to grant relief pursuant to Rooker-Feldman [See Appx, Doc 7, pgs 6-10], and Res Judicata [Appx, Doc 7, pgs 10-11].

On 4/19/2022, Taveras filed his Dispositive Motion to Remand [Appx Doc 12], asserting that the removal was improper [Appx, Doc 12, pg 7], and a "fraudulent scheme planned and executed by Defendants and their attorneys of records, intentionally designed to obstruct the administration of justice" [Appx, Doc 12, pgs 1-2]. Taveras further argues the trial court's previous finding that it lacks jurisdiction [Appx, Doc 12, pgs 5-6], and that "The court should be consistent, that is to say, it must lack contradiction." (Emphasis in original) [Appx, Doc 12, pg 7].

On 5/9/2022, the district court entered its order dismissing this action, finding:

"[T]his case, properly here upon removal based on federal-question jurisdiction represents Taveras's third attempt, in this Court alone, to do so: both prior attempts have failed. Because this case involves the same parties and arises from the same nucleus of operative facts as the first two cases, the Court dismisses it, with prejudice, for improper claims splitting" (emphasis added).

On 5/21/2022, Taveras moved to vacate the Order pursuant to Rule 60(4) and 60(6) of Federal Rules of Civil Procedure, asserting that "[T]he Court lacks jurisdiction for the Order, thus, the Order is null and void ab initio." (Emphasis in original) [Appx, Doc 23, pg 1], and therefore, that the Order is contrary to Taveras' due process rights, Id. Taveras further argues that the action was improperly (and fraudulently) removed from the state court which has concurrent jurisdiction for Taveras' federal claims [Appx,

Doc 23, pg 13-16], and that the district court erred in denying his motion to remand [Appx, Doc 23, pgs 16-17]. In addition, Taveras asserts the Appellees' conspiracy to defraud the court and the United States by removing this action [Appx, Doc 23].

On 6/2/2022, the district court entered its order denying Taveras' Motion to Vacate. On 6/13/2022, Taveras timely filed his Notice of Appeal to this Court.

THE PREVIOUS ACTION

On February 17, 2021, Taveras, joined by Nathan Taveras, filed in the same court their complaint against Defendants under Case No. 1:21-cv-20660-RNS (the "Previous Action"). The Previous Action raised out of the same nucleus of operative facts. Here, the plaintiffs also sought to avoid the foreclosure judgment. On 3/16/2021, the defendants jointly moved to dismiss the complaint in its entirety as barred by the Rooker-Feldman doctrine for lack of jurisdiction and failure to state a claim. On 4/23/2021, the plaintiffs moved for leave to file an amended complaint to add causes of action under federal RICO [id. Doc 42]. On 4/30/2021 the district court entered an order dismissing the Previous Action without prejudice [See Appx, Doc 23, pg 26: "Conclusion"], finding:

The Rooker-Feldman doctrine applies and strips the district court of jurisdiction over all of the claims in the Plaintiffs' complaint..." (emphasis added).

[See Appx, Doc 23, pg 23].

Regarding the plaintiffs' motion for leave to amend the Court held "the Court finds that the causes of action raised therein are barred by the Rooker-Feldman doctrine because they do not fail to cure the deficiencies described above, chiefly, the relief sought would effectively nullify the state-court judgments, and the claims are inextricably intertwined with the state court judgment" (emphasis added). Id.

[See Appx, Doc 23, pg 25"].

EFFECT OF THE DISTRICT COURT'S ACTION

The district court's order dismissing this action has, directly and indirectly, caused substantial damages to Taveras. In addition of being deprived of his constitutional right of due process, Taveras was severally harmed as a direct consequence of the Order: Taking advantage of the Order, on 7/7/2022, Appellees caused the eviction of Taveras from his home, causing him substantial financial and emotional distress. Nightmares, sleeplessness, fear, anxiety, anger, and deep feelings of betrayal by his government are part of the Taveras' psychological makeup. In addition to harming Taveras' economic, and psychological wellbeing, the Order was a substantial factor to cause the irreversible loss of the Taveras' home. Had the district court not entered its Order, Taveras would have a fair opportunity – in the right forum – to stop or stay eviction until the final disposition of this action.

STANDARD OF REVIEW

This Court reviews question of law de novo. *Williams v. Bd. of Regents of Univ. Sys. of Ga.*, 477 F.3d 1282, 1291 (11th Cir. 2007), but under the abuse of discretion standard, the court will "uphold any district court determination that falls within a permissible range of permissible conclusions." *Cooter & Gell v. Hartmarx Corp.*,496 U.S. 384, 400 (1990). "A district court abuses its discretion if it misapplies the law . . . ." *Ambrosia Coal & Constr. Co. v. Pages Morales*, 368 F.3d 1320, 1332 (11th Cir. 2004) (citing *Delta Air Lines, Inc. v. Air Line Pilots Ass'n, Int'l*, 238 F.3d 1300, 1308 (11th Cir. 2001)), or makes findings of fact that are clearly erroneous, United States v. Jordan, 316 F.3d 1215, 1249 (11th Cir.2003).

SUMMARY OF ARGUMENT

I. The Action Was Improperly Removed.

II. The District Court Lacks Jurisdiction to Enter the Order. Thus, The Order Is Void and Null Ab

Initio.

III. The Order Is in Contravention of Taveras' Due Process Rights.

IV. The District Court Erred Dismissing This Action for Improper Claims Splitting.

ARGUMENT

I. The Action Was Improperly Removed

The district judge justified his order by suggesting that the action was properly removed under federal question jurisdiction (for Taveras' cause of action on federal RICO). However, federal courts do not have exclusive jurisdiction for civil claims under federal RICO. Under the Supreme Court's opinion in *Gulf Offshore Co. v. Mobil Oil Corp.*, analysis of state-court jurisdiction over a federal cause of action "begins with the presumption that state courts enjoy concurrent jurisdiction." 453 U.S. 473 (1981) at 478.

Furthermore, in the Previous Action, the court had found that it lacks jurisdiction for Taveras' claims.

The Appellees' motion to dismiss on the grounds that the district court lacks jurisdiction evidence that the Attorneys knew or should have known that removal was legally improper and that the removal was done in bad faith, causing an unnecessary waste of time and public resources. It is one of the fundamental principles of justice that no man should be allowed to take advantage of his own fraud.

II. The District Court Lacks Jurisdiction. Thus, The Order Is Null and Void Ab Initio

The district court lacks the power to enter the Order. Plaintiff's claims are inextricably intertwined with the state court's judgment. Therefore, as previously found and affirmed by the district court, the Rooker-Feldman doctrine "applies and strips this court of jurisdiction over all of the claims in the Plaintiffs' complaint". See *Sanchez v. Ocweb Loan Servicing, LLC*, 840 F. App'x 419, 420 (11th Cir. 2020) (citing *Lozman v. City of Riviera Beach*,

713 F.3d 1066, 1069–70 (11th Cir. 2013))

The court has been inconsistent. The order dismissing this action clearly exceeded the district court's authority and was entered without the requisite procedural safeguard. The Order is void and null and has no legal effect. An order is void if the court that rendered lacked jurisdiction of the subject matter, of the parties, or acted in a manner inconsistent with due process, Fed. R. Civ. P. 60(b)(4).

The law is well-settled that "[C]ourts are constituted by authority and they cannot go beyond that power delegated to them. If they act beyond that authority, and certainly in contravention of it, their judgments and orders are regarded as nullities; they are not voidable, but simply void, and this even prior to reversal." *Williamson V. Berry*, 49 U.S. 495 (1850).

III. The district court acted in violation of Taveras' due process rights

The Order departs from the essential requirement of the law, which resulted in a miscarriage of justice. The district court acted contrary to Taveras' constitutional rights, including his right to due process protected by the Fifth Amendment to the U.S. Constitution and Article 1, §9 of the Florida Constitution.

The Due Process Clause of the Constitution requires that litigants be given a meaningful opportunity to be heard. *Boddie v. Connecticut*, 401 U.S. 371, 377 (1971). By entering the Order, the district court deprived Taveras of his constitutional right of seeking remedy in the right forum.

IV. The District Court Erred Dismissing This Action for Improper Claims Splitting

In addition to the above-alleged facts, the trial court erred by dismissing this action for improper claims splitting. The order creates a per se rule that actions dismissed without prejudice cannot be brought again in

any forum, or that subsequent actions must be identical, pursuant to the claim-splitting doctrine. The district court is wrong and must be corrected.

The claim-splitting doctrine is applied where a second lawsuit has been filed before the first one has reached a final judgment. The principle is based on the fact that "related claims must be brought in a single cause of action." *Vanover v. NCO Fin. Servs., Inc.*, 857 F.3d 833, at 840 (Citing *Katz v. Gerardi* 655 F.3d 1212, 1214 (10th Cir. 2011).

The district judge failed to properly compare the facts in Vanover and this case. This action is not similar to Vanover. The Previous Action was dismissed without prejudice pursuant to Rooker-Feldman. Taveras is not barred from refiling a lawsuit in the right forum, "the district court has made a clear error of judgment, or has applied an incorrect legal standard." *Alexander v. Fulton County*, 207 F.3d 1303, 1326 (11th Cir. 2000).

CONCLUSION

The district court has dismissed this action with prejudice based on its mistaken assumption that the claim-splitting doctrine bars litigants from refiling an action, even when a previous one has been dismissed without prejudice. Acting without power, contrary to the Appellant's constitutional rights, the district court is wrong and has abused its discretion; therefore, it must be corrected.

For the above-stated reasons, the district court's order dismissing this action with prejudice is due to be reversed.

/s/ Eliezer Taveras
Appellant

APPENDIX D

Case No. 22-11975
IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA
Lower Court Case No. 1:22-cv-21134-RNS

ELIEZER TAVERAS
Plaintiff – Appellant
v.
US BANK NATIONAL ASSOCIATION;
U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE, FOR THE GSAMP TRUST 2006-HE6 MORTGAGE PASS-THROUGH
CERTIFICATES, SERIES 2006-HE6;
OCWEN LOAN SERVICING, LLC
Defendants – Appellees

Excerpt from
APPELLEES RESPONSE BRIEF
(Entered on 07/20/2022)

. . .

ARGUMENT

I. THE ROOKER-FELDMAN DOCTRINE IS INAPPLICABLE AND DID NOT DEPRIVE THE DISTRICT COURT OF SUBJECT MATTER JURISDICTION.

A. The Rooker-Feldman Doctrine Is Inapplicable Because The State Court Foreclosure Proceedings Did Not End Before The District Court Proceedings In This Case Commenced.

Mr. Taveras argues the District Court (1) lacked subject matter jurisdiction under the Rooker-Feldman doctrine because his Complaint sought review and nullification of, and was otherwise inextricably intertwined with, the Consent Judgment; and (2) therefore was prohibited from dismissing his Complaint with prejudice and instead was required to remand the improperly removed case to the State Court. (Opening Br. 8-9, 13-15). He is wrong. Rooker-Feldman is inapplicable because the State Court foreclosure proceedings—namely the Second Post-Judgment Appeal and Motion to Vacate—were pending when the District Court proceedings in this case commenced. . .

. . .

D. Judicial Estoppel Does Not Apply To This Case.

Appellees realize that their position in this appeal—that Rooker-Feldman is inapplicable—is contrary to their earlier asserted position. That, however, does not warrant the application of judicial estoppel. Courts, including the former Fifth Circuit, have held that judicial estoppel cannot be invoked where jurisdiction is at issue.13 *In re Sw. Bell Tel. Co.*, 535 F.2d 859, 861 (5th Cir. 1976), affirmed en banc by, *In re S.W. Bell Tel. Co.*, 542 F.2d 297, 298 (5th Cir. 1976), vacated on other grounds by, Gravitt v. S.W. Bell Tel. Co., 430 U.S. 723, 724 (1977), and *In re S.W. Bell Tel. Co.*, 556 F.2d 370 (5th Cir. 1977) ("Whatever the scope of the [judicial estoppel] doctrine may be...it has never been employed to prevent a party from taking advantage of a federal forum when he otherwise meets the statutory requirements of federal jurisdiction.

. . .

II. THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION IN DISMISSING MR. TAVERAS'S COMPLAINT FOR IMPROPER CLAIM-SPLITTING.

A. The Court Must Affirm The Dismissal Order Because Mr. Taveras Abandoned Any Challenge To The District Court's Ruling That His Claims In This Action Were Impermissibly Split From Those In The First Federal Action.

The District Court dismissed the Complaint based on improper claim-splitting for two independent reasons: Mr. Taveras's claims in this case arose out of the same transaction or series of transactions and nucleus of operative facts as those in (1) the First Federal Action and (2) the Second Federal Action. (D.E. 22). On appeal, Mr. Taveras challenges only the District Court's ruling that his claims were impermissibly split from those in his Second Federal Action, arguing that the Second Federal Action could not serve as the basis for improper claim-splitting because it was dismissed without prejudice. (Opening Br. 15-16).

. . .

B. The District Court Correctly Ruled Mr. Taveras Impermissibly Split His Claims.

Even if this Court rules Mr. Taveras did not abandon his claim-splitting challenge and reviews this issue's merits—which it should not—it should nonetheless affirm because the District Court did not abuse its discretion in ruling this action is barred under the claim-splitting doctrine. Although it appears Mr. Taveras is correct that the Second Federal Action would not bar his claims in the Complaint under the claim-splitting doctrine because it was dismissed without prejudice on jurisdictional grounds,

the District Court correctly ruled his Complaint impermissibly split claims from the First Federal Action.

. . .

Finally, in the unlikely event that the Court rules Mr. Taveras did not abandon his challenge to the claim-splitting ruling, and the claim-splitting doctrine is inapplicable when, like here, a final judgment has been reached in the first case, Appellees request that the Court affirm based on the res judicata doctrine, since the test for "the rule against claim-splitting ... effectively incorporates the other requirements of res judicata." *Gadsden Indus. Park, LLC v. United States,* No. 4:15-cv-0956-JEO, 2017 U.S. Dist. LEXIS 163515, at *23 (N.D. Ala. Oct. 3, 2017); see (Opening Br. 15-16).

CONCLUSION

Based on the foregoing, Appellees request that the Court affirm the Judgment and all underlying orders, including the Dismissal Order, in all respects.

