No. 21-

IN THE

Supreme Court of the United States

FLOYD CHODOSH, *et al.*,

Petitioners,

v.

JOHN SAUNDERS, *et al.*,

Respondents.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

A disqualified state court judge called in from vacation and delayed a temporary restraining order, then "self-requalified" himself back on to the case to enable the fiduciary fraudulent below market sale of a senior oceanside mobilehome park. The California Judiciary and Attorney General allowed self-re-qualification. The District Court and Ninth Circuit held *Rooker-Feldman* barred jurisdiction because the "fraud on the court" exception excludes fraud by the court.

Petitioners moved to disqualify the District Court Judge for personal and collegial ties with the state court judges allegedly involved in the fraud.

The questions presented are:

Whether Petitioners' procedural due process rights were violated by deprivation of federal remedy for state judiciary wrongdoing on decision that *Rooker-Feldman* "fraud on the court" exception did not apply because the state court judges were part of the fraud.

Whether Petitioners have a federal action where state court judges denied procedural due process by acting to assure no impartial court and obstructing Petitioners' inquiry into judicial misconduct.

Whether Petitioners were denied due process when their motion to disqualify a District Judge for personal and collegial ties with local state court judges was decided under District Court General Order that did not comply with disqualification statute, 28 U.S.C. §455.

PARTIES TO THE PROCEEDING

Petitioners were appellants in the Ninth Circuit Court of Appeals, Floyd M. Chodosh, Sue Eicherly, Myrle Moore, Ole Haugen, Todd Peterson, Rodger Kane, Jr.

Respondents were appellees in the Ninth Circuit Court of Appeals. John Saunders, Robert S. Coldren, ICC 35902 LLC, a Delaware limited liability company, 3187 Redhill LLC, a Delaware limited liability company, Pacific Current Partners, a California limited liability company, Diana Mantelli, George Fiori, Lisa Salisbury, Edward Susolik