No. 17-

IN THE
SUPREME COURT OF THE UNITED STATES

In re: YAN SUI

Appellant

YAN SUI
Petitioner
v.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT
Respondent

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI

Yan Sui
Petitioner in pro se
P. O. Box 4732
Mission Viejo, CA92690
(949)- 903-6378

No. 17-

IN THE

SUPREME COURT OF THE UNITED STATES

In re: YAN SUI

Appellant

YAN SUI
Petitioner
v.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT
Respondent

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI

Yan Sui
Petitioner in pro se
P. O. Box 4732
Mission Viejo, CA92690
(949)- 903-6378

QUESTION PRESENTED

Whether the Ninth Circuit improperly hinders, infringes upon Petitioner's right to appeals after such appeals were caused directly or indirectly by its own inaction to enjoin Appellees' unlawful acts.

PREFACTORY STATEMENT

During 2012 and 2017, Petitioner has twenty-two (22) appeals and petitions with United Stated Court of Appeals for the Ninth Circuit. Petitioner succeeded and two and didn't in the remaining twenty. On 5/31/2017, Ninth Circuit issued an order listing the twenty-two cases and directed Petitioner to show cause why a pre-filing review order should not be entered. On 6/15/2017, Petitioners filed the cause and attached 6 exhibits in support. On 8/17/ 2017, Ninth Circuit entered the order.

STATEMENT OF RELATED PETITION

Petitioner would inform Court that there is no petition directly related pending at Court. However, the order in question encompasses Petitioner's prior petitions to this Court under: 16-1522; 14-6413; 14-6257 in relationship to Chapter 7.

LIST OF PARTIES

All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in this Court who would be likely impacted by the outcome will be:

1. Marshack Hays LLP – law firm owned by Richard A. Marshack & Edward D. Hays;

2. Wells Fargo Bank, N.A., dba Wells Fargo Home Mortgage, Inc.;
3. Pickford Real Estate Co., dba Berkshire Hathaway Real Estate Co.,;
4. 2176 Pacific Homeowners Association;
5. Scottsdale Insurance Co.;
6. David M. Goodrich;
7. Dentons US LLP, successor by merger with McKenna Long & Aldridge LLP
8. Hon. Catherine E. Bauer, Judge of United States Bankruptcy Court, Central District of California, Santa Ana;
9. Office of United States Trustees;
10. United States Marshals Service;
11. Brian P. Salt of United States Marshals Service, Central District of California;
12. Eric F. King, owner of EFK Properties LLC;
13. John Chace, King's agent in buying the house.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Federal Cases

TABLE OF AUTHORITIES...... continued

Federal Cases

Federal Statutes

California Cases

PETITION FOR A WRIT OF CERTIORARI

Petitioner Yan Sui ("Sui") respectfully petitions Court for a writ of certiorari to review or to vacate the order of the United States Court of Appeals for the Ninth Circuit and the preceding order by Appellate Commissioner Peter L. Shaw.

OPINIONS BELOW

The Order of the Ninth Circuit (hereafter - "Order") dated 8/17/2017 is unpublished (App.1-3). It requires that Petitioner obtain a certification from district court stating that Petitioner's upcoming appeal is not frivolous; alternatively, Petitioner must be represented by counsel in the appeal. The Order by Appellate Commissioner Peter L. Shaw ("CO") dated 5/31/2017 is unpublished (App. 4-7).

JURISDICTION

This Court has jurisdiction to review the decision of the Ninth Circuit pursuant 28 *U.S. Code* § 1254 which provides:

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

RELEVANT STATUTORY PROVISIONS

F.R. App. Proc. Rule 3 (a) provides in pertinent part:"

> "(a) FILING THE NOTICE OF APPEAL. (1) An appeal permitted by law as of right from a district court to a court of appeals may be taken only by filing a notice of appeal with the district clerk within the time allowed by Rule 4. At the time of filing, the appellant must furnish the clerk with enough copies of the notice to enable the clerk to comply with Rule 3(d)."

First Amendment provides:

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances."

Fourteenth Amendment, Section One provides:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the

> United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF RELEVANT FACTS

a. Chapter 7 Filing, Discharge and Eviction

Sui filed a non-assert Chapter 7, paid off all debts and received a discharge order under 11 *U. S. C.* § 727 on 3/29/2013. Et ux Pei-yu Yang ("Yang") didn't file for bankruptcy and had been timely paying on the mortgage loan until after the eviction on 1/22/2015. On 6/30/2013, Sui invited Chapter 7 Trustee, Richard A. Marshack ("Marshack") to file for his final admin fees. Marshack declined on contention that there is a long way to go before completion of Chapter 7. On 7/24/2013, Marshack filed his second adversary action with United States Bankruptcy Court to compel the turnover and sale of the primary residence of Petitioner and family. The second action was based on a district court order granting his summary adjudication in his invalid first action, which must be striken under *F. R. Civ. Proc.* Rule 11(a). Marshack obtained a pre-filing order to bar three dispositive motions in second action filed by Yang pursuant to an order of bankruptcy court re: discovery and trial. Marshack took default of Yang. Bankruptcy court issued default judgment against Yang in second action over opposition. The pre-filing order was vacated through appeal by Sui/Yang. Default judgment was not reevaluated on remand.