Dated: September 19, 2022

BY: /s/ Kimberly S. Mello
Kimberly S. Mello
Counsel for Appellees

APPENDIX E

Case No. 22-11975
IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA
Lower Court Case No. 1:22-cv-21134-RNS

ELIEZER TAVERAS
Plaintiff – Appellant
v.
US BANK NATIONAL ASSOCIATION;
U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE, FOR THE GSAMP TRUST 2006-HE6 MORTGAGE PASS-THROUGH
CERTIFICATES, SERIES 2006-HE6;
OCWEN LOAN SERVICING, LLC
Defendants – Appellees

Excerpt from
APPELLANT REPLY BRIEF
(Entered on 12/27/2022)

. . .

INTRODUCTION AND SUMMARY OF FACTS

Plaintiff-Appellant, Eliezer Taveras ("Appellant" or "Taveras"), hereby replies to the answering brief filed by Appellees, U.S. Bank National Association, As Trustee, For The GSAMP Trust 2006-HE6 Mortgage Pass-Through Certificates, Series 2006-HE6 ("US Bank"), and Ocwen Loan Servicing, LLC ("Ocwen").

This litigation stems from the disposition of the foreclosure action filed in the Circuit Court of Miami-

Dade, Florida (the "state court"), Case No.: 2017-020857CA01. On 10/1/2018, the state court entered final judgment of foreclosure on behalf of the foreclosure plaintiff, US Bank. On 2/22/2022, Taveras filed suit in the state court against US Bank and Ocwen, seeking avoidance of the final judgment of foreclosure, relief pursuant to sections 86.011, 812.035, and 702.036 Florida Statutes, treble damages pursuant to Florida Statute 772, and federal RICO. Under his cause of action for unjust enrichment, Taveras seeks a constructive trust for his benefits over the subject property pursuant to Florida common law. Finally, Taveras seeks injunctive relief pursuant to Fla. R. Civ. P. 1.610 [DE 1-2]. On 4/13/2022, Appellees removed the case to federal court pursuant to 28 U.S.C. §§ 1331, 1441, and 1446. In addition, on 4/15/2022, Appellees moved the court to dismiss the action for lack of subject matter jurisdiction (pursuant to Rooker-Feldman and the doctrines of res judicata). On 4/19/2022, Taveras urged the court to remand asserting that the court lacked jurisdiction over the subject matter of this controversy and that the removal was improper, and a "fraudulent scheme planned and executed by Defendants and their attorneys of records, intentionally designed to obstruct the administration of justice." In addition, Taveras moved the court for sanctions against Appellees and their attorneys of records. On 5/9/2022, ignoring Taveras' motion to remand and motion for sanction the district court entered its order dismissing this action with prejudice (the "Order"). Further, the district court denied Taveras' motion pursuant to Fed. R. Civ. P. 60(b)(4) and 60(b)(6). On 6/13/2022, Taveras appealed. Rather than waiting for the final resolution of this appeal, Appellees chose to evict Taveras from home forcibly. On 7/7/2022, after a 24-hrs eviction notice, around five Appellees' employees arrived at Taveras' home accompanied by a Miami Dade's Sheriff, who gave Taveras and his family five minutes to vacate

the Property. A few minutes later the employees proceeded to change the door lock and the Sheriff told Taveras and his family that they would be arrested if they entered the property without authorization thereafter. The Miami-Dade deputy sheriff did not undertake any effort to determine whether Taveras had a right to be on the premises. Despite efforts by Taveras to provide documentation supporting his legal right to reside at the property, the officer ignored Taveras' pleas and escorted him and his family from the premises. The Sheriff and Appellees' employees dispossessed Taveras of his home by physically removing all his personal items, more likely throwing them in the trash, causing irreparable harm to Taveras.

THE APPELLEES BRIEF

In a skillful maneuver of its attorneys, putting facts out of context, and omitting relevant facts that must be considered, Appellees come to Court improperly inviting it to make findings of facts only appropriate in the state court where this action was properly filed. As public records evidence, Appellees managed to seize the subject property, after three unlawful attempts.

The first one was filed by US Bank in the state court in 2007 under Case No. 2007-37120CA03. Public Records evidence that the subject mortgage had never been assigned to US Bank before filing this foreclosure action. It was not until 8/25/2009 (almost two years later) that an assignment of mortgage was recorded in public records of Miami-Dade County ("Public Records"), book No. 26988, page 3750, reflecting that the transaction happened backward on October 3, 2007. The assignment reflects that Mortgage Electronic Registration Systems ("MERS") was transferring the mortgage on behalf of Ownit Mortgage Solutions, Inc. ("Ownit"), a defunct corporation that filed for bankruptcy on January 2007, to US Bank. The mortgage was never assigned back from US Bank to

MERS. During the pendency of the 2007 foreclosure action, US Bank, as many other financial institutions, got involved in criminal investigations.[1] Consequently, US Bank abandoned the foreclosure action, which was dismissed on December 2nd, 2010.

The second one was on 3/14/2013, when Ocwen, shielded behind the name of US Bank, tried to take the property through another foreclosure action filed in the state court under Case No. 2013-08125CA01. As evidenced by Public Records, on 11/07/2012, in another maneuver, most likely designed for Ocwen to withhold proceeds from a foreclosure sale, Ocwen unlawfully manufactured and registered another assignment of mortgage using its employees pretending to be MERS's executives.[2] This assignment of mortgage, registered on Public Records Book 28347, page 4251, reflects that once again, MERS was transferring the mortgage to US Bank c/o Ocwen. Nevertheless, a few months after filing the 2013 foreclosure action, Ocwen was the subject of criminal investigation for violations of consumer financial laws, including alleged fraudulent practices in foreclosure actions, leading to a multimillion mortgage settlement with the CFPB;[3] the reason why on November 12, 2014,

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[1] This was close to the $25 Billion National Mortgage Settlement entered by some organizations several years ago, when they were caught cutting corners in the robo-signing scandal, violating consumer financial laws at every stage of the mortgage servicing process, and pursuing fraudulent foreclosure actions, illegally dispossessing property owners across the United States.

[2] As evidenced by public records of Miami-Dade County, FL., and Osceola County, FL, Yamaly Martinez, an Ocwen employee, robo-signed several official documents, pretending to be an executive of multiple corporations.

[3] The Settlement between Ocwen and the CFPB required this organization to ensure factual assertions made in pleadings to be accurate, complete, and to be supported by competent and reliable evidence, also that affidavits, sworn statements and declarations be based on personal knowledge in accordance with evidentiary

US Bank c/o Ocwen voluntarily dismissed the 2013 foreclosure action. The mortgage settlement was only enforceable for three years, expiring in early 2017. After the expiration of the settlement, in its greed, Ocwen resumed its questionable foreclosure practices, and pursued, once again, its target of taking the property. This leads us to the third attempt.

The third one was in 2017, when Ocwen, shielded again behind the name of US Bank, filed the third foreclosure action in the state court under Case No. 2017-020857CA01. Nevertheless, this time Appellees faced another barrier: In 2015, after so many scandals related to foreclosure fraudulent action, the Florida Supreme Court adopted amendments to the Florida Rules of Civil Procedure, requiring verification of complaint under risk of perjury in this type of action. Apparently, no law firm or particular attorney wanted to take the risk of signing and filing – under risk of perjury – a complaint on behalf of US Bank and Ocwen under present conditions. Therefore, they decided to file an "unfinished complaint", that was accepted by clerk of the state court, missing the mandatory verification of complaint and the required signature of an attorney. The state court allowed this practice,[4] in contravention of Florida law and Florida Rules of Civil Procedures.

Knowing its complaint's "deficiencies", and more likely intending to avoid legal consequences of a final judgment of foreclosure in those circumstances, Appellees found the collaboration of the foreclosure defendant's attorney to

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requirements of the applicable state or federal law, and that assignments of mortgage executed by or on behalf of them to be executed with appropriate legal authority, accurately reflecting the completed transaction and acknowledged correctly.

[4] According to some sources, this was not an isolated case, but a common practice for various plaintiffs and lawyers, which had to be confronted in an Administrative & Implementing Order signed by the Chief Judge of the Eleventh Judicial Circuit of Florida.

convince them to sign a consent to final judgment, depriving them of a meaningful trial. Under the terms of the agreement, the parties were consenting, inter alia, "to the entry of Final Judgment of Foreclosure", which was acknowledged by the state court on 10/1/2018; nonetheless, for unknown reasons, the state court entered a final judgment asserting that a trial had happened. On 1/29/2019, the Property was sold in a foreclosure auction. On 6/24/2019, the state judge ordered the issuance of a certificate of title to US Bank c/o Ocwen. Appellees then moved for a writ of possession that was granted by the state court. Taveras appealed the decision to the Florida Third District Court of Appeal ("3DCA"). The 3DCA entered its per curiam order on January 19, 2022 asserting:

Affirmed. See *Rivas v. Bank of New York Mellon*, 244 So. 3d 334, 335 (Fla. 4th DCA 2018) ("The appellant may not attack the underlying foreclosure judgment through appeal of an order granting possession of the property after sale.").

On 2/4/2022, Taveras filed his Motion for Rehearing and Rehearing en Banc, which was denied by the 3DCA on 3/23/2022. That was the end of the "Taveras' Appeal". Notably, after the per curiam decision, the 3DCA clerk of court – not Taveras – for an unknown and very suspicious reasons, caused the "petition for review" to the Florida Supreme Court.

On 2/22/2022, Taveras filed his complaint in the state court [DE 1-2], seeking the annulment of the final judgment on the ground of the state court's lack of jurisdiction during the pendency of the 2017 foreclosure action. On 4/13/2022, in another maneuver of Appellees – a modus operandi of these corporations – their attorneys filed their notice of removal [DE 1]; additionally, their Motion to Dismiss [DE 7], on the grounds of the court's lack of jurisdiction. Timely, Taveras filed his Dispositive

Motion to Remand [DE 12], asserting improper removal [DE 12, p. 7], and fraud "intentionally designed to obstruct the administration of justice" [DE 12, pp. 1-2]. Surprisingly, this time Appellees got a huge push by a federal judge, who – ignoring the motion to remand and the facts – dismissed the action with prejudice under the doctrine of improper claims splitting [DE 22]. This appeal follows.

ARGUMENT

I. CONTRARY TO APPELLEES ALLEGATIONS, THE CONSENT TO FINAL JUDGMENT DOES NEED TO BE SET ASIDE FOR RELIEF

Trying hard to divert the attention of the court to irrelevant facts, Appellees come to court focusing on Taveras's attempt to get the consent to final judgment vacated. Appellees are wrong, Florida law and case law clearly demonstrate that Taveras does not need the annulment of the consent to final judgment in order to get the final judgment of foreclosure declared null and void, to get a constructive trust for his benefit over the Property, and other reliefs sought. In fact, once this action is successfully remanded to state court, it is most likely that Taveras will drop his cause of action seeking annulment of the consent to final judgment. The main focus of Taveras Action is the annulment of the final judgment. It is been settled, in Florida "Subject matter jurisdiction is conferred upon a court by the constitution or by statute and cannot be created by waiver, acquiescence or agreement of the parties." Ruble v. Ruble, 884 So. 2d 150, 152 (Fla. 2d DCA 2004) (citing *Chapoteau v. Chapoteau*, 659 So. 2d 1381, 1384 (Fla. 3d DCA 1995)), thus the agreement to final judgment is irrelevant.[5] Additionally, if necessary Taveras

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[5] The facts were properly brought to state court: No lawful foreclosure complaint was ever filed during the pendency of the Appellees' third attempt to take the Property. Under the Florida Constitution, art.V, §5(b), every original action is within the subject matter jurisdiction of

will demonstrate in state court that the consent to final judgment is already void, not merely voidable. Florida case law establishes that a contract is void if it is against public policy, if the contract is illegal, if the offer/acceptance/consideration calls for action that violates the law, or if the purpose of the contract is illegal. The main language of the consent to final judgment was for the trial court to enter final judgment while lacking the power to do so, thus the agreement is unenforceable. Indeed, the agreement's object, inviting the state court to act while lacking jurisdiction, is not lawful; the offer, acceptance, and consideration were improper; the parties (Appellees) were not in capacity to form the contract; the consideration was not lawful; the performance of the contract was not possible (the court lacked jurisdiction to enter final judgment), and therefore is null and void. In conclusion, the issue before this Court is not related to the consent to final judgment and any attempt to get it declared null and void, the issue is that the district court abused its discretion by dismissing this action with prejudice.

II. CONTRARY TO APPELLEES ALLEGATIONS, THE APPEAL WAS NOT PENDING

Appellees come to court not only making wrong allegations but false allegations, known to be false when made. Taveras expresses a belief that Appellees have sentiently set in their Response Brief some unconscionable scheme calculated to interfere with the Court's ability impartially to adjudicate this appeal by improperly influencing the Court with false statements of facts, knowing to be false when made. Appellees continue in this court with their malicious practice to achieve their

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either the county court or the circuit court. Jurisdiction does not exist until proper pleadings are filed. Lovett v. Lovett, 112 So. 768, 776 (Fla. 1927). Thus, the state court lacked subject matter jurisdiction during the pendency of the third foreclosure action.

objectives. In conclusory fashion, relying on *Nicholson v. Shafe*, 558 F.3d 1266, 1275 (11th Cir. 2009), Appellees wrongfully allege that "Mr. Taveras's Second Post-Judgment Appeal and Motion to Vacate were pending when this District Court proceedings in this case commenced. Therefore, Rooker-Feldman is inapplicable and did not deprive the District Court of subject matter jurisdiction." First, the state foreclosure proceedings had ended. In fact, the so-called "Taveras Appeal" was related to the Appellees' motion for writ of possession, not an appeal related to the state's final judgment entered in 2018. To support their theory, Appellees assert "Florida Supreme Court did not deny Mr. Taveras's petition for discretionary review until after the Notice of Removal was filed." And further add "The chronology of relevant events..." asserting "Mr. Taveras sought Florida Supreme Court review of the Third District's affirmance in the Second Post-Judgment Appeal on April 5, 2022 (Exhibit "G")." These statements are not only false but known to be false when made, intentionally made to mislead the Court. Before filing their Response Brief, Appellees and their attorneys of records knew that Taveras did not cause the "petition" for review; in Appellees' response to Taveras' motion to show cause (Appellant's Exhibit "A"), Appellees attached an email sent by Taveras to their attorneys, stating that he had not caused such "petition", knowing that the Florida Supreme Court lacks jurisdiction to review a per curiam decision of a court of appeal.[6]

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[6] Under the Florida Constitution the Florida Supreme Court does not have the authority to review a per curiam decision of a court of appeals, "the Supreme Court of Florida lacks jurisdiction to review per curiam decisions of the several district courts of appeal of this state rendered without opinion, regardless of whether they are accompanied by a dissenting or concurring opinion, when the basis for such review is an alleged conflict of that decision with a decision of another district court of appeal or of the Supreme Court." Jenkins v. State, 385 So.2d 1356(Fla. 1980), at 1359.

Additionally, Appellees had received a copy of Taveras' Notice to the Florida Supreme Court (Appellant' Exhibit "B"), explaining the reasons why he would not file a brief or petition, asserting that he had not caused such "petition", knowing the court lack of jurisdiction. Here, after seeing and analyzing so many false allegations and acts by Appellees, Taveras expresses a belief that the petition was intentionally caused by Appellees, who knowing that Taveras had filed the lawsuit in state court, already had their plans to remove the action to federal court.

Second, when Taveras filed his action, it was filed in state court, not federal court, the removal of this action was on 4/13/2022. Therefore, *Nicholson* is inapplicable here, so is *Doll v. Sec'y, Fla. Dep't of Corr.*, 715 F. App'x 887, 892 (11th Cir. 2017). Taveras was not seeking to correct the final judgment in the 3DCA, but challenging the trial court jurisdiction to grant writ of possession, those are different issues. The real chronology of relevant facts is as follows:

1. Taveras filed his appeal to the order granting writ of possession on April 30, 2021.

2. In a per curiam decision, the 3DCA affirmed the Order Granting Writ of Possession on January 19, 2022.

3. Taveras sought rehearing and rehearing en banc on February 4, 2022.

4. Taveras filed his Complaint in the State Court on February 22, 2022 (DE 1-2)

5. The Third District denied his motion for rehearing and rehearing en banc on March 23, 2022. That was the end of the Appeal, although the clerk of the 3DCA (sua sponte or by Appellees' scheme) caused the "petition for review" in the Florida Supreme Court.

6. Appellees removed the case to federal court on April 13, 2022 (DE 1)

III. CONTRARY TO APPELLEES ALLEGATIONS, THE "MOTION TO VACATE" IS NOT PENDING

After its order granting writ of possession, the state court closed the case (See Appellees, Exhibit "B"). Before filing the so-called "Motion to Vacate," Taveras did not file a motion to reinstate the action. Therefore, the motion is null and void, not pending before the court. Appellees' attorneys are experienced lawyers, knowing this fact before their allegations.

IV. CONTRARY TO APPELLEES ALLEGATIONS, THE DISTRICT COURT LACKED JURISDICTION TO DISMISS THIS ACTION WITH PREJUDICE

Contrary to Appellees allegations, the district court lacked jurisdiction to review the state court's final judgment. Here, all Taveras' claims are inextricably intertwined with the state court judgment, which bars Plaintiff from "complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments." *Exxon Mobil Corp. v. Saudi Basic Industries Corp.*, 544 U.S. 280 (2005). Barring Taveras from bringing his case to federal court [see AOB pp. 10-11], but allowing Appellees to remove the action to get it dismissed, is an injustice, an act of tyranny against Taveras. In addition, there is no controversy between the parties regarding the district court's lack of power; both, Taveras and Appellees asserted that the court lacked jurisdiction. Federal courts are limited to deciding "cases" and "controversies." U.S. Cons. Art. III, § 2. Indeed, "[n]o principle is more fundamental to the judiciary's proper role in our system of government than the constitutional limitation of federal-court jurisdiction to actual cases or controversies." *Simon v. E. Ky. Welfare Rights Org.*, 426 U.S. 26, 37, 96 S.Ct. 1917, 48 L.Ed.2d 450 (1976). The district court did not follow the regular process of the law. Florida Statutes provide an implied

cause of action to seek annulment of final judgment of foreclosure. Fla. Stat. § 702.036. However, federal courts "cannot overturn an injurious state-court judgment" *Exxon Mobil*, 544 U.S. at 292–93. Thus, the action was properly filed in state court and unproperly removed to federal court. Abusing its discretion, the district court dismissed the action with prejudice. That was a clear error, a dismissal with prejudice is a disposition on the merits, which only a court with jurisdiction may render.

A. The dismissal is a violation of Taveras' due process rights

As asserted in AOB, a previous action was dismissed by the district court pursuant to the Rooker-Feldman doctrine [OAB pp. 10-11]. The dismissal – without prejudice – of the previous action (signed by Judge Robert N. Scola, Jr.) was an opportunity for Taveras (plaintiff) to refile his action in the right forum. A party cannot be deprived of that right pursuant to the Fifth and Fourteen Amendments. Here, Judge Scola, acting under color of law, signed the order dismissing this action in a manner inconsistent with Taveras' due process rights. The action was dismissed without due process of law, denying Taveras equal protection of the law. The Equal Protection Clause provides that no "State" shall "deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, § 1. While the Equal Protection Clause itself applies only to state and local governments, the Supreme Court affirmed "This Court's approach to Fifth Amendment equal protection claims has always been precisely the same as to equal protection claims under the Fourteenth Amendment." Weinberger v. Wiesenfeld, 420 U.S. 636, 638 n.2 (1975). The district court did not follow the normal course of the law by denying the Taveras equal protection of the law and due process. "Due process of law requires that the proceedings shall be fair, but fairness is a relative, not an absolute concept. . . . What is fair in one

set of circumstances may be an act of tyranny in others." *Snyder v. Massachusetts*, 291 U.S. 97, 116, 117 (1934). The dismissal was not in the interest of justice. The dismissal under the doctrine of improper claims splitting was only beneficial to Appellees, but an act of tyranny against Taveras.

The district court denied Taveras equal opportunity of the law.

B. The dismissal was an important factor causing the eviction

The language of the Fourteenth Amendment requires the provision of due process when an interest in one's "life, liberty or property" is threatened. *Morrissey v. Brewer*, 408 U.S. 471, 481 (1982). The district court did not follow the process of law. And Appellees, taking unfair advantage of the Order, evicted Taveras and his family from their home during the pendency of this appeal. Defendants, US Bank and Ocwen, conspired with, confederated with, and joined with the district judge, by words or conduct, to deprive Taveras of the Property and thus acting under color of law caused the eviction. Had this action not been removed to federal court and dismissed by Judge Scola, Taveras would have a fair opportunity to stop the eviction in state court. As a direct or reasonably probable consequence of the Order, the Property was unreasonably seized, depriving Taveras of property without due process of law, contrary to Taveras's civil rights, guaranteed by the Fourth and Fourteenth Amendments of the US Constitution, causing Taveras and his family fear, humiliation, distress, mental anguish, and other emotional and mental harm.

The Order was an important factor causing the unreasonable seizure of the Property and the harm.

C. The Order is void

The Order was entered outside the jurisdictional boundaries that Congress has set to federal courts.

Federal district courts are, by statute, courts of limited jurisdiction, 28 U.S.C. §§ 1331, 1332. See *University of South Alabama v. American Tobacco Co.*,168 F.3d 405, 409 (11th Cir. 1999); and *Kokkonen v. Guardian Life Ins. Co. of America,* 511 U.S. 375, 377, 114 S.Ct. 1673, 1675, 128 L.Ed.2d 391 (1994) ("Federal courts are courts of limited jurisdiction. They possess only that power authorized by Constitution and statute, which is not to be expanded by judicial decree[.]" (internal citations omitted)). The Order is void "Courts are constituted by authority and they cannot go beyond that power delegated to them. If they act beyond that authority, and certainly in contravention of it, their judgments and orders are regarded as nullities; they are not voidable, but simply void, and this even prior to reversal." *Williamson v. Berry* 49 U.S. 495 (1850).

The Order is deemed to be reversed.

V. THE DOCTRINE OF IMPROPER CLAIMS SPLITTING CAN NOT BE AN OPEN DOOR FOR FORUM SHOPPING

If affirmed, the Order will create a per se rule that allows forum shopping. According to the Order, after getting an action containing a federal cause of action dismissed for any doctrine (Rooker-Feldman, Colorado River, etc.), and a subsequent filing in state court, a defendant could remove the action to federal court to have it dismissed for improper claims splitting. That would be a manifest injustice.

The Order is suggesting that Plaintiff cannot refile his action in state court after dismissal without prejudice, thus according to the Order, such dismissal has the same effect of dismissal with prejudice. That is a manifest injustice and must be reversed.

VI. CONTRARY TO APPELLEES ALLEGATIONS, FAILURE TO REMAND THIS ACTION IS A CLEAR

ERROR AND REQUIRES REMAND BY THIS COURT FOR FULL CONSIDERATION

Contrary to the Appellees argument, the removal was improper, a fraudulent act ignored by the district court, as demonstrated in AOB. Appellees are wrong in arguing that Taveras has failed to demonstrate the court's lack of jurisdiction, they (the removing party) "bears the burden of proving proper federal jurisdiction" *Leonard v. Enterprise Rent a Car*, 279 F.3d 967, 972 (11th Cir.2002). Appellees – not Taveras – were to establish that they were entitled to removal under 28 U.S.C. § 1441. Appellees failed to reasonably establish that all elements of jurisdiction existed at the time jurisdiction was invoked. If fact, they denied the court jurisdiction in their motion to dismiss.

Because removal infringes upon state sovereignty and implicates core concepts of federalism, courts must construe removal statutes narrowly, with all doubts resolved in favor of remand. See *University of South Alabama v. American Tobacco Co.*, 168 F.3d 405, 411 (11th Cir.1999) (explaining that strict construction of removal statutes derives from "significant federalism concerns" raised by removal jurisdiction); *Whitt v. Sherman Int'l Corp.*, 147 F.3d 1325, 1333 (11th Cir.1998) (expressing preference for remand where removal jurisdiction is not absolutely clear); *Burns v. Windsor Ins.* Co., 31 F.3d 1092, 1095 (11th Cir.1994) (uncertainties regarding removal are resolved in favor of remand); *Newman v. Spectrum Stores, Inc.*, 109 F.Supp.2d 1342, 1345 (M.D.Ala.2000) ("Because federal court jurisdiction is limited, the Eleventh Circuit favors remand of removed cases where federal jurisdiction is not absolutely clear."). Analyses of removal must consider that, "[i]n light of the federalism and separation of powers concerns implicated by diversity jurisdiction, federal courts are obligated to strictly construe the statutory grant of diversity

jurisdiction ... [and] to scrupulously confine their own jurisdiction to the precise limits which the statute has defined." *Morrison v. Allstate Indem. Co.*, 228 F.3d 1255, 1268 (11th Cir.2000) (citations omitted).

Here, it is evident that Plaintiff seeks annulment of state judgment. Federal court is not the proper venue for this relief. Such is the case here. The district court in an act of manifest injustice and contradiction – dismissed this action improperly removed by Appellees. The Appellees' motion to dismiss on the grounds that the district court lacks jurisdiction evidence that Appellees knew that removal was legally improper and that the removal was done in bad faith. The Order allowed Appellees to take advantage of their own fraud, contrary to the fundamental principles of justice. See *New York Mut. Life Ins. Co. v. Armstrong*, 117 U.S. 591 (1886). Thus, the district court was required to remand the case to the state court.

CONCLUSION

For the above-stated reasons, the district court's order dismissing this action with prejudice is due to be reversed.

Respectfully filed on 12/27/2022,

/s/ Eliezer Taveras
12105 SW 110 Street Cir N
Miami FL 33186
Phone: 305-515-4840
Etaveras2020@gmail.com

APPENDIX F

Case No. 22-11975
IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA
Lower Court Case No. 1:22-cv-21134-RNS

ELIEZER TAVERAS
Plaintiff – Appellant
v.
US BANK NATIONAL ASSOCIATION;
U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE, FOR THE GSAMP TRUST 2006-HE6 MORTGAGE PASS-THROUGH
CERTIFICATES, SERIES 2006-HE6;
OCWEN LOAN SERVICING, LLC
Defendants – Appellees

Excerpt from
PETITION FOR REHEARING AND REHEARING EN BANC
(Filed on January 26, 2024 – after leave of court for failure to serve panel decision)

. . .

II. RULE 35 STATEMENT

In counsel's judgment, this panel's decision conflicts with the following decisions of the Eleventh Circuit, necessitating full Court consideration to ensure consistency and uniformity in the application of legal principles:

1. *University of South Alabama v. American Tobacco Co.*, 168 F.3d 405 (11th Cir. 2011): This case emphasizes the procedural nuances and federalism concerns in

removal cases, highlighting the importance of federal courts confirming their subject matter jurisdiction in the context of removal. It illustrates the principle that doubts about jurisdiction should be resolved in favor of remand to state court, a principle seemingly overlooked in this case.

2. *Velchez v. Carnival Corp.*, 331 F.3d 1207 (11th Cir. 2003): This case underscores the procedural requirements for removal under 28 U.S.C. § 1446, focusing on the necessity of complying with timing and documentation requirements in removal cases. The decision in *Velchez* to remand the case back to state court due to procedural defects contrasts with the decision in this case, where the court proceeded despite allegations of improper removal.

Additionally, this appeal raises questions of exceptional importance in light of decisions from other circuits:

1. *D'Lil v. Best Western Encina Lodge & Suites*, 538 F.3d 1031, 1036 (9th Cir. 2008): This case from the Ninth Circuit addresses the burden of establishing federal jurisdiction and the "case-or-controversy" requirement of Article III of the Constitution. It emphasizes that standing is a "core component" of this requirement, a crucial aspect relevant to the current appeal, particularly in the context of the parties' consensus on the lack of federal jurisdiction.

2. *Arbaugh v. Y & H Corp.*, 546 U.S. 500, 514 (2006): In this Supreme Court case, the principle that federal courts have an independent obligation to determine whether subject-matter jurisdiction exists, even in the absence of a challenge from any party, was firmly established. This decision is directly pertinent to our case, where the issue of subject-matter jurisdiction was critical and potentially overlooked.

In addition, this appeal raises the following questions of exceptional importance:

1. How does the Eleventh Circuit reconcile the application of the Rooker-Feldman doctrine in cases where

the federal lawsuit seeks avoidance of a state court's final judgment due to allegations of fraud and procedural irregularities?

2. What is the impact of alleged fraudulent removal on the jurisdictional analysis under the Rooker-Feldman doctrine, particularly in the context of cases where the federal court's jurisdiction is in question?

3. In cases of alleged procedural irregularities in state court proceedings, how should the Eleventh Circuit balance the principles of federalism and jurisdictional integrity when considering removal to and dismissal by federal courts?

These questions highlight significant legal issues that warrant an en banc review due to their potential impact on the interpretation of the Rooker-Feldman doctrine, the procedural integrity of federal court jurisdiction in removal cases, and the principles of federalism in the judicial system.

. . .