Based on this default judgment, Marshack moved in United States Marshals Service ("Marshals") to evict while the default judgment was under appeal. Eviction was effectuated on 1/22/2015 by eight Marshals headed by Mr. Brian P. Salt.

b. Sale of House

After the eviction, Marshack moved bankruptcy court for an order authorizing the sale of the house outside of ordinary business courts. Sui opposed. Sui notified the prospective buyer, Eric F. King of EFK Properties LLC and his agent, John Chace of the discharge injunction. Sui cautioned them not to participate in the transaction or to face lawsuit. Caution didn't deter them from finishing up the deal. On 6/4/2015, bankruptcy court issued an order to authorize the sale over opposition of Sui. Sui appeals. BAP deferred decisions in the related appeals of Sui and Yang. On 7/16/2015, BAP dismissed both appeals on "mootness." Sui/Yang appealed to Ninth Circuit. On 1/22/2016, the house was re-sold by King to Krupsey with a mark-up of $160,000. In the resale, Wells Fargo Home Mortgage provided a 30-year loan of over $600,000. Ninth Circuit affirmed BAP on "mootness" (16-1522 App. 38-40).

Based on the escrow document prepared by Pickford Escrow Co., Wells Fargo Home Mortgage, Inc. was paid its updated loan balance. Chace was paid a commission of $14,400 and real estate agents of Pickford Real Estate Co., was approximately paid with $14,400 and $860.00.

c. Lower Courts Sat on Sideline to Watch

On or around one week before the scheduled eviction, Sui/Yang filed an ex-parte application with district court to stay the eviction pending determination of bankrupt, surplus or non-bankrupt estates existing post-discharge. District court denied on "lack of jurisdiction." Concurrently, Sui/Yang filed an extra ordinary writ of prohibition to stay the eviction. Ninth Circuit denied on contention that it lacked jurisdiction because the case didn't reach its level. On eve of the eviction, Petitioner petitioned Ninth Circuit and district court for an extraordinary writ of prohibition to stay the eviction. The application and the writ was primarily based on that Trustee et al violated the discharge injunction. Ninth Circuit denied based on "lack of jurisdiction" because the case didn't reach its level. District court denied after based on "lack of jurisdiction." When Ninth Circuit did have jurisdiction over the appeals over the sale of the house under 15-60065 and 15-60066, Ninth Circuit denied Sui/Yang's Rule 8 Motion for Injunction Pending Appeal to bar the resale of the house.

REASONS FOR GRANTING THE WRIT

Petitioner has presented Court with evidence that Ninth Circuit has played a trickery: it dismissed Sui's appeal under 16-60038 and misconstrues Sui's motion to hold Marshack et al in contempt of discharge injunction as a sanction motion in an "ongoing litigation" based on "a review of the record" before Ninth Circuit. At that time, Petitioner's lawsuits against Marshack et al are apparently "ongoing litigations" on its record. Ninth Circuit sent a misleading that Sui could seek remedy in civil rights lawsuits. Almost immediately, Ninth Circuit dismissed these lawsuits to make such remedy not available. In 16-60038, Ninth Circuit didn't state and decide that Marshack et al didn't violate the discharge injunction when the facts are clear that they did violate. Had Ninth Circuit stated and decided in 16-60038 that no violation occurred, Sui would petition this Court for a review. Then, a clear error would be caught by Court. Ninth Circuit didn't wish an error to be pointed out by layperson Petitioner and caught by Court. Ninth Circuit played a game of "lack of jurisdiction." So far, Ninth Circuit succeeded because Court denied Sui's petition under 16-1522.

Sui has the clearly established constitutional rights to petition district court to redress the acts of Marshack et al; to appeal from decisions of district court to Ninth Circuit. Sui has not got the sale proceeds from Marshack yet. Asking Sui to have counsel to represent in an appeal is unreasonable. Asking Sui to obtain a certification from district court that an appeal is not frivolous subjects Sui to be sanctioned by district court on any excuse it can make up.

Sui's constitutional rights should not be limited before Ninth Circuit makes express finding that any of Sui's appeals is frivolous. Order and OC didn't list any. They don't establish prima facie reason to stand on. Court should intervene to safeguard the rights of Sui, a grass-root citizen whose rights and family members are harmed by Marshack et al to redress their wrongs. Petition is warranted.

SUMMARY ARGUMENT

Lower courts know that Marshack will not leave Chapter 7 before he got something. They also know that Sui will keep fighting until Sui/Yang and family members are made whole through lawsuits. Lower courts know that they could not possibly shield them off all the times in all appeals. Would they do so, loopholes would be created that expose them to a review by this Court. Lower courts could not always dismiss based on "ongoing litigation" at certain point of time. Lower courts always have some tools to turn layperson Sui away.

At BAP level, it could very well overturn default judgment order because Marshack's first action is invalid; overturn the sale order because it violated discharge injunction. Had BAP done that, Chapter 7 could be expeditiously closed under 11 *U. S. Code* § 704. Most of the appeals at Ninth Circuit relevant to Chapter 7 could be avoided and the Order and OC would not be issued.

At district court level, had it held the evidentiary hearing to determine whether bankrupt, surplus or non-bankrupt estates existed after the discharge, non-bankrupt estate is most likely the result. District court could stay the eviction and Sui's second civil right lawsuit could be avoided.

At level of Ninth Circuit, had it acknowledge the fact that Marshack et al violated the discharge injunction, it could have issued the extraordinary writ to stay the eviction. Then, Sui's second civil right lawsuit could be avoided. Had Ninth Circuit issued the Rule 8 injunction to prohibit the re-sale, unlawful acts of Marshack et al could be enjoined.