V. PETITION FOR REHEARING AND REHEARING EN BANC

Pursuant to 11th Circuit Rule 40, as well as Rule 35(1) & (2), the Appellant, Eliezer Taveras, hereby formally petitions for Rehearing and Rehearing en Banc. In accordance with Eleventh Circuit Rule 35, it is understood that the granting of a rehearing en banc would effectively vacate the prior opinion and judgment rendered by this Court and concurrently stay the issuance of the mandate.

VI.STATEMENT OF THE ISSUE

This appeal crucially questions whether the District Court erred in dismissing Appellant Eliezer Taveras's lawsuit on grounds of improper claim splitting, particularly in light of its refusal to apply the Rooker-Feldman doctrine and amidst allegations of fraudulent removal. The case brings into sharp focus the issue of whether the state lawsuit, involving new and independent

allegations distinct from previously litigated federal court issues, was erroneously dismissed under the guise of claim splitting. Furthermore, this appeal raises serious concerns about the legitimacy of the federal court's jurisdiction, particularly considering the allegations that the removal to federal court was fraudulent. It questions whether the court possessed the requisite power and authority to act under such circumstances, which potentially undermines the foundational principles of judicial fairness and due process. The resolution of these intertwined issues is pivotal for determining the proper scope of federal court jurisdiction and the safeguarding of litigants' rights within the Eleventh Circuit.

VII. ARGUMENT

A. The Decision Conflicts with Rooker-Feldman

In Taveras' federal lawsuit, the central objective was the avoidance of a State Court's final judgment, a scenario that squarely falls within the ambit of the Rooker-Feldman doctrine. This doctrine clearly delineates that federal district courts lack jurisdiction to review, reverse, or invalidate final judgments of state courts. The federal court's decision to exercise jurisdiction over Taveras' claims, aimed directly at circumventing the state court's judgment, appears to be in direct contradiction with the fundamental principles underpinning the Rooker-Feldman doctrine. This contravention is not a mere procedural oversight but a significant legal misstep that undermines the doctrine's essence, which is to maintain the hierarchical judicial structure and respect state court finalities.

The federal court's decision to entertain and adjudicate claims that inherently challenge a state court's final judgment represents a jurisdictional overreach, conflicting with the established parameters of the Rooker-Feldman doctrine. By adjudicating on matters that are essentially appeals of state court decisions, the federal court intrudes

upon the domain reserved for higher state appellate courts or the United States Supreme Court. This encroachment not only contravenes the doctrine's intent to preserve the sanctity of state court judgments but also disrupts the delicate balance of federal-state judicial relations. Such a deviation from the doctrine's core purpose highlights a substantial legal error, necessitating a critical reevaluation to align with the precedential mandate of respecting state court finalities.

In the gravest terms, Appellant implores this Honorable Court for an en banc review of the decision in Taveras' case, a matter that strikes at the very core of our judicial system's integrity and the sanctity of state court judgments. This case transcends the mere specifics of a singular legal dispute; it embodies a pivotal moment where the principles enshrined in the Rooker-Feldman doctrine, a cornerstone of our federalist judicial structure, are at risk of being fundamentally misapplied. The federal court's exercise of jurisdiction over a matter that unambiguously sought to overturn a State Court's final judgment not only contravenes the well-established tenets of this doctrine but also portends a dangerous precedent, potentially eroding the delicate balance between federal and state judicial authorities. An en banc review is not merely warranted; it is a constitutional imperative, a call to uphold the sanctity of state court judgments and to reaffirm the judiciary's commitment to legal precedence and procedural rectitude. Failure to address this issue at a full court level risks a profound destabilization of the judiciary's role and a blatant disregard for the principles that govern our legal system, setting a precarious course for future jurisprudence. This case, in its essence, demands the collective wisdom and full consideration of this Court, to ensure justice is not only served but seen to be served, in the highest traditions of our legal system.

B. The Decision Conflicts with *Univ. of S. Ala. v.*

Am. Tobacco Co.

In light of the Eleventh Circuit's ruling in *University of South Alabama v. American Tobacco Co.*, 168 F.3d 405 (11th Cir. 2011), the district court's failure to prioritize the confirmation of its subject matter jurisdiction in this case appears to be a significant oversight. In American Tobacco, the Eleventh Circuit vacated the lower court's order for failing to ascertain jurisdiction prior to addressing other substantive legal issues, even in the presence of a dismissal notice. Similarly, in this case, given the contentious and complex nature of the jurisdictional issues arising from the alleged fraudulent removal, it was incumbent upon the district court to rigorously verify its jurisdiction before proceeding. The failure to do so, as highlighted by the American Tobacco precedent, suggests a deviation from the circuit's established procedural norms, warranting a thorough reexamination in this appeal.

The decision in American Tobacco emphasizes the paramount importance of federalism in the context of removal from state court, a principle seemingly neglected in our case. The Eleventh Circuit underscored that any doubts regarding jurisdiction should be resolved by remanding the case to state court, reflecting a respect for the federal-state court dynamic. However, in the instant case, despite serious allegations of fraudulent removal that called into question the federal court's jurisdiction, the case proceeded without such a careful jurisdictional analysis. This approach appears to contradict the spirit of federalism and the preference for remand in cases of jurisdictional ambiguity as upheld in " American Tobacco, underscoring a critical area of conflict that necessitates en banc consideration.

Further, the application of the Rooker-Feldman doctrine in this case presents a stark contrast to the procedural and jurisdictional diligence observed in

University of South Alabama v. American Tobacco Co. In American Tobacco, the Eleventh Circuit's insistence on a meticulous examination of jurisdiction before delving into the merits of the case sets a precedent that was not followed in this scenario. This case, entangled with the complexities of alleged fraudulent removal, required a similar level of jurisdictional scrutiny, especially given the Rooker-Feldman doctrine's implications for federal-state court relations. The oversight of such a critical procedural step, as demonstrated in American Tobacco, signals a misapplication of the Rooker-Feldman doctrine in this case, further substantiating the need for this Court's intervention and review.

C. The Decision Conflicts with Velchez v. Carnival Corp.

The Decision conflicts with *Velchez v. Carnival Corp.*, 331 F.3d 1207 (11th Cir. 2003). In *Velchez*, the Eleventh Circuit underscored the importance of strict adherence to procedural requirements in removal cases, particularly under 28 U.S.C. § 1446. This precedent highlights the need for federal courts to rigorously assess their jurisdiction and remand cases when procedural defects are evident. In contrast, the decision in our case proceeded despite substantial allegations of fraudulent removal, which, under the guidance of *Velchez*, should have prompted a more critical examination of the jurisdictional and procedural propriety of the case's presence in federal court. The failure of the district court to remand the case, akin to the prudent course of action taken in *Velchez*, suggests a significant deviation from the established procedural norms of the Eleventh Circuit, meriting reconsideration in light of the principles upheld in *Velchez* v. Carnival Corp.

D. The Decision Conflicts with the Ninth Circuit, *D'Lil v. Best Western Encina Lodge & Suites*, 538 F.3d 1031, 1036 (9th Cir. 2008)

The constitutional limitation of federal court jurisdiction to genuine cases or controversies, as underscored in *Simon v. E. Ky. Welfare Rights Org.*, 426 U.S. 26, 37 (1976), is a principle that lies at the core of our judicial system. This appeal illustrates a clear departure from this principle, given that both parties initially agreed on the federal court's lack of jurisdiction.

The Panel Decision stands in stark conflict with established precedents of the Ninth Circuit regarding the interpretation and application of Article III's "case or controversy" requirement. This discrepancy is evident when considering the mutual acknowledgment by both Appellant Taveras and Appellees of the federal court's lack of jurisdiction, as initially presented in the district court. Such a consensus directly challenges the existence of a legitimate Article III case, as underscored by the Ninth Circuit in *D'Lil v. Best Western Encina Lodge & Suites,* 538 F.3d 1031, 1036 (9th Cir. 2008), which mandates that a party invoking federal jurisdiction must satisfy the "case-or-controversy" requirement, a core component of Article III standing. Furthermore, Medina v. Clinton, 86 F.3d 155 (9th Cir. 1996), reinforces the inseparable link between Article III standing and the subject-matter jurisdiction of federal courts. The Eleventh Circuit's decision to overlook this fundamental aspect of jurisdiction, where both parties initially concurred on the absence of federal jurisdiction, represents a significant deviation from the constitutional principles upheld by the Ninth Circuit. This incongruity necessitates an en banc review to reconcile the Eleventh Circuit's interpretation with the established jurisprudence of the Ninth Circuit and to ensure uniformity in the federal judiciary's adherence to constitutional standards.

E. The Decision Conflicts with Arbaugh v. Y & H Corp

The case at hand presents a fundamental legal issue

regarding the District Court's independent obligation to determine subject-matter jurisdiction, as emphasized in *Arbaugh v. Y & H Corp.*, 546 U.S. 500, 514 (2006), and further elucidated in *Ruhgras AG v. Marathon Oil Co.*, 526 U.S. 574, 583 (1999). This obligation persists regardless of the parties' assertions or failures to challenge jurisdiction. The District Court, in this case, overlooked this crucial judicial duty, proceeding with the case despite significant indications that subject-matter jurisdiction was lacking due to the alleged fraudulent nature of the removal and the related jurisdictional challenges.

Moreover, the principles of waiver, consent, and estoppel are inapplicable to jurisdictional issues, as affirmed by the *Supreme Court in Insurance Corp. of Ireland v. Compagnie des Bauxites de Guinee*, 456 U.S. 694 (1982), and echoed in *Singer v. State Farm Mut. Auto. Ins. Co.*, 116 F.3d 373 (9th Cir. 1997). Consequently, the actions or inactions of the parties, including Taveras and the Appellees, cannot vest the District Court with jurisdiction beyond the constitutional and statutory limitations. The consent or acquiescence of the parties to federal jurisdiction is irrelevant, and the failure to challenge jurisdiction early in the proceedings does not constitute a waiver. This principle was not properly considered in the decision of the District Court and was overlooked in the appellate review, leading to a substantial legal error in the handling of this case.

VIII. THE PANEL MISAPPLIED RES JUDICATA

In this case, the validity and jurisdictional authority of the state court to enter a consent judgment is a pivotal issue, particularly given the irregularities in the foreclosure action. The Decision, however, overlooked the critical fact that the foreclosure plaintiff never lawfully filed a foreclosure action, rendering the consent judgment void due to the court's lack of power to enter such a

judgment. Therefore, the Pannel's argument regarding the consent is incorrect. The consent judgment is void, not voidable. This oversight directly contradicts the principle that a judgment, to be valid and enforceable, must stem from a court exercising its jurisdiction appropriately. The absence of a lawful foreclosure action fundamentally undermines the legitimacy of the consent judgment, challenging the application of Res Judicata as the consent judgment itself lacks legal sanctity. This crucial aspect necessitates a thorough review by the Eleventh Circuit, as it presents a significant departure from established legal norms concerning the validity of court judgments and their subsequent treatment in appellate proceedings.

In the instant case, the crucial issue pertains to the nature of the consent judgment entered in the state court, which is void and not merely voidable. This distinction is paramount, as a void judgment denotes a fundamental lack of judicial authority or a significant procedural irregularity, rendering the judgment legally nonexistent. While the appellant initially sought an order declaring the judgment void, it is important to note that in the planned amended complaint, this cause of action was set to be removed. This adjustment reflects a strategic shift in the appellant's legal approach, acknowledging the inherent nullity of the consent judgment due to the court's lack of jurisdiction or other substantive procedural flaws, thereby negating the need for a formal declaration of its void status.

In another hand, the impact of the error or bad faith action by the Clerk of the Third District Court of Appeals further complicates the judicial narrative. The Eleventh Circuit's decision fails to account for the fact that the Third District Court of Appeals had already entered an unappealable order in the Florida Supreme Court. This misrepresentation, whether due to error or bad faith, led to the false notification of an appeal to the Florida

Supreme Court. This administrative anomaly casts doubt on the finality and reliability of the state court's proceedings, challenging the basis of the Res Judicata doctrine applied by the district court. The federal court's reliance on such procedurally tainted state court proceedings calls into question the integrity of the appellate process and highlights a significant contradiction in the application of legal principles, warranting a closer examination and reconsideration by this Court.

IX.TAVERAS DUE PROCESS RIGHTS WERE VIOLATED

The removal of Taveras' lawsuit from state court to federal jurisdiction represents a fundamental violation of his constitutional right to due process. This procedural transposition, particularly under the cloud of alleged fraudulent removal, deprived Taveras of his right to a fair and impartial adjudication within the appropriate legal forum. The act of removal, devoid of a thorough jurisdictional analysis and seemingly in disregard of the alleged irregularities, effectively denied Taveras the procedural safeguards intrinsic to the state court system. Such an abrupt shift in jurisdiction, especially when predicated on questionable grounds, undermines the essence of procedural due process, which mandates that legal proceedings occur in a manner consistent with predetermined rules and fairness.

Furthermore, the subsequent dismissal of Taveras' action by the District Court compounded the due process violations. This dismissal, anchored on the application of doctrines like Res Judicata to a purportedly void consent judgment, circumvented the substantive merits of Taveras' claims. The District Court's decision to dismiss without delving into the complexities and nuances of the case, including the validity of the underlying state court judgment and the appropriateness of its own jurisdiction,

reflects a disregard for Taveras' substantive due process rights. Such dismissal not only denied Taveras the opportunity to fully present his case but also seemed to contravene the principles of justice and fairness that are at the core of substantive due process. The culmination of these actions in federal court - removal followed by dismissal - deprived Taveras of his constitutional right to due process, thus warranting a critical reassessment in the appellate process.

The violations of Taveras' due process rights are irrefutable, as they are grounded in clear deviations from established legal procedures and principles. The chain of events, starting from the unlawful initiation of the foreclosure proceedings to the flawed application of legal doctrines in federal court, paints a clear picture of due process violations. These are not mere technicalities but are fundamental breaches that go to the heart of the justice system's purpose – to ensure fair and equitable treatment under the law. The cumulative impact of these breaches on Taveras' rights and life cannot be overlooked or understated, making the case for a thorough reexamination of the judicial decisions that led to such egregious violations.

The egregious violations of Taveras' due process rights, manifested in both the removal of his lawsuit to the District Court and the subsequent dismissal of his action, present compelling grounds for an en banc revision by this Court. The removal, clouded by allegations of fraud and procedural irregularities, coupled with the District Court's dismissal of the case without a comprehensive examination of jurisdictional validity and substantive claims, strikes at the very heart of judicial fairness and equity. These actions not only deprived Taveras of his constitutionally guaranteed procedural and substantive due process rights but also raised serious concerns about the proper application of legal doctrines and jurisdictional

principles. Such significant deviations from the fundamental tenets of justice and due process underscore the necessity for a thorough en banc review, to ensure that the principles underpinning our legal system are upheld and that Taveras' constitutional rights are duly respected and protected.

X. THE PANEL AFFIRMANCE OF THE DISTRICT COURT DISMISSAL UNDER CLAIM-SPLITTING DOCTRINE MUST BE REVIEWED

In Taveras' case, his presentation of claims in State Court introduced critical legal issues that were distinct from those addressed in any previous actions. The District Court's application of the claim-splitting doctrine, based on the assertion that Taveras had filed a previous action similar to this one, overlooks the nuances and specifics of these new claims. Claim-splitting is a doctrine intended to prevent litigants from dividing a single cause of action across multiple suits to thwart judicial efficiency or harass an opponent. However, the assertions made in Taveras' most recent state court action encompass new and independent allegations, including claims of procedural misconduct and jurisdictional challenges that were not and could not have been, encompassed in any prior litigation. This pivotal aspect of introducing materially different claims in the state court proceedings underscores the inappropriateness of applying improper claim-splitting, and highlights a potential misjudgment in the federal court's decision to dismiss the case based on this doctrine.

The District Court's reliance on the claim-splitting doctrine to dismiss Taveras' case potentially constitutes a significant legal error, requiring careful reexamination. While it is true that Taveras had engaged in prior litigation, the claims he brought forth in the state court in the instant action were not mere reiterations but involved new legal and factual grounds. Dismissing these claims

under the premise of claim-splitting fails to recognize their unique and independent nature, and misinterprets the purpose of the claim-splitting doctrine, which is not to bar litigants from pursuing distinct legal issues arising from evolving or different factual scenarios. The federal court's decision, in this context, appears to have unjustly penalized Taveras for seeking legal redress for issues distinct from those litigated previously, thus denying him the full and fair opportunity to present his case. This misapplication of claim-splitting contradicts the principles of fair and equitable legal process, calling into question the appropriateness of the dismissal and the need for a more thorough judicial review.

XI. CONCLUSION

In conclusion, this appeal underscores the necessity for a rigorous reexamination of the District Court's decision, particularly in light of the serious allegations of fraudulent removal and the questionable application of claim-splitting principles. The complexities and unique circumstances of this case, involving critical issues of judicial jurisdiction and procedural fairness, demand careful scrutiny by this Court. It is imperative that the principles of justice and equitable legal procedure be upheld, ensuring that the rights of litigants like Appellant Eliezer Taveras are not compromised by potentially flawed judicial interpretations or procedural irregularities. Appellant respectfully urges the Court to grant a rehearing en banc to rectify these concerns and to reinforce the integrity and fairness of the judicial process within the Eleventh Circuit. . .

Respectfully submitted on January 26, 2024

/s/ Eliezer Taveras
Appellant

APPENDIX G

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

D.C. Case No.: 1:22-cv-21134-Civ-Scola
Removed From:
Circuit Court of the 11th Judicial Circuit in
and for Miami-Dade County, Florida
Case No.: 2022-003365-CA-01

Eliezer Taveras,
Plaintiff,
v.
U.S. Bank National Association, U.S. Bank National Association, as Trustee for the GSAMP Trust 2006-HE6 Mortgage Pass-Through Certificates, Series 2006-HE6, and Ocwen Loan Servicing, LLC,
Defendants

NOTICE OF REMOVAL
(ECF No. 1, Filed on 4/13/2022)

Defendants U.S. Bank National Association, as Trustee for the GSAMP Trust 2006-HE6 Mortgage Pass-Through Certificates, Series 2006-HE6, U.S. Bank National Association, and Ocwen Loan Servicing, LLC ("Defendants"), pursuant to 28 U.S.C. §§ 1331, 1441, and 1446, hereby remove this action from the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida, to the United States District Court for the Southern District of Florida. In support of removal, Defendants state as follows:

1. On February 22, 2022, Plaintiff Eliezer Taveras ("Plaintiff") filed a Complaint against Defendants in the Miami-Dade County Circuit Court for alleged violations of the federal Racketeer Influenced and Corrupt Organizations statutes ("RICO") as codified in 18 U.S.C. § 1962, among other causes of action. 2. On March 14, 2022, U.S. Bank, National Association (in its individual capacity), was served with a copy of the Summons and Complaint via its registered agent. 3. On March 14, 2022, U.S. Bank National Association, as Trustee for the GSAMP Trust 2006-HE6 Mortgage Pass-Through Certificates, Series 2006-HE6 was served with a copy of the Summons and Complaint via its registered agent. 4. On March 17, 2022, Ocwen Loan Servicing, LLC was served with a copy of the Summons and Complaint via its registered agent.5. All Defendants have consented to the removal of the state court action to federal court. 6. Pursuant to 28 U.S.C. § 1446(b), the deadline for Defendants to file their Notice of Removal is April 13, 2022. This Notice of Removal is, therefore, timely filed within thirty (30) days after Defendants first received the Complaint, through service. See 28 U.S.C. § 1446(b). 7. Defendants filed a Notice of Appearance and a Motion for Extension of Time in the state court action.

8. Defendants' deadline to respond to the Complaint filed in the Miami-Dade County Circuit Court was April 4, 2022. See Fla. R. Civ. P. 1.140. However, Defendants' filed a Motion for Extension of Time seeking an extension of time through and including April 25, 2022 to file a response to the Complaint. 9. Unless this Court says otherwise, upon removal of this action, Defendants' deadline to respond to the Complaint in this Court is April 20, 2022. See Fed. R. Civ. P. 81(c)(2). In filing this Notice of Removal, Defendants do not waive any defenses or counterclaims that may be available to them.

10. Pursuant to 28 U.S.C. § 1441(a), the United States

District Court for the Southern District of Florida – Miami Division is the proper venue for this action. Indeed, the underlying foreclosed property is located in Miami-Dade County, Florida and the state court action was filed in the Miami-Dade County Circuit Court – the forum in which the removed action was pending. 11. This Court has original jurisdiction over this civil action pursuant to 28 U.S.C. § 1331, and the action may be removed to this Court by Defendants pursuant to 28 U.S.C. § 1441(c). The allegations set forth in the Complaint render this action a civil action arising under the Constitution, laws or treaties of the United States, as Plaintiff alleges that Defendants violated 18 U.S.C. § 1962, among other federal statutes.

12. Further, pursuant to 28 U.S.C. § 1367(a), this Court has supplemental jurisdiction over Plaintiff's related state-law claims because they are so related to the federal claims that they form part of the same case or controversy under Article III of the United States Constitution. 13. Pursuant to 28 U.S.C. § 1446(a), the undersigned counsel attaches all process, pleadings, and orders served upon Defendants in the state court action as Composite Exhibit A. 14. Pursuant to 28 U.S.C. § 1446(d), the undersigned counsel certifies that a copy of this Notice of Removal will be served promptly upon Plaintiff and filed with the Clerk of the Circuit Court of Miami-Dade County, Florida.

WHEREFORE, Defendants hereby give notice that the above-referenced action pending in the Miami-Dade County, Florida Circuit Court has been removed from therefrom to this Court.

Dated this 13th day of April, 2022.

W. Bard Brockman
Florida Bar No. 868817
Ezequiel J. Romero
Florida Bar No. 107216

APPENDIX H

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

D.C. Case No.: 1:22-cv-21134-RNS

Excerpt from
DEFENDANTS' MOTION TO DISMISS AND MEMORANDUM IN SUPPORT
(ECF No. 7, filed on 4/15/2022)

Defendants U.S. Bank National Association, as Trustee for the GSAMP Trust 2006-HE6 Mortgage Pass-Through Certificates, Series 2006-HE6, U.S. Bank National Association (together "U.S. Bank"), and Ocwen Loan Servicing, LLC ("Ocwen") (collectively "Defendants") file this Motion to Dismiss and Memorandum in Support. The lawsuit attacks and effectively seeks to invalidate a negotiated settlement of a state court residential foreclosure action filed in the Circuit Court of Miami-Dade County. Based on that settlement, the state court entered a Consent Final Judgment of Foreclosure and conducted a judicial sale of the property at issue. Plaintiff has filed two prior lawsuits in this Court to effectively invalidate the same settlement agreement and state court judgment, and in both instances the Court has dismissed Plaintiff's pleading. The same result is warranted here. Plaintiff's claims are barred by the Rooker-Feldman doctrine, and the doctrines of res judicata and release. Additionally, Plaintiff has failed to plead a viable cause of action upon which relief can be granted. The Complaint should therefore be dismissed in its entirety with prejudice.

. . .

ARGUMENT AND CITATION OF AUTHORITY

. . .

B. Plaintiff's Claims Are Barred By The Rooker-Feldman Doctrine.

Plaintiff's claims are once again barred by the Rooker-Feldman doctrine because they seek to use the District Court as a means to appeal and "effectively nullify" the state court's entry of the Consent Final Judgment. The Rooker-Feldman doctrine is a limitation on the jurisdiction of the district courts. Target Media Partners v. Specialty Marketing Corporation, 881 F.3d 1279, 1284 (11th Cir. 2018). This limitation is intended to prevent the federal courts from hearing what are essentially appeals from state court decisions, which may only be heard by the United States Supreme Court. Id.

. . .

Here, the Court need look no further than Judge Scola's correct determination that Plaintiff's causes of action are barred by the Rooker-Feldman doctrine because they are "inextricably intertwined" with the state court judgment. Judge Scola's ruling applied not only to the claims presented in Plaintiff's operative pleading in that case, but also to the then-proposed claims for RICO and injunctive relief, which Plaintiff seeks to reassert here.

. . .

C. Plaintiff's Claims Are Barred By The Doctrine of Res Judicata.

Plaintiff's claims are also barred by the doctrine of res judicata. That doctrine bars a subsequent action when the prior decision: (1) was rendered by a court of competent jurisdiction; (2) was a final judgment on the merits; (3) involved the same parties or their privies; and (4) involved the same causes of action. Trustmark Ins. Co. v. ESLU, Inc., 299 F.3d 1265, 1269 (11th Cir. 2002) (citing In re Piper Aircraft Corp., 244 F.3d 1289, 1296 (11th Cir. 2001)). "A party may raise a res judicata defense by a Rule

12(b) motion when the defense exists and can be judged on the face of the complaint."

Dated this 15th day of April, 2022.

Respectfully submitted,

/s/ Ezequiel J. Romero
W. Bard Brockman
Florida Bar No. 868817
Ezequiel J. Romero
Florida Bar No. 107216
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APPENDIX I

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

D.C. Case No.: 1:22-cv-21134-Civ-Scola

Eliezer Taveras,
Plaintiff,
v.
U.S. Bank National Association, et al.
Defendants

PLAINTIFF'S DISPOSITIVE MOTION TO REMAND
(ECF No. 12, filed on 4/20/2022)

Plaintiff, Eliezer Taveras ("Taveras" or "Plaintiff"), pro se, hereby files Plaintiff's Dispositive Motion to Remand and Incorporated Memorandum of Law, and as grounds alleges as follows:

INTRODUCTION

Contemporarily with this motion, Taveras has filed Plaintiff's Motion To Hold In Contempt Ocwen Loan Servicing, LLC., Us Bank National Association, The Law Office Of Bryan Cave Leighton Paisner, Ezequiel Romero, And Brockman Bard And For Order To Show Cause (the "Motion to Hold in Contempt"). Due to the extraordinary and egregious conduct of Defendants as explained thereto, Plaintiff prays that the Court exercise its discretionary jurisdiction to decide that motion before remanding this action to the State Court.

The removal is a fraudulent scheme planned and executed by Defendants and their attorneys of records,

intentionally designed to obstruct the administration of justice (See Motion to Hold in Contempt).

The Court has stated that it does not have jurisdiction for this action. The Court cannot contradict itself.

STATEMENT OF FACTS

1. In this case Taveras attempts to avoid a foreclosure judgment entered in the state court in 2018 (the "Foreclosure Judgment"), pursuant to Fl. Stat. 702.036, on the grounds that the state court lacked power to enter any judgment, including final judgment of foreclosure for lack of subject matter jurisdiction. Further, Taveras also seeks treble damages for alleged violations of federal and Florida RICO, injunctive relief, and an alternative cause of action seeking a constructive trust on the subject property, located in Miami-Dade, Florida, at 15465 SW 19 Way, Miami, FL 33185 (the "Property").

2. Taveras alleges that Defendants designed and implemented a fraudulent scheme to misappropriate him and his family of the Property. In furtherance of the scheme, on 8/24/2017, Defendants filed a foreclosure action in the state court,[1] however, they never filed a lawful foreclosure complaint; thus, depriving the state court of jurisdiction from day one. Although Defendants filed a document entitled "Complaint" [See Doc 1, Complaint, attached Exhibits], the document failed to be signed by an attorney, failed to be verified, pursuant to FL. R. Civ. P. 1.115(e), between others fatal errors that deprived the state court of subject matter jurisdiction.

3. On 10/1/2018, the state court entered final judgment. On 1/29/2019, the Property was sold in a foreclosure auction. Defendants were the higher bidder. On 6/24/2019, the state court ordered the issuance of a certificate of title to Defendants. On 3/31/2021, Defendants filed their Motion to Grant Writ of Possession, and on 4/16/2021 the Amended Motion (hereinafter the

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[1] Trial court Case No. 2017-20857CA01.

"Motion for Writ"), arguing that the trial court had "retained jurisdiction" to grant the Motion.

4. On 4/17/2021, Taveras filed his response in opposition to the Motion for Writ ("Response"), arguing, inter alia, that the court lacked power/jurisdiction to entertain such a motion, and his Motion/Petition for Constructive Trust ("Petition"), on the grounds that all judgments entered by the court during the pendency of the underlined foreclosure action are void as a matter of law.

5. On 4/23/2021, the trial court held a hearing before the Honorable Carlos Lopez, who granted Defendants' Motion for Writ. Timely, Taveras appealed to the Third District Courts of Appeal, challenging the order granting Motion for Writ.[2]

6. On January 29, 2022, the Third District entered a per curiam decision arguing:

"Affirmed. See *Rivas v. Bank of New York Mellon*, 244 So. 3d 334, 335 (Fla. 4th DCA 2018) ("The appellant may not attack the underlying foreclosure judgment through appeal of an order granting possession of the property after sale.")."

7. The 3DCA further denied Taveras' Motion for Rehearing and Rehearing en Banc, arguing that the issue before the court was jurisdictional, not a challenge to final judgment. Taveras is now seeking review of the 3DCA's decision in the US Supreme Court.