At this junction, Ninth Circuit didn't wish to question why Marshack et al did what they had done. Order and OC wish to curtail Sui's rights to pursue them. It is simply proposing injustice detrimental to Canons of Judicial Ethics, 2 The Public Interest [Courts exist to promote justice, and thus to serve the public interest].

Order and OC proposes injustice by restricting Sui's right to appeal, by burdening Sui with request of counsel representation, by pushing Sui around at district court to request for a certification that an appeal is not frivolous (App. 2 ¶ 2). In essence, they are unconstitutional because Legislature encourages private citizens to petition Government to redress the unlawful acts of Marshack et al through peaceful lawsuit and not protest.

LEGAL ARGUMENT

f. Order and CO are Void

(1) It Serves Unlawful Purpose

The fact is clear that Marshack et al committed unlawful acts against Sui and family members. Ninth Circuit has the duty as a reviewing court to enjoin such acts through appeals. Not only it fails to do so, it issues these orders to hinder Sui's fighting off such acts. These orders apparently contravene with the First Amendment that empowers private citizen to petition court to redress unlawful acts. To that extent, these two orders are unconstitutional.

Although it is true that nobody has the constitutional right to initiate frivolous litigation *Wolfe v. George,* 486 F. 3d 1120 (9th Cir. 2007) (App.12 ¶ 4), Order and OC didn't state, identify or decide which one of Sui's appeals or petitions is frivolous. Order and OC didn't state or decide whether twenty-two (22) appeals and petitions in five years constitute "abusive litigation" as admonished by *Visser v. California,* 919 F. 2d 113, 114 (9th Cir. 1990) ("This court has the inherent power to restrict a litigant's ability to commence abusive litigation") (App.12 ¶ 4). If Court reviews these cases, they parenthetically support Sui's law-suits and appeals which were supported by facts and laws.

If Court looks at the Order and CO, they failed to articulate the standard on what is "abusive" and which is "frivolous." When such standard is absent, the only reasonable and logical conclusion is that Ninth Circuit intends to ensure that Sui be restricted to fight off the unlawful acts. Order and OC serve the unlawful purpose that such unlawful acts not be easily enjoined through appeal. They are void as a result.

(3) Lack Subject Matter Jurisdiction

This Court can review de novo whether the Order and CO are void *Retail Clerks Union Joint Pension Trust v. Freedom Food Ctr., Inc.*, 938 F.2d 136, 137 (9th Cir. 1991) [whether a judgment is void is a legal issue subject to de novo review].

Orders didn't cite any statute or case law to show that an appellate court has authority to order an appellant be represented before taking an appeal.

The subject matter is Sui being represented by a counsel. It is up to Sui to decide whether, when and how to retain counsel. It is up to Sui to file the notice of appeal and prosecute the appeal pro se. Sui didn't ask for extra lenience or favor from Ninth Circuit because of the pro se capacity. It is up to Sui and his attorney to decide how to prosecute an appeal. Neither district court nor BAP requested Sui to have counsel. This matter didn't exist at district court or at BAP. No lower courts asked Ninth Circuit to decide whether Sui needs counsel representation. Ninth Circuit has no jurisdiction over this subject matter. Ninth Circuit has jurisdiction over the appeal itself. Under such jurisdiction, it can dismiss a frivolous appeal; sanction Sui if Sui argues frivolously or baselessly.

Ninth Circuit lacks jurisdiction to dictate that Sui be represented before notice of appeal can be filed. Barring the filing of such was not within the jurisdiction of Ninth Circuit. Barring the filing of such notice because of no non-frivolity certification evinces a mischief of justice.

Schwartz v. United States, 976 F.2d 213, 217 (4th Cir. 1992) [it is void only if the court that rendered it lacked jurisdiction of the subject matter, or of the parties, or if it acted in a manner inconsistent with due process of law].

Order and CO are void under case of *Kyle v. Carmon* (1999) 71 Cal. App. 4th 901, 909 [an order by a court lacking subject matter jurisdiction is void].

Sui has the statutory right to appeal and Ninth Circuit has the obligation to rule. It has no jurisdiction to bar the filing of an appeal notice.

b. Order and CO Make Incorrect Assumptions

If Ninth Circuit decides that Sui's appeal is frivolous, it can very well dismiss and impose sanctions. Sui will glad face Ninth Circuit why the appeal is not frivolous. Sui would not argue that the appeal is not frivolous because of the pro se capacity. If Ninth Circuit finds that Sui makes baseless or frivolous argument, Sui will not argue otherwise because of pro se capacity. Sui will support the appeal with facts and law as Sui has been doing. Sui follows the same rules and standard against frivolity. Being represented by counsel does not automatically mean that appeal is not frivolous or the argument could not be frivolous. Sui has seen been a lot of Marshack's frivolous arguments. Pro se appeal does not automatically mean that the appeal will be frivolous or argument will be baseless. Order and CO didn't point out any from the record. Requesting counsel representation is on the incorrect assumption that Sui's future appeal will be frivolous or be abusive litigation. Ninth Circuit should focus on the briefs. Noticing an appeal is only a procedural step to safeguard Sui's right to be heard at appellate level. It does not constitute "abusive litigation" before the briefs are read. Noticing an appeal evinces that Sui observes some errors of lower courts that need correction at appeal. If Ninth Circuit disagrees with Sui, that is totally fine. Just put that down on a paper. Ninth Circuit apparently is afraid to put that down on a paper.