8. This action follows.

9. Taveras and his family run the imminent risk of eviction, a fact that has caused him and his family distress, mental anguish, financial distress, between others. For instance, as a direct consequence of the distress suffered during and after the pendency of the underlined foreclosure action, on 10/3/2020, Taveras suffered a heart attack which has caused many other terrible consequences, including financial distress, etc.

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[2] 3DCA Case No. 3DCA21-1038.

10. Therefore, any delay is highly prejudicial to Plaintiff, affects him financially and emotionally.

THE COURT ALREASY(sic) SAID IT LACKS JURISDICTION

11. On February 17, 2021 Plaintiff, Eliezer Taveras, joined by Nathan Taveras filed in this Court their complaint against the same parties in this action, plus other related parties under Case No. 1:21-cv-20660-RNS ("Previous Action").

12. The Previous Action, related to the same property and same set of facts, was also an attempt to avoid the Foreclosure Judgment, among others.

13. On 3/16/2021 Defendants jointly moved to dismiss the complaint in its entirety as barred by the Rooker-Feldman doctrine, for lack of jurisdiction, and failure to state a claim [See Previous Action, Doc 15]. The Motion to Dismiss was filed by the same attorneys representing Defendants here, and responsible for filing the Notice of Removal.

14. Notably, among other things the Defendants contended that:

Plaintiffs' claims are barred by the Rooker-Feldman doctrine because they seek to use the District Court as a means to appeal and "effectively nullify" the state court's entry of the Foreclosure Judgment.

15. On 4/23/2021, the Plaintiffs moved for leave to file amended Complaint to add cause of action for federal RICO [id. Doc 42].

16. On 4/30/2021 the Court entered an order granting Defendants' Motion to Dismiss (the "Order to Dismiss"), and denying Motion for Leave to Amend, arguing:

> The Rooker-Feldman doctrine applies and strips the district court of jurisdiction over all of the claims in the Plaintiffs' complaint... **The Rooker-Feldman doctrine is a jurisdictional rule that bars lower federal courts from reviewing**

> **state-court judgments**... Upon review of the proposed amended complaint, the Court finds that the causes of action raised therein are barred by the Rooker-Feldman doctrine because they do not fail to cure the deficiencies described above, chiefly, the relief sought would effectively nullify the state-court judgments, and the claims are inextricably intertwined with the state court judgment. (emphasis added).

See id. Doc. 43.

17. Notably, regarding the plaintiffs' motion for leave to amend the Court held "the Court finds that the causes of action raised therein are barred by the Rooker-Feldman doctrine because they do not fail to cure the deficiencies described above, chiefly, the relief sought would effectively nullify the state-court judgments, and the claims are inextricably intertwined with the state court judgment." Id.

SCHEME TO DEFRAUD

18. Knowing these facts, in defiance of this Court's Order to Dismiss, in bad faith, Defendants filed their notice of removal in the state court.

ARGUMENT AND MEMORANDUM

Complaints asserting claims that raise a federal question pursuant to title 28 United States Code section 1331 can be removed. If the claims in the case include both federal-question claims and nonremovable claims or claims over which the court cannot assert original or supplemental jurisdiction, the action is still removable, but the non-federal claims must be severed and remanded. (§ 1441(c).)

Assuming arguendo that this would apply here, nevertheless, the Court already found that "the relief sought would effectively nullify the state-court judgments, and the claims are inextricably intertwined with the state court judgment". The Court must be consistent, that is to

say, it must lack contradictions.

Because federal courts are courts of limited jurisdiction and because of federalism concerns, there is a presumption against removal jurisdiction. (See *Kokkonen v. Guardian Life Ins. Co. of Am.* (1994) 511 U.S. 375, 377 [holding that presumption against jurisdiction exists because federal courts are courts of limited jurisdiction]; *Shamrock Oil & Gas Corp. v. Sheets* (1941) 313 U.S. 100, 108-09 [indicating that federalism concerns and Congressional intent mandate strict construction of removal statutes].)

This "strong presumption against removal jurisdiction means that the defendant always has the burden of establishing that removal is proper." (*Gaus v. Miles, Inc.* (9th Cir. 1992) 980 F.2d 564, 566).

Here, Defendants knew that removal is improper. The removal of this action is not only frivolous, but done in bad faith, causing an unnecessary waste of time and public resources and more mental anguish, distress and financial distress to Plaintiff.

The Court has previously stated that it lacks jurisdiction, pursuant to Rooker-Feldman doctrine. And the Court got to this conclusion based on Defendants' motion.

A disciplinary sanction must be applied in this case (see Motion to Hold in Contempt).

WHEREFORE, Plaintiff, Eliezer Taveras, respectfully prays that the Court:

I. Remand this case back to the Circuit Court of The Eleventh Judicial Circuit, In and For Miami-Dade County, Florida;

II. Award Plaintiff, Eliezer Taveras, legal fees and costs incurred in conjunction with preparing this Dispositive Motion to Remand; and

III. Grant any other further relief this Court deems just and proper.

It is hereby certified that before filing this motion, and in a good faith effort to resolve by agreement the issues raised in it, on 4/16/2022, at 5:29AM the Plaintiff contacted Defendants' attorney via email. At 9:33 AM of the same day the attorney Bard Brockman answered the email, asking Plaintiff to articulate the bases of this motion. Plaintiff replied providing the information requested. Mr. Brockman did not reply nor asked for more time. The parties could not come to a satisfactory agreement.

/s/ Eliezer Taveras
Etaveras2020@gmail.com
Plaintiff

APPENDIX J

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

D.C. Case No.: 1:22-cv-21134-Civ-Scola

Eliezer Taveras,
Plaintiff,
v.
U.S. Bank National Association, et al.,
Defendants

DEFENDANTS' RESPONSE IN OPPOSITION TO PLAINTIFF'S MOTION TO REMAND
(ECF No. 13, filed on 4/20/2022)

Defendants U.S. Bank National Association, as Trustee for the GSAMP Trust 2006-HE6 Mortgage Pass-Through Certificates, Series 2006-HE6, U.S. Bank National Association (together "U.S. Bank"), and Ocwen Loan Servicing, LLC ("Ocwen") (collectively "Defendants") file this response in opposition to Motion to Remand. Plaintiff's Motion to Remand should be denied.

Plaintiff's most recent Complaint asserts a federal cause of action under the federal Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1962. [See Dkt. 1]. Therefore, it was properly removable to this Court under 28 U.S.C. §§ 1331, 1441 and 1446. Plaintiff even acknowledges in his Motion to Remand that his pleading includes a federal cause of action. [See Dkt. 12, at p. 2]. Plaintiff has offered no valid reason for remand of his lawsuit back to state court.

BACKGROUND

Plaintiff is a serial pro se litigant. This is the third time Plaintiff's claims have been before this Court. See Taveras v. Ocwen Loan Servicing, LLC, Case No. 19-cv-23358-Bloom; and Taveras, et al. v. Ocwen Loan Services, Inc.; Case No. 1:21-cv-20660-Scola. In this latest iteration Plaintiff filed a Complaint against Defendants in the Miami-Dade County Circuit Court in and for Miami-Dade County. [Dkt. 1]. Plaintiff's seven-count Complaint includes a claim under the federal RICO statute. Accordingly, Defendants filed an appropriate and timely Notice of Removal to this Court based on the existence of a federal claim.1 [Id.].

ARGUMENT

Plaintiff's Motion to Remand should be denied. Plaintiff's motion is self-defeating. He acknowledges that his Complaint includes a claim for alleged violations of the federal RICO statute. [See Dkt. 12 at p. 2]. That admission forecloses the need for any analysis of the remand request. Plaintiff offers no other legitimate reason for remand back to state court.

CONCLUSION

For the reasons set forth above, Defendants respectfully request that the Court: (i) deny Plaintiff's Motion for Remand; (ii) award Defendants its reasonable attorneys' fees in connection with this response in opposition; and (iii) grant Defendants such other relief as it deems appropriate and just.

Dated this 20th day of April, 2022.

Respectfully submitted,
/s/ W. Bard Brockman
W. Bard Brockman
Florida Bar No. 868817
Ezequiel J. Romero
Florida Bar No. 107216
BRYAN CAVE LEIGHTON PAISNER, LLP

APPENDIX K

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

D.C. Case No.: 1:22-cv-21134-Civ-Scola

Eliezer Taveras,
Plaintiff,
v.
U.S. Bank National Association, et al.,
Defendants

Order Dismissing Case

(ECF No. 22, entered on 5/9/2022)

This case is before the Court upon an independent review. Plaintiff Eliezer Taveras, proceeding pro se, seeks to invalidate a negotiated settlement of a state-court, residential-foreclosure action filed in the Circuit Court of Miami-Dade County. Based on that settlement, the state court entered a consent final judgment of foreclosure, in 2018, and conducted a judicial sale of the property at issue, a few months later, in January 2019. Taveras has been litigating that judgement and sale, continuously, ever since. This case, properly here upon removal based on federal-question jurisdiction,[1] represents Taveras's third

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[1] The Court has original jurisdiction over this civil action as provided for by 28 U.S.C. § 1331; and it has been properly removed to this Court by the Defendants under 28 U.S.C. § 1441(c). The allegations set forth in the complaint render this action a civil action "arising under the Constitution, laws or treaties of the United States," as Taveras alleges that the Defendants violated 18 U.S.C. § 1962, among other federal statutes. Taveras's motion to remand (ECF No. 12), as well as his motion for contempt (ECF No. 11), based on the removal,

attempt, in this Court alone, to do so: both prior attempts have failed. Because this case involves the same parties and arises from the same nucleus of operative facts as the first two cases, the Court **dismisses** it, **with prejudice**, for improper claims splitting.

"[I]t is well settled that a plaintiff may not file duplicative complaints in order to expand their legal rights." *Vanover v. NCO Fin. Servs., Inc.*, 857 F.3d 833, 841 (11th Cir. 2017). This concept, referred to as claim-splitting, "is an offshoot of res judicata that is concerned with the district court's comprehensive management of its docket, whereas res judicata focuses on protecting the finality of judgments." *O'Connor v. Warden, Florida State Prison*, 754 F. App'x 940, 941 (11th Cir. 2019) (cleaned up). The doctrine serves "to promote judicial economy and shield parties from vexatious and duplicative litigation while empowering the district court to manage its docket." *Kennedy v. Floridian Hotel, Inc.*, 998 F.3d 1221, 1236 (11th Cir. 2021). In evaluating whether a case is duplicative of another, a court must find "(1) mutuality of the parties and their privies, and; (2) whether separate cases arise from the same transaction or series of transactions." *O'Connor*, 754 F. App'x at 941 (cleaned up). To determine whether "successive causes of action arise from the same transaction or series of transactions," a court looks at whether "the two actions are based on the same nucleus of operative facts." *Vanover*, 857 F.3d at 842.

Both elements are readily met here. First, this case arises out of the exact same set of facts as Taveras's previous two cases: *Taveras v. Ocwen Loan Servicing, LLC*, Case No. 19-cv-2335-BB, Compl., ECF No. 1 (S.D. Fla. Aug. 12, 2019) (Bloom, J.) (dismissed based on res judicata and failure to state a claim) and *Taveras v.*

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are, therefore, both wholly meritless. The Court, thus, **denies** both motions (**ECF Nos. 11, 12.**)

Ocwen Loan Services, Inc., Case No. 1:21-cv-20660-RNS, Compl., ECF No. 1 (S.D. Fla. Feb. 17, 2021) (Scola, Jr., J.) (dismissed as barred by the *Rooker-Feldman* doctrine). In all three cases, Taveras attempts to avoid the consent final judgment, entered in state court, by claiming that, among other things, the state court lacked jurisdiction, that the assignment of mortgage in favor of U.S. Bank was fraudulent, and that U.S. Bank and Ocwen had, together, deceived him in order to obtain the consent final judgment. Any variation in Taveras's claims in this case cannot defeat the Court's conclusion that, regardless, at bottom, this case is still based on the same nucleus of operative facts. To be sure, Taveras himself explicitly acknowledges that his previous case "related to the same property and same set of facts, [and] was also an attempt to avoid the Foreclosure Judgment." (Pl.'s Mot., ECF No. 11, 5.)

Second, there can be no dispute that there is a mutuality of parties and their privies as to the litigants in this case and Taveras's other two cases: Taveras is a plaintiff and U.S. Bank, or its privies, and Ocwen are defendants in all three.

Accordingly, in exercising its discretion to do so, the Court **dismisses** Taveras's case, **with prejudice**. *Vanover*, 857 F.3d at 837, 842–43 (affirming district court's dismissal of case, with prejudice, for claim splitting). The Court directs the Clerk to **close** this case. All pending motions are **denied as moot**.

Done and ordered, at Miami, Florida, on May 6, 2022.

Robert N. Scola, Jr.
United States District Judge

APPENDIX L

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

D.C. Case No.: 1:22-cv-21134-Civ-Scola
Removed From:
Circuit Court of the 11th Judicial Circuit in
and for Miami-Dade County, Florida
Case No.: 2022-003365-CA-01

Eliezer Taveras,
Plaintiff,
v.
U.S. Bank National Association, et al.,
Defendants

MOTION TO VACATE COURT'S ORDER DISMISSING ACTION

(ECF 23, filed on 06/01/2022)

Plaintiff, Eliezer Taveras, pro se, and pursuant to Rule 60(4) and 60(6) of Federal Rules of Civil Procedure hereby files Plaintiff's Motion to Vacate this Court's Order Dismissing Case [Doc 22] (the "Order"), and further stays:

PRELIMINARY STATEMENT

The Court has entered an arbitrary and capricious order of dismissal of an action that was properly filed in The Circuit Court Of The Eleventh Judicial Circuit, In And For Miami Dade, Florida (the "State Court"). **The Court lacks jurisdiction for the Order,** thus, the Order is null and void *ab initio.* The Order is contrary to

one of the fundamental principles and rights to be considered by a court of the United States: The due process rights, guaranteed by both, the Florida and United States Constitution. The Order departs from the essential requirement of the law, it violates a clearly established principle of law, which resulted in a miscarriage of justice. The Order is something more than a simple legal error, it is contrary not only to case law or interpretation of a statute or procedural rule but contrary to a constitutional provision.

The Court entered the order without observance of procedure required by law. The Court erred (1) dismissing this case with prejudice; (2) denying – as moot – Plaintiff's Motion to Hold in Contempt and to Show Cause [Doc 11 and 15] ("Motion to Show Cause"); (3) denying – as moot – plaintiff's Motion to Remand [Doc 12].

Therefore, the Order must be set aside and this action remanded to the State Court. In addition, the Court should rule on Plaintiff's Motion to Show Cause.

BACKGROUND

1. Because the Order is based on the concept of "claim-splitting" under the assumption that this case, "properly here upon removal based on federal-question jurisdiction, represents Taveras's third attempt, in this Court alone, to do so: both prior attempts have failed. Because this case involves the same parties and arises from the same nucleus of operative facts as the first two cases, the Court dismisses it, with prejudice, for improper claims splitting...," it is necessary to take a look at the background and facts surrounding this action.
2. On 10/29/2007 Defendant, US Bank National Association, As Trustee For The GSAMP TRUST 2006-HE6 Mortgage Pass-Through Certificates, Series 2006-HE6 ("US Bank") filed its foreclosure action (the "Foreclosure 07") in State Court, under case No. 2007-

37120CA03. The foreclosure action was an attempt to foreclose the mortgage purportedly given to Ownit Mortgage Solutions, Inc. ("Ownit"), and registered in the Public Records of Miami Dade Book 24717, Page 427 (the "Mortgage"), encumbering the property located at 15465 SW 19 Way, Miami, FL 33185 (the "Property"), previously owned by Plaintiff.

3. Public Records evidence that before 10/29/2007 the Mortgage had never been assigned to US Bank. It was not until 8/25/2009 that an assignment of mortgage was caused to be recorded in Miami-Dade County, book No. 26988, page 3750 (almost two years after the Foreclosure 07 was commenced). As seen, the assignment ("MERS-AMO") was dated October 3, 2007 (more likely backward). The assignment reflects that Mortgage Electronic Registration Systems ("MERS") transferred the mortgage on behalf of Ownit Mortgage Solutions, Inc. ("Ownit"), a defunct corporation that filed for bankruptcy in January 2007, to US Bank.
4. US Bank abandoned the Foreclosure 07 and the action was dismissed by the State Court. There is good cause to believe that US Bank abandoned the Foreclosure 07 due to ongoing investigations by the Department of Justice related to mortgage fraud involving major institutions.[1]
5. On 11/07/2012, the second assignment of mortgage (the "Ocwen-AMO") was filed in Miami Dade County Records, Book 28347, page 4251 to indicate that, **once again, MERS** (via OCWEN signors and witnesses)

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[1] During the pendency of the Foreclosure 07, several banks and mortgage companies were caught cutting corners in the robo-signing scandal, and major institutions faced federal lawsuits and complaints and were under criminal investigation. In 2010, the Florida Attorney General's Office issued a report entitled "Unfair, Deceptive and Unconscionable Act in Foreclosure Cases," which documented these organizations' use of fabricated assignments of mortgage in detail. More likely due to these facts.

assigned the Mortgage to "U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE, FOR THE GSAMP TRUST 2006-HE6 MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2006-HE6 whose Address is c/o OCWEN Loan Servicing, LLC, 1661 Worthington Road, Suite 100, West Palm Beach, Florida, 33409."

6. On 3/05/2013, in **the second attempt to take the Property**, Defendant, Ocwen Loan Servicing, LLC (Ocwen) filed another foreclosure action in the State Court under Case No. 2013-08134CA24 (the "Foreclosure 13"), relying on the MERS-AMO.
7. Notably, In December 2013, the Consumer Financial Protection Bureau (the "CFPB") along with authorities in 49 states, and the District of Columbia, filed a lawsuit against Ocwen Financial Corporation and Ocwen Financial Servicing, LLC alleging the corporations' illegal misconduct. The CFPB's suit was resolved by a settlement agreement that was memorialized in a formal consent judgment. See Appendix "B" of Motion to Show Cause.[2]
8. In addition, during the pendency of the Foreclosure 13 US Bank was also sued for deceptive and fraudulent practices, and FHA Mortgage Lending Violations, which led to the $200 million settlement.
9. On 11/12/2014, the Defendants filed their notice of voluntary dismissal of the Foreclosure 13. There is good cause to believe that they did so due to the previous investigations and settlements.
10. On 8/24/2017, shortly after the Ocwen consent judgment's term expired, once again in their attempt to take the Property, Defendants initiated in the State

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[2] Notably, shortly after the Ocwen consent judgment's term expired on April 20, 2017, the CFPB filed another lawsuit in this Court against Ocwen Loan Servicing, LLC for failing borrowers at every stage of the mortgage servicing process. The CFPB uncovered substantial evidence that Ocwen has engaged in significant and systemic misconduct at nearly every stage of the mortgage servicing process.

Court **the third foreclosure action** (the "Foreclosure 17"). This time, however, **Defendants failed to file a lawful complaint.**[3]

11. Around 9/24/2018 Defendants offered a Settlement and Release Agreement ("SRA") by which the foreclosure's defendants will agree to enter a consent to final judgment ("CFJ").[4] The foreclosures defendants signed the agreement.
12. Accordingly, on 10/1/2018, the State Court entered final judgment of foreclosure (the "Foreclosure Judgment"). On 1/29/2019, the Property was sold in a foreclosure auction. Although US Bank was the higher bidder, the State Court ordered the issuance of certificate of title to US Bank/Ocwen.[5]

FACTS PUTTING PLAINTIFF IN DANGER

13. The following set of facts have put Plaintiff and his family in risk:
14. On 3/31/2021, Defendants filed in the State Court its Motion to Grant Writ of Possession, and on 4/16/2021 the Amended Motion (hereinafter the "Motion for

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[3] Ocwen filed a document, entitled "Complaint", however, although Ocwen and US Bank are corporations, the document was not signed by an attorney according to Fla. R. Jud. Admin. 2.515, in fact, the document was not signed at all. Further, the document was not verified under risk of perjury, failing to comply with Fla. R. Civ. P. 1.115(e). In addition, the document fails to attach or identify with specificity any document demonstrating that Ocwen had been delegated the authority to institute a mortgage foreclosure action "on behalf" of US Bank, according to Fla. R. Civ. P 1.115(b) of., and Fla. Stat. 702.015(3). A copy of the faulty complaint was served to Appellant, who hired the services of attorney Ray Garcia to answer the "Complaint" and failed to notice these deficiencies. The so-called complaint was never amended.

[4] The Settlement and Release Agreement establishes an offer subject to the court's power to enter a final judgment which the Court did not have.

[5] A certificate of title was recorded in Official Records Book 31507, Page 4638 of the Public Records of Miami Dade, Florida.

Writ"), arguing that the State Court had "retained jurisdiction" to grant the Motion. On 4/17/2021, Plaintiff filed his response in opposition to the Motion for Writ, arguing, inter alia, that the court lacked power/jurisdiction to grant relief. On 4/23/2021, the State Court granted the Motion for Writ.

15. Timely, Plaintiff appealed the State Court's decision to the 3DCA. However, in a per curiam decision, the 3DCA affirmed the State Court's order granting writ of possession arguing "Affirmed. See Rivas v. Bank of New York Mellon, 244 So. 3d 334, 335 (Fla. 4th DCA 2018) ("The Appellant may not attack the underlying foreclosure judgment through appeal of an order granting possession of the property after sale.")." On 2/4/2022 Plaintiff filed his Motion for Rehearing and Rehearing en Banc ("Motion for Rehearing"), on the grounds that the challenge was jurisdictional, and that the 3DCA's decision conflicts with controlling case law and other districts, and with its own findings in several cases, and consideration by the full Court was therefore necessary. In addition, Plaintiff expressed a belief, that the panel's decision is exceptionally important because it conflicts with the Fla. Const., Art. V, § 1, the 14TH Amendment of the USA Constitution, as well as the American Declaration of the Rights and Duties of Man, and Article 21 of The American Convention on Human Rights.
16. The 3DCA denied the Plaintiff's Motion for Rehearing. More intending to put Defendants under notice, on April 5, 2022, Plaintiff notified the 3DCA and Defendants that he would be seeking review of the PCA in the Supreme Court of the United States. Plaintiff is now in the process of filing his petition accordingly.
17. As noticed, Plaintiff and his family run the imminent risk of being evicted from home.

FACTS RELATED TO THIS COURT

18. On February 17, 2021, Plaintiff and Nathan Taveras filed in this Court their complaint against Defendants and other related parties under Case No. 1:21-cv-20660-RNS (the "Previous Action"). The plaintiffs sought to avoid the Foreclosure Judgment.
19. On 3/16/2021, Defendants jointly moved to dismiss the complaint in its entirety as barred by the Rooker-Feldman doctrine for lack of jurisdiction and failure to state a claim [See Previous Action, Doc 15]. The motion to dismiss was filed by the same attorneys representing the defendants here. Notably, the Defendants contended:

Plaintiffs' claims are barred by the Rooker-Feldman doctrine because they seek to use the District Court as a means to appeal and "effectively nullify" the state court's entry of the Foreclosure Judgment.

20. On 4/23/2021, the Plaintiffs moved for leave to file an amended complaint to add causes of action under federal RICO [id. Doc 42].
21. On 4/30/2021 the Court entered an order granting the Defendants' motion to dismiss (the "Order to Dismiss"), arguing:

> The Rooker-Feldman doctrine applies and **strips the district court of jurisdiction** over all of the claims in the Plaintiffs' complaint... The Rooker-Feldman doctrine is a jurisdictional rule that bars lower federal courts from reviewing state-court judgments... (emphasis added).

See *id.* Doc. 43.

22. Regarding the plaintiffs' motion for leave to amend the Court held "the Court finds that the causes of action raised therein are barred by the Rooker-Feldman doctrine because they do not fail to cure the

deficiencies described above, chiefly, the relief sought would effectively nullify the state-court judgments, and **the claims are inextricably intertwined with the state court judgment**" (emphasis added). Id.

PLAINTIFF'S INDEPENDENT ACTION

23. On 2/22/2022, Plaintiff filed this action properly in the State Court.
24. In this case Plaintiff attempts to avoid the Foreclosure Judgment, pursuant to Fl. Stat. 702.036, on the grounds that the state court lacked power to enter any judgment, including final judgment of foreclosure for lack of subject matter jurisdiction.
25. Plaintiff's Complaint has seven causes of action:
    - I. Void Contract – Seeking a declaration that the CFJ is void and null ab initio for impossibility of performance (on the grounds that the State Court lacked subject matter jurisdiction – power – to enter any order);
    - II. Void Final Judgment, pursuant to Section 86.011 of Fla. Stat. and F.S. 702.036. Plaintiff seeks a declaration that the Final Judgment of Foreclosure is void and null ab initio (for the court's lack of subject matter jurisdiction at all times during the pendency of the Foreclosure 17), and monetary damages, pursuant to F.S. 702.036.
    - III. Equitable Relief, pursuant to Fla. Stat. 772 (Florida RICO), seeking treble damages pursuant to Florida Statute 772.104 for the alleged violations of 18 USC § 1343, Fla. Stat. § 817.535, Fla. Stat. § 517, and § 817.29 in connection with a scheme to defraud.
    - IV. Federal RICO. Plaintiff seeks treble damages for the alleged violations of 18 U.S. Code § 1956, 18 U.S. Code § 1957, 18 USC § 1344, 18 USC 1343, in connection with a scheme to defraud.

V. Cause of Action pursuant to Chapter 812 of Fla. Stat.

VI. Alternative Cause of Action seeking a constructive trust for the benefit of the Plaintiff over the Property;

VII. Injunctive Relief, pursuant to Fla. R. Civ. P. 1.610, seeking a temporary injunction, to prevent the eviction of Plaintiff and his family from the Property during the pendency of the action.

26. On 4/13/2022, the attorneys Ezequiel J. Romero and W. Bard Brockman from the law office of Bryan Cave Leighton Paisner, LLP filed their notice of removal in the state court [Doc 1].

27. On 4/15/2022, the Defendants filed their Motion to Dismiss, on the grounds that **this court lacks jurisdiction** to grant relief.[6]

28. On 4/18/2022, the Plaintiff mailed his Dispositive Motion to Remand on the grounds that this Court lacks jurisdiction, and asserting that the removal was a fraudulent scheme by Defendants.

29. On 4/18/2022, Plaintiff also mailed his Motion to Hold in Contempt and to Show Cause ("Motion to Show Cause") for Defendants' fraud upon the Court and other alleged illegal acts.

30. On 4/20/2022, Defendants filed their Response in

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[6] See Plaintiff's Motion for Sanction and to Show Cause in which he argues that the Removal is an intentional procedural manipulation designed to frustrate the resolution of disputes, and to defraud Plaintiff, the state court, the United States, and this court. Plaintiff further asserts that the Defendants' scheme is a new tactic to bar Plaintiff not only from seeking remedies in this Court, but also in the State Court, and to spend precious time that will end up exhausting the term to seek remedy in state court due to the statutes of limitations. Plaintiff asserts that Defendants' conduct is a calculated, intentional scheme executed in bad faith which has caused a devastating financial and emotional effect to Plaintiff, given the circumstances.

Opposition to Plaintiff's Motion to Remand, failing to demonstrate that the case was properly removed.

31. On 4/20/2022, Defendants filed their Response in Opposition to Plaintiff's Motion for Contempt in which the Attorneys limit themselves to argue that there is nothing unwarranted or inappropriate about their action removing the case to this court.
32. On 4/26/2022, Plaintiff mailed to this Court his Reply To Defendants' Response To Plaintiff's Motion To Remand, his Avoidance Of Defendants' Response To Plaintiff's Motion To Hold In Contempt And To Show Cause, and his Renewed Memorandum of Law for Plaintiff's Motion to Hold in Contempt and to Show Cause
33. On 4/27/2022, after consulting with opposing counsel if Defendants would oppose an extension of time to file a response in opposition to their Motion to Dismiss, Plaintiff filed his Motion for Extension of Time to File a Response to Motion to Dismiss.
34. On 5/6/2022, the Court, sua sponte, entered the Order dismissing the case with prejudice and denying all pending motions as moot.

MEMORANDUM OF LAW

Rule 60(b) of the Federal Rule of Civil Procedures provides that the court may relieve a party from a judgment or order and sets forth the following six categories of reasons for which such relief may be granted: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly-discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59; (3) fraud, misrepresentation, or misconduct by an adverse party; (4) circumstances under which a judgment is void; (5) circumstances under which a judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the

judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. F.R.C.P. Rule 60(b)(1)-(b)(6).

The aim of Rule 60(b), Fed. R. Civ. P., is "to strike a delicate balance between two countervailing impulses: the desire to preserve the finality of judgments and the incessant command of the court's conscience that justice be done in light of all the facts." *Seven Elves, Inc. v. Eskenazi*, 635 F.2d 396, 401 (5th Cir. Jan. 1981) (internal quotation marks omitted).

THE ACTION WAS IMPROPERLY (AND FRAUDULENTLY) REMOVED. THE COURT LACKS JURISDICTION AND THE STATE COURT HAS CONCURRENT JURISDICTION FOR PLAINTIFF'S FEDERAL CLAIMS

The Court is wrong in finding that the action was properly removed. The Court does not have exclusive jurisdiction for civil claims under federal RICO. The State Court has concurrent jurisdiction for Plaintiff's action. The Defendants' attorneys knew or should have known this fact; the removal was done in bath faith.

Under the Supreme Court's opinion in *Gulf Offshore Co. v. Mobil Oil Corp.*, analysis of state-court jurisdiction over a federal cause of action "begins with the presumption that state courts enjoy concurrent jurisdiction." 453 U.S. 473 (1981) at 478. See also *Claflin v. Houseman*, 93 U.S. 130 (1876); *Charles Dowd Box Co. v. Courtney*, 368 U.S. 502 (1962). Recognizing that Congress has the power to limit a federal claim to federal courts, "the presumption of concurrent jurisdiction can be rebutted by an explicit statutory directive, by unmistakable implication from legislative history, or by a clear incompatibility between state-court jurisdiction and federal interests." *Gulf Offshore*, 453 U.S. at 478.

Undisputable, state courts share jurisdiction with

federal courts over civil RICO claims. Only three factors could rebut this presumption: (1) an explicit statutory grant of exclusive jurisdiction; (2) an unmistakable implication in the statute's legislative history that Congress intended exclusive jurisdiction; and (3) a clear incompatibility between state-court jurisdiction and the federal interests underlying the statute related to civil federal RICO.[7] Satisfying one of these three prongs is the only method to rebut the presumption and allow federal courts exclusive jurisdiction over the federal claim. **None of the conditions apply here.**

The Supreme Court held in *Tafflin v. Levitt*[8] that concurrent jurisdiction was permitted in civil federal RICO.

In another hand, this Court lacks jurisdiction.

Plaintiff's claims are inextricably intertwined with the state court judgment. Therefore, the Rooker-Feldman doctrine applies and strips this court of jurisdiction over all of the claims in the Plaintiffs' complaint. See *Sanchez v. Ocweb Loan Servicing, LLC*, 840 F. App'x 419, 420 (11th Cir. 2020) (citing *Lozman v. City of Riviera Beach*, 713 F.3d 1066, 1069–70 (11th Cir. 2013)).

Pursuant to the Rooker-Feldman doctrine federal courts other than the Supreme Court do not possess appellate jurisdiction over state-court judgments. See *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 283-84, 125 S. Ct. 1517, 1521 (2005). The Rooker-Feldman rule bars "a party losing in state court . . . from seeking what in substance would be appellate review of the state judgment in a United States district court, based on the losing party's claim that the state judgment itself violates the loser's federal rights." *Johnson v. De Grandy*, 512 U.S. 997, 1005-06, 114 S. Ct. 2647, 2654 (1994).

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[7] See *Gulf Offshore*, 453 U.S. at 478 (announcing the three-pronged test to rebut the presumption of concurrent jurisdiction).

[8] 110 S. Ct. 792 (1990).

In the Previous Action this Court already affirmed that it lacks jurisdiction for the subject matter before the Court. See attached Exhibit "1".

Defendants can't take the best of both worlds.

If the claims in the case include both federal-question claims and nonremovable claims or claims over which the court cannot assert original or supplemental jurisdiction, the action is still removable, but the non-federal claims must be severed and remanded. (28 USC § 1441(c).)

Assuming arguendo that this would apply here (which is not the case), nevertheless, the Court already found that "the relief sought would effectively nullify the state-court judgments, and the claims are inextricably intertwined with the state court judgment". **The Court must be consistent, that is to say, it must lack contradictions.**

The Order is void. An order is void if the court that rendered lacked jurisdiction of the subject matter, of the parties, or acted in a manner inconsistent with due process, Fed. R. Civ. P. 60(b)(4). A Party affected by VOID judicial action need not appeal. *State ex Rel. Latty, v. Owens* 907 S.W.2d at 486. It is entitled to no respect whatsoever because it does not affect, impair, or create legal rights." Ex parte *Spaulding*, 687 S.W.2d at 745 (*Teague*, J., concurring).

The 14th amendment of the United States Constitution gives everyone a right to due process of law, which includes judgments that comply with the rules and case law.

The law is well-settled that a void order or judgment is void even before reversal, *Valley V. Northern Fire & Marine Ins. Co.*, 254 U.S. 348,41 S. Ct. 116 (1920) "Courts are constituted by authority and they cannot go beyond that power delegated to them. If they act beyond that authority, and certainly in contravention of it, their judgments and orders are regarded as nullities; they are

not voidable, but simply void, and this even prior to reversal." *Williamson V. Berry, 49 U.S.* 495 (1850).

THE COURT ERRED IN DENYING – AS MOOT - THE DISPOSITIVE MOTION TO REMAND

Because federal courts are courts of limited jurisdiction and because of federalism concerns, there is a presumption against removal jurisdiction. (See *Kokkonen v. Guardian Life Ins. Co. of Am.* (1994) 511 U.S. 375, 377 [holding that presumption against jurisdiction exists because federal courts are courts of limited jurisdiction]; *Shamrock Oil & Gas Corp. v. Sheets* (1941) 313 U.S. 100, 108-09 [indicating that federalism concerns and Congressional intent mandate strict construction of removal statutes].)

This "strong presumption against removal jurisdiction means that the defendant always has the burden of establishing that removal is proper." (*Gaus v. Miles, Inc.* (9th Cir. 1992) 980 F.2d 564, 566).

Here, the Defendants' attorneys knew that removal is improper. The removal of this action is not only frivolous but done in bad faith, causing an unnecessary waste of time and public resources and more mental anguish, distress, and financial distress to Plaintiff and his family.

The Court has previously stated that it lacks jurisdiction, pursuant to the Rooker-Feldman doctrine. And the Court got to this conclusion based on the Defendants' motion to dismiss the Prior Action. A disciplinary sanction must be applied in this case (see Motion to Hold in Contempt). Further, as demonstrated above, the State Court has jurisdiction for all Plaintiff's federal claims.

THE COURT ERRED IN DENYING – AS MOOT - THE MOTION TO SHOW CAUSE

Although this Court lacks jurisdiction over the underlined case, the Court may impose sanction under Federal Rule of Civil Procedure 11. See *Willy v. Coastal*

Corp., 503 U.S. 131, 137-9 (1992). The Eleventh Circuit found that the reasoning of Willy v Costal Corp equally applies to sanctions under a court's inherent powers or 28 U.S.C. § 1927.

Plaintiff's Motion to Show Cause successfully demonstrates that Ocwen, US Bank, Ezequiel J. Romero, and W. Bard Brockman (jointly referred to as the "Parties") acted in concert, in the form of an association-in-fact enterprise, to defraud the state court, the United States, this Court, and Plaintiff, that the Parties committed fraud upon the court and attempted to commit fraud upon the court in an effort to commit felony misconduct in this case, more likely using the mail and interstate telephone calls or electronic communication in furtherance of their scheme to defraud which are both felonies and predicate acts that amount to violation of federal's RICO statute.

The Court already has evidence of bad faith and fraudulent action: the removal and subsequent filed Motion to Dismiss. Plaintiff demonstrates that the scheme, executed by the Attorneys, officers of the court, is intentional so that "the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases that are presented for adjudication." *Travelers Indem. Co. v. Gore,* 761 F.2d 1549, 1551 (11th Cir. 1985).

The Parties' conduct has the "natural tendency to influence or [is] capable of influencing, the decision of the decisionmaking body to which it is addressed." *United States v. Gaudin,* 515 U.S. 506, 510 (1995).

The Parties conspired to defraud this Court and the United States. See 18 U.S. Code § 371. See also *Hass v. Henkel,* 216 U.S. 462 (1910), and *Hammerschmidt v. United States,* 265 U.S. 182 (1924). The Parties' misconduct was done "within the jurisdiction" of this Court. *United States v. Yermian,* 468 U.S. 63, 69 (1984), which is punishable by law. 18 USC 1001.

Removal of the instant action is a cynical disregard of this Court's previous Order to Dismiss.[9] The Parties' conduct amounts to violation of federal RICO. This Court should find the Parties' violation of the law.

The Court ran to dismiss this action with prejudice while lacking jurisdiction for such an order, however, it refused to exert its power to punish by fine or imprisonment, or both, at its discretion, the "(1) Misbehavior of any person in its presence or so near thereto as to obstruct the administration of justice; (2) Misbehavior of any of its officers in their official transactions; (3) Disobedience or resistance to its lawful writ, process, order, rule, decree, or command."18 U.S. Code § 401.

The Court ran to dismiss this action with prejudice while lacking jurisdiction for such an order, however, it refused to "protect the administration of justice by levying sanctions in response to abusive litigation practices." *Kovilic Const. Co., v. Missbrenner,* 106 F.3d 768, 772-73 (7th Cir. 1997); *Brockton Sav. Bank v. Peat, Marwick, Mitchell & Co.*, 771 F.2d 5, 11 (1st Cir. 1985), cert. denied, 475 U.S. 1018 (1986), quoting *Penthouse Int'l, Ltd. v. Playboy Enters.*, 663 F.2d 371, 386 (2d Cir. 1981).

The Court has refused to appropriate sanction the Parties who have willfully abused the judicial process and removed this action in bad faith. See *In re Itel Sec. Litig.*, 791 F.2d 672, 675 (9th Cir. 1986), cert. denied, 479 U.S. 1033 91987); *Kreager v. Solomon & Flanagan*, P.A. 775 F.2d 1541, 1542-43 (11th Cir. 1985); *Lipsig v. Nation Student Mktg. Corp.*, 663 F.2d 178, 180-81 (D.C. Cir. 1980); *Link v. Walbash R.R.*, 370 U.S. 626, 632 (1962).

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[9] Under 18 U.S. Code § 1509, "Whoever, by threats or force, willfully prevents, obstructs, impedes, or interferes with, or willfully attempts to prevent, obstruct, impede, or interfere with, the due exercise of rights or the performance of duties under any order, judgment, or decree of a court of the United States, shall be fined under this title or imprisoned not more than one year, or both."

It should not be necessary and certainly would be a waste of society's money to bring this issue to a superior court to compel this Court to exercise its authority when it is the duty to do so.[10]

CONCLUSION

The Court has been internally inconsistent in its holdings. The Order is arbitrary and capricious, not in accordance with law.

WHEREFORE, Plaintiff, Eliezer Taveras, respectfully asks this Court to:

i. Vacate the Order dismissing this case with prejudice.

ii. To rule on Plaintiff's Dispositive Motion to Remand (and properly remand this action to the State Court); and retain its inherent power to:

iii. Rule on Plaintiff's Motion to Hold in Contempt and to Show Cause;

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[10] *United States v. Shalhoub*, 855 F.3d 1255, 1263 (11th Cir. 2017) (citations omitted) (first *quoting Cheney v. U.S. Dist. Court*, 542 U.S. 367, 380, 124 S. Ct. 2576, 2586 (2004); then quoting *Allied Chem. Corp. v. Daiflon, Inc.*, 449 U.S. 33, 35, 101 S. Ct. 188, 190 (1980)).

APPENDIX M

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

D.C. Case No.: 1:22-cv-21134-Civ-Scola

Eliezer Taveras,
Plaintiff,
v.
U.S. Bank National Association, and others,
Defendants

Order Denying Motion for Reconsideration
(ECF No. 25, entered on 06/02/2022)

Previously, the Court reviewed pro se Plaintiff Eliezer Taveras's case upon an independent review. Based on that review, the Court dismissed Taveras's case, with prejudice, for improper claims splitting. (Order, ECF No. 22.) Taveras now asks the Court to reconsider its order, arguing the Court lacks jurisdiction over this action and, therefore, should remand it back to state court. (Pl.'s Mot., ECF No. 23.) After review, the Court **denies** the motion **(ECF No. 23)**.

"[I]n the interests of finality and conservation of scarce judicial resources, reconsideration of an order is an extraordinary remedy that is employed sparingly." *Gipson v. Mattox*, 511 F. Supp. 2d 1182, 1185 (S.D. Ala. 2007). A motion to reconsider is "appropriate where, for example, the Court has patently misunderstood a party, or has made a decision outside the adversarial issues presented

to the Court by the parties, or has made an error not of reasoning but of apprehension." *Z.K. Marine Inc. v. M/V Archigetis*, 808 F. Supp. 1561, 1563 (S.D. Fla. 1992) (Hoeveler, J.) (citation omitted). "Simply put, a party may move for reconsideration only when one of the following has occurred: an intervening change in controlling law, the availability of new evidence, or the need to correct clear error or prevent manifest injustice." *Longcrier v. HL-A Co.*, 595 F. Supp. 2d 1218, 1247 (S.D. Ala. 2008) (quoting *Vidinliev v. Carey Int'l, Inc.*, No. CIV.A. 107CV762-TWT, 2008 WL 5459335, at *1 (N.D. Ga. Dec. 15, 2008)). However, "[s]uch problems rarely arise and the motion to reconsider should be equally rare." *Z.K. Marine Inc.*, 808 F. Supp. at 1563 (citation omitted). Certainly, if any of these situations arise, a court has broad discretion to reconsider a previously issued order. Absent any of these conditions, however, a motion to reconsider is not ordinarily warranted. Here, reconsideration is decidedly not warranted.

Taveras begins his brief with a lengthy recap of the state foreclosure litigation involving his family home and his efforts to avoid the judgment of foreclosure that resulted. He then complains, as he has throughout this litigation, that the Defendants improperly removed his case from state court and that the Court lacks jurisdiction to hear it. Or, he says, at a minimum, the Court should have dismissed only his federal claims and then remanded his state claims. (*E.g.*, Pl.'s Mot. at 15.) To be clear, in dismissing Taveras's case, the Court properly exercised original jurisdiction over Taveras's federal claims and supplemental jurisdiction over his remaining state-law claims as provided for by 28 U.S.C. § 1367. While perhaps the Court could have exercised its discretion not to exercise supplemental jurisdiction over the state-law claims, it chose not to; and Taveras has not presented any reason why it should have. Accordingly, Taveras's

suggestion is wholly meritless. Ultimately, except for disagreeing with the Court's analysis, in its order dismissing his case, and rehashing arguments he has already made, Taveras fails to set forth any basis that would justify the Court's revisiting its decision. Consequently, the Court **denies** his motion for reconsideration (**ECF No. 23**).

Done and ordered, at Miami, Florida, on June 1, 2022.

Robert N. Scola, Jr.
United States District Judge