In Ninth Circuit, there are quite a few cases where counsel were sanctioned for making frivolous arguments and other misconduct. These cases include, but not limited to: (1) *Holgate v. Baldwin* 425 F.3d 671 (9th Cir. 2005) [sanction attorney who presents to the court "claims, defenses, and other legal contentions . . . [not] warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law under Rule 11(b) (2)]; (2) *Blixseth v. Yellowstone Mountain Club* 796 F.3d 1004 (2015) [sanction party and one of his attorneys under *Fed. R. App. P.* 38 and 28 U.S.C. § 1927 for bringing a frivolous appeal in a bankruptcy case].

This case proves that a represented party can have "utter frivolousness in his claims" in an appeal. Order and CO incorrectly assume that a counsel representation can avoid utterly frivolous claims in appeal. This case also proves that Ninth Circuit didn't have extra mercy or lenience toward an appellant when he has frivolousness in his claims. Sui doesn't assume that Ninth Circuit has extra mercy or lenience toward Sui if Sui has frivolousness in the claims in the past. Otherwise, why didn't Ninth Circuit indicate any of such? Since Sui has no such claims in the past appeals, what is the ground that Sui needs counsel representation? The request is extraordinary based on incorrect assumptions.

c. These Orders Attempt to Achieve Undue Goal

Order and CO attempt to achieve undue goal to place Sui in an disadvantaged position to take an appeal.

According to their design, Sui needs to first request district court to certificate that Sui's appeal is not frivolous. Order forces Sui to do some extra work with district court after Sui couldn't persuade district court. Order asks Sui to state to district court to the effect that district court erred and entrap Sui in a proceeding with district court. Now that the self-scheduling with district court is usually over 30 days, there is no guarantee that Sui can obtain a certification stating that the appeal is not frivolous. What if at the hearing the district court gives Sui another hurdle and declines to issue such a certification? Sui will most likely miss the deadline.

Sui already encountered trickery and treatment at district court already: Sui filed a *lis pendens* for a signature by judge. Magistrate judge returned the paper based on "papers are printed on both sides" when actually only one side was printed. Sui mailed back the returned paper district court again. District court returned them with remarks: "the papers are ordered not filed, but rejected." Sui would encounter more of such treatments if Sui requests district court to certify. These orders apparently attempt to achieve the undue goal that Sui misses the 30-day limitation. Its ultimate end is to deny the right to appeal.

Order attempts to achieve the undue goal that no attorney will represent Sui. Court can see clearly that no other circuit requests that an appellant be represented by counsel. If Sui presents such order to attorney, he would assume that Sui has gravely offended Ninth Circuit already or Sui has made and had been specially treated by Ninth Circuit. Attorney will more likely decline to represent. Marshack has not given Sui a penny from the sale proceeds. Sui has no money to pay attorney to represent. Attorney has more other lucrative clients to earn his fees. Attorney will find it risky to represent Sui for concern that he can be sanctioned for whatever reason Ninth Circuit comes up with. Sui will have to come up with several times more of fees to engage attorney in an appeal. This is another undue goal of the Order that attorney be scared away.

d. Order is Procedurally Infeasible

Order creates an example to let district court to function as both a trial court and a reviewing court. After trial court makes an adverse decision, how could Order expect district court to determine whether Sui's appeal is frivolous or not. How could district court make such determination? At what point can it make such determination? Does Sui need to file a pre-brief with district court for it to decide? Which district court judge should review such brief? By the presiding judge, or by a different judge from a different chamber? Order is essentially asking a district court judge to picks up the duty of reviewing court to determine whether an appeal is frivolous. If after reviewing such pre-brief and district court decides that Sui's appeal is frivolous, can Sui appeal from its finding? Is Order unwarrantedly burdening district court with extra case load? Order didn't set up standard how to determine non-frivolity; didn't have means that district court will certify after every adverse ruling; didn't set up the tolling of the limitation during the certification process ; didn't set up the deadline for district court to certify; didn't set up the waiver to state to the effect that if district court does not certify within a set time frame that Sui's appeal is not frivolous, the appeal will be deemed non-frivolous.

Order is infeasible: what specialty counsel Ninth Circuit wants Sui to be represented by, bankruptcy attorney, or civil rights attorney. If no such attorney can be found, does Sui need two to represent? How to screen such attorney to satisfy the no-money situation, a pro bono attorney? What if the representing attorney wants to quit half way? Is Sui allowed to be pro se again?

Order does not stat what goal it attempts to achieve. It is aimless before a prior finding that one of Sui's targeted appeals is frivolous. Order simply restricts for the purpose of restricting.

Sui would feel honored if Ninth Circuit can pick out any Chapter 7 related appeal, presents to Court and allow Sui to argue with Ninth Circuit whether Sui's appeal is frivolous. If Ninth Circuit does not want to go that way, the Order better be voluntarily withdrawn or be vacated by Court.

e. Order is Unfair Comparing with Other Circuits' Orders

CO did simple adding up of those twenty appeals and two petitions. Two of the appeals resulted favorably to Sui. They create unfair burden on Sui that Sui needs to incur more fees even to engage an attorney with the order in place. They unfairly burden Sui to petition district court for a non-frivolity certification after district court disagrees with Sui. The orders unfairly require Sui to ask district court to function as a reviewing court to determine whether an appeal would be frivolous. Order and CO didn't carry a provision to toll the 30-day limitation. At the same time, they unfairly enlarge the scope of the restrictions to appeal from decisions, which could be initiated by Marshack et al. Such adverse decisions could be from district court to affirm bankruptcy court orders adverse to Sui; orders granting Marshack's attorneys fees against Sui in a contempt proceeding for suing Marshack et al without obtaining leave of bankruptcy court (*See* undocketed petition to review Ninth Circuit decisions of 15-55708 and 15-56130). Bankruptcy court has indicated that Marshack can seek further sanctions against Sui/Yang if Sui/Yang assert right on the sold house (*See* Petitioner's RJN in support of petition under 16-1522).

On the issue of pre-filing order, Second Circuit ruled fairly in *In re Martin-Trigona*, 737 F.2d 1254, 1261 (2d Cir. 1984), providing:

> "ORDERED that Anthony R. Martin-Trigona must file in this court within 20 days of the filing of a notice of appeal from a judgment rendered by a district court within this circuit a motion for leave to take such appeal. This order shall not apply to an appeal from a judgment rendered against Anthony R. Martin-Trigona as a defendant or adjudicating him in contempt."

Second Circuit safeguarded the statutory right of the appellant that he can file the notice of appeal first. Then, within 20 days after the filing, he can file a motion for leave to take such appeal. Second Circuit gave appellant due process right argue why his appeal is not frivolous. This order didn't burden appellant to obtain a certification from district court.

It is noteworthy for Court to observe that Anthony R. Martin-Trigona "is the source of literally hundreds of lawsuits, motions and miscellaneous plea-dings, all but a small fraction of which lack any merit whatsoever." Sui only sued Marshack et al two times at district court. One of the lawsuits was filed only after Marshack didn't desist his acts after repeated warnings. Even under such distinguishable situations, Second Circuit didn't restrict his filing a notice of appeal, but Ninth Circuit restricted the filing. It is unfair under the comparison.

Second Circuit further ruled:

> "ORDERED that Anthony R. Martin-Trigona is hereby enjoined from filing any applications for relief other than an appeal from a judgment rendered by a district court in this court unless such application is accompanied by a motion for leave to file such application which states supporting grounds."

This portion of the case guarantees the right to appeal. This portion also guarantees appellant's right to seek other relief through an application so long the application is accompanied by a motion for leave to file the application stating supporting ground. This case excludes pre-filing requirement on contempt judgment against Martin-Trigona. Sui will more likely face more contempt judgment from bankruptcy court and affirmed by BAP (*See* Petitioner's Request for Judicial Notice attached to 16-1522). Order unfairly bars Sui from such contempt judgment if this case's exception is considered. [3]

Filing twenty-two appeals and petitions in five years falls far short from being "conduct impairing their ability to carry out their Art. III functions" *Id.*

f. Order Intrudes into Sui's Right Not be Represented

On the matter of counsel representing, Sui has stated and presented evidence that Marshack threatened Mr. Ken Liang not to represent Sui in a motion to sanction him (App. 43 ¶ 1). Mr. Liang has been providing assistance. Marshack threatened to depose him for unknown reason. It was only after Mr. Liang replied that he was not going to represent Sui that Marshack let him go. In communicating with Liang, Marshack presents himself as a trustee appointed by bankruptcy court. His email threat discouraged him from representing Sui. Sui had contacted multiple attorneys who refrained from representing. They stated that the best they could do was to assist

---

3. Sui assumes that Order applies to appeal from BAP although only "district court" is mentioned.

through counseling and not representing. Order didn't caution Marshack desist harassing Sui's attorney in the future in any manner.

On the matter of counsel representing, it is up to Sui and attorney to decide best way to preserve the best interest of Sui and attorney. When a powerful figure of Marshack is involved, Sui's attorney could chose to advise and not to be on record. It is understandable because attorney does not wish to defeat Marshack when representing Sui one day. And later on, cordially negotiates bankruptcy matters with Marshack at bankruptcy court. Attorney does not wish to confront Marshack at district court. Such a confrontation would undermine his cordial relationship with Marshack in Chapter 7 if he picks up such a case in the future. If Sui strongly urges attorney to present in an appeal, attorney could walk away. That will result in a non-representation.

Under federal and state laws, counsel representation required in two categories of case: (1) minor custody; (2) criminal proceeding. No law requires an appellant be represented in civil litigation.

Searching through the California case inventory, *Mix v. Tumanjan Development Corp.,* (2002) 102 Cal. App. 4th 1318 states that Sui does not need an attorney to be on the record [for recovering incurred attorney fees. *Mix, supra* provides in pertinent part:

> "If an attorney is in fact retained by the pro se litigant and renders legal services assisting in the lawsuit, the attorney need not be an attorney of record in order for

> the reasonable fees of the attorney to be awarded to a prevailing party. (*West Coast Development v. Reed, supra, 2 Cal. App. 4th at pp. 706-707 [3 Cal. Rptr. 2d 790].*)"

Order is the latest creation by Ninth Circuit to impose extraordinary restriction. The unreasonableness of such is unprecedented. If Court reviews orders of other circuits, Order is legal error.

g. Pre-Filing Orders are Legal Errors

(1) *Cromer, supra*

Pre-filing orders are usually issued by district court throughout circuits.

Cromer v. Kraft Foods N. Am., Inc., 390 F.3d 812, 817 (4th Cir. 2004) provides in pertinent part:

> "In determining whether a prefiling injunction is substantively warranted, a court must weigh all the relevant circumstances, including (1) the party's history of litigation, in particular whether he has filed vexatious, harassing, or duplicative lawsuits; (2) whether the party had a good faith basis for pursuing the litigation, or simply intended to harass;(3) the extent of the burden on the courts and other parties resulting from the party's filings; and (4) the adequacy of alternative sanctions. *See, e.g., Safir v. United States Lines, Inc.*, 792 F.2d 19, 24 (2d Cir. 1986); *Green v. Warden, United States Penitentiary,*

> 699 F.2d 364, 368-69, 370 n. 8 (7th Cir. 1983); *Pavilonis*, 626 F.2d at 1078-79."

Sui's history of five-years with twenty-two appeals and petitions are not that many. Particularly, Sui has no vexatious, harassing or duplicative lawsuits. Sui/ Yang have successfully appealed from order of bankruptcy court under CC-13-1572 to vacate its order of pre-filing and leave to sue Mar-shack et al. Sui's lawsuits are totally defensive of the house and it was Marshack et al who harass Sui and family members with duplicative adversary actions at bankruptcy court against Sui's et ux Yang. Sui has good faith believe of discharge injunction, non-bankrupt and surplus estates to sue to protect the house and to enforce discharge injunction against Mar-shack et al. The relevant two lawsuits were forced to be filed after Marshack et al didn't desist, but persisted in their unlawful acts. It was Marshack et al who burdened Sui and not the other way around. There is adequate alternative sanction available to Ninth Circuit that it can admonish certain issues or argument be excluded in the future appeals, or frivolous appeal be sanctioned.

Cromer court has vacated the pre-filing injunction. Cromer case has been followed by different circuits.

Order and OC didn't consider these four-prongs of Cromer. They simply added the number together and concluded that Sui "burdens" the Ninth Circuit. Burdening a reviewing court does not mean that an appeal is frivolous. Ninth Circuit didn't state any of the lawsuits were frivolous or baseless (*See* 16-1522, App. 1-41). "Burdening" is not a legal test to deter-mine pre-filing. Isn't Ninth Circuit a reviewing court over district court and BAP? It is a legal error to use "burden" to substitute these four prongs. Complain of "burdening" should direct at Marshack et al who caused all these trouble. It is a self-inflicted on Ninth Circuit by its inaction to intervene at an earlier stage. It is not something that an appellate court should blame an appellant.

(2) *Thomas, supra*

Fourth Circuit refrained from issuing the pre-filing order in *Thomas v. Salvation Army Southern Territory* 14-2214 (4th Cir. 2016) and left that to district court. Fourth Circuit ruled:

> "As the district court noted, Thomas has filed at least eight lawsuits in the Western District of North Carolina, prevailing in none, and at least five additional suits in the Middle District of North Carolina. J.A. 59. Our opinion herein does not reflect on whether Thomas should be subject to a pre-filing injunction, a matter we leave to the district court in the first instance."

Sui only sued Marshack et al twice at district court. Sui prevailed in appealing from the contempt fee order of $30,319.50 in 15-55708. Although the dismissal was affirmed but not the fee order. The dismissal is pending at Court for docketing. Therefore, the dismissal has not become final. It is a legal error to assume that Ninth Circuit's dismissal makes Sui's appeal frivolous or abusive litigation. It is a legal error because Sui/Yang prevailed on a practical level that the contempt fee order is not affirmed on appeal.

(3) *Procup, supra*

Eleventh Circuit ruled in *Procup v. Strickland*, 792 F.2d 1069 (11th Cir. 1986) that:

> "As of June 1983, Procup had filed 176 cases in the Jacksonville Division of the Middle District of Florida alone, not counting suits filed in other federal and state courts. Most of Procup's suits have been pro se, in *forma pauperis* civil rights actions under 42 U.S. C.A. Sec. 1983. None has reached the stage of trial on the merits; most have been frivolous. We hold that the district court's injunction was overbroad, but that the district court has authority to impose serious restrictions on Procup's bringing matters before the court without an attorney."

Suing Marshack twice and appealed in 14 occasions in four years time is far from being "abusive litigation," or "impairs courts' ability to carry out Article III functions." The argument the other way around is true: when Ninth Circuit, district court or BAP didn't decide matter on merit and only dismissed on "mootness" Sui's appeal from the sale order, the chaos didn't go away. They exacerbated. When

Ninth Circuit stated that "Yang's contention on the invalidity is unpersuasive" and didn't enjoin Marshack from prosecuting the invalid adversary action (*See* Petition 14-5783), more harm was caused and lawsuits needed to file to get remedy. It is Ninth Circuit that ignored material facts and set Marshack free to harm.

According to Eleventh Circuit, Ninth Circuit can restrict Sui from bringing up those claims which had been brought up, litigated and decided on merits in final judgment. Ironically, Ninth Circuit denied Sui's extraordinary writ to stay the eviction on notice that the eviction violated the discharge injunction. Ninth Circuit didn't consider this meritorious claim. It denied on "lack of jurisdiction" although it is a court of all writ. This case illustrates the situation that a litigant will have no attorney willing to represent due to his litigation history and intro-office conflict.

On counsel representation, Order is not in line with Eleventh Circuit, who vacated the pre-filing injunction. Procup Court found:

> "In this Court's judgment, however, the requirement that Procup file suits only through an attorney may well foreclose him from filing any suits at all. A private attorney, knowing Procup's track record, might well be unwilling to devote the time and effort necessary to sift through Procup's generally frivolous claims to see if there is one of sufficient merit to undertake legal representation."

If Sui brings the Order to an attorney and asks if he would represent and how much. Attorney will first ask Sui what has Sui said in all these fourteen appeals. Attorney needs to read the OB and RB to find out whether Sui has frivolous claims. There would be 28 sets of such documents. Going through all of these and verifying sources of cases will need at least 112 hours. A civil right attorney will reasonably charge between $250-$300 hourly fees *Moreno v. City of Sacramento*, 534 F.3d 1106, 1112 (9th Cir. 2008). That alone will cost Sui from $28,000 - $33,600 before an attorney determine whether he is willing undertake to represent. Marshack is withholding purportedly $320,000 of sale proceeds. He refused to pay Sui/Yang more than two years after he got the proceeds. Ninth Circuit has really making trouble with Sui.

Faced with the Order, an attorney will have a negative view of Sui and of the upcoming appeal. In order to compensate the possibility that Ninth Circuit sanction for whatever possible reasons, attorney will certain pass on the burden to Sui by asking double or triple fees. This is not something that Sui can afford to pay. Sui will face the same situation that Eleventh Circuit predicted that attorney will walk away. Eleventh Circuit vacated the pre-filing injunction. Order should be vacated by Court under the same concern that Sui's to access federal appellate court would be barred.

(4) *In re Oliver*

Third Circuit found in *In re Oliver*, 682 F.2d 443, 446 (3d Cir. 1982) in pertinent part:

> "(Oliver) has filed fifty-one cases in the United States District Court for the Western District of Pennsylvania since 1969At the appellate level, Oliver has been equally prolific and unsuccessful. In addition to the present case, Oliver has appealed twenty-four district court orders to this Court. In nineteen cases he was denied relief; five appeals are pending."

In the past four years, Sui sued Marshack et al twice and got relief against Marshack that the contempt order was not affirmed. Sui got the relief from Ninth Circuit in 16-60038 to deem, without deciding that Marshack et al violated the discharge injunction and subject to sanction in an "on-going litigation" (*See* Petition 16-1522). Although Court denied the petition, it does not change the result that Marshack has been found violative of discharge injunction. Such finding entitles Sui/Yang to take future action against Marshack et al as ground. Under the circumstances, issuing the Order and OC to restrict Sui is legal error under analysis of this case.

(5) *Abdule-Akbar, supra*

Third Circuit rule in *Abdule-Akbar v. Watson* 901 F.2d 329 (3rd Cir.1990) that:

> "we conclude that the district court erred by issuing an order barring Abdul-Akbar from filing *any in forma pauperis* § 1983 suits

> without considering the effects on a legitimate claim and we further conclude that his claim is not legally "frivolous," we will vacate and remand to the district court for further proceedings."

Order targets at Sui's appeal and not lawsuits. Principle remains the same that Ninth Circuit must determine whether Sui has frivolous claims in the appeal. If Ninth Circuit has not found any, Order improperly bar legitimate claims. Order doesn't state and decide that Sui has frivolous claims in those 14 appeals and petitions. Order is unfounded under this case.

Third Circuit cautioned that pre-filing injunction should be sparingly used.

> "*In re McDonald,* 489 U.S. 180, 109 S. Ct. 993, 996, 103 L Ed.2d 156 (1989). We also have stated that "[a]ccess to the courts is a fundamental tenet to our judicial system *legitimate* claims should receive a full and fair hearing no matter how litigious the plaintiff may be. We recently recognized in *Matter of Packer Ave. Assoc.,* 884 F.2d 745 (3rd. Cir. 1989) that while the All Writs Act, 28 U.S. C.§ 1651, gives the district court the power to issue an injunction to restrict the filing of meritless pleadings, it is an extreme remedy which must "be narrowly tailored and sparingly used."

Sui's appeals have merit, just like the lawsuits against Marshack et al.

Order and CO didn't state to the contrary. So far, Ninth Circuit claimed Sui/Yang having "abusive litigation practices" (*See* undocketed petition to review its decisions under 15-55708 and 15-56130). Ninth Circuit sidesteps the term of "litigious" and picks up the term of "abusive litigation practices." As Sui/Yang argue in the petition that such accusation is unfounded. Two lawsuits and fourteen appeals and petitions are nothing even close to being "abusive." Under standard of this case, Order bars Sui to have full and fair hearing at appellate level of his meritorious claims.

Summing up the holdings of the decisions, a district court litigant can appeal from the pre-filing order to appellate court. Under *In re Martin-Trigona,* 737 F.2d 1254, 1261 (2d Cir. 1984), appellant Martin-Trigona's right to appeal is not restricted. If Anthony R. Martin-Trigona didn't agree with the Second Circuit on his motion for leave to take the appeal, he can petition this Court to review the dismissal of his appeal. These orders provided aggrieved party remedy to seek review.

Order doesn't provide the remedy for Sui to seek review by a higher court. It design a trap to drag Sui into a legal quagmire of district court proceedings. It unwarrantedly entraps Sui into fruitless negotiation with a prospective attorney. Order does not instruct how to review district court's refusal or denial of the certification; how to toll the 30-day limitation; how to resolve the disagreement between district court and Sui. Order hides an under pinning mechanism to obstruct Sui's right to seek remedy through prompt and efficient appeal.

(6) *Ringgold-Lockhart, supra*

Ninth Circuit's own case of *Ringgold-Lockhart v. County of Los Angeles* 761 F.3d 1057, 1062 (9th Cir. 2014) provides:

> "Out of regard for the constitutional underpinnings of the right to court access," pre-filing orders should rarely be filed," and only if courts comply with certain procedural and substantive requirements. *De Long,* 912 F.2d at 1147. When district courts seek to impose pre-filing restrictions, they must: (1) give litigants notice and "an opportunity to oppose the order before it [is] entered"; (2) compile an adequate record for appellate review, including "a listing of all the cases and motions that led the district court to conclude that a vexatious litigant order was needed"; (3) make substantive findings of frivolousness or harassment; and (4) tailor the order narrowly so as "to closely fit the specific vice encountered." *Id.* at 1147-48." (App. 35)

Although this case was on pre-filing order by a district court, its holding binds on Order because Ninth Circuit is a federal court. Order apparently didn't wish to be bound. Out of the four-prongs, Ninth Circuit fails three of them. CO didn't list all the appeals and petitions that lead it to conclude that a vexatious litigant order was needed. CO didn't state and decide which of those fourteen cases are vexatious. CO didn't make substantive finding of frivolousness or harassment in any of those appeals. Finally, CO didn't identify any "vice" encountered. Filing fourteen appeals and petitions apparently not the "vice" because it is Sui's statutory right. Going through the CO, it is apparently that Ninth Circuit feels it was been "burdened" by those appeals and petitions. "Burdening an appellate" is not the standard to issue the pre-filing review order. Adopting this term is a legal error.

h. Order is Barred by Equitable Estoppel

Order is barred by doctrine of "equitable estoppels" whose application was articulated in *Gabriel v. AEPF* 755 F.3d 647 (9th Cir. 2014).

Court knows that Ninth Circuit dismissed Sui's appeal under 16-60038, which was petitioned under 16-1522 for a review. In the dismissal, Ninth Circuit deems Sui's motion to hold Marshack et al in contempt of discharge injunction as a sanction motion in an "ongoing litigation." Under this presentation, Sui had ground to sue and incorporate allegations on discharge violation. If district court dismisses the lawsuit, Sui should have the unhindered right to sue. Order apparently has the effect to bar such appeal before Jan. 2019. Order didn't carve out this sort of appeals and spare such appeal from the Order.

Secondly, Ninth Circuit presumably allows lawsuit without leave of bank-ruptcy court if Sui/ Yang can plead sufficient facts to support that Mar-shack acted beyond the scope of his authority as a Chapter 7 trustee under its "neither ...nor" formula (*See* 16-1522, App. 33). Such lawsuit could be filed in the future. In the event of the filing and the dismissal, Sui will be barred by Order to appeal without representation. Order didn't carve out this sort of appeal.

Thirdly, Order didn't carve the appeal from dismissal of lawsuit filed against non-Trustee defendants at district court. In 15-55708, Ninth Circuit presumably allows lawsuit against Wells Fargo Bank, N.A. if Sui/Yang allege applicable federal claims (*See* 16-1522, App. 33). Order didn't carve out this sort of appeal.

Order is overbroad as to its scope. It is vague as to its application. It is barred by equitable estoppels to the extent that Ninth Circuit proffered sort of benefits that Sui can use to seek remedy. Now, Ninth Circuit takes it back, or at least restricts its usage through the Order.

i. Order and CO Contravene Canon 3 of Judicial Ethics

Sui personally has respect to Panel judges. They work hard on voluminous cases. But, when imminent eviction fell on Sui and family member, a different Panel sat on the sideline to watch. After the harm has been done against Sui and family members, yet another Panel restricts Sui's ability to fight back. When it is proven that Marshack et al violated the laws, this Panel restricts Sui's ability to seek remedy. This is not something that these judges should do. Now they have done that. Order and CO contravene Canon 3 of judicial ethics that they fail to protect the public interest:

> "Courts exist to promote justice, and thus to serve the public interest. Their administration should be speedy

> and careful. Every judge should at all times be alert in his rulings and in the conduct of the business of the court, so far as he can, to make it useful to litigants and to the community. He should avoid unconsciously falling into the attitude of mind that the litigants are made for the courts instead of the courts for the litigants."

These Panel judges didn't promote justice because they acquiesced unlawful acts and failed to promptly enjoin. They fail the public interest. They didn't promote justice speedily to stay the eviction; didn't prohibit the re-sale of the house. They didn't carefully promote justice by issuing the Order and CO, whose terms are so legally deficient and erroneous. Order and CO have no value at all comparing the Second Circuit decision in *In re Martin-Trigona,* 737 F.2d 1254, 1261 (2d Cir. 1984). These Panel judges have apparently fallen into an antagonist attitude against Sui whose allegations are not reasonably, logically and liberally interpreted.

CONCLUSION

For the reasons discussed, Petitioner Yan Sui respectfully prays this Court to grant the petition to enjoin this one-of-a-kind Order. Alternatively, Sui respectfully prays that Court vacates the Order.

DATED: 11/13/2017

Respectfully submitted,

By: / s / Yan Sui

YAN SUI
Petitioner in pro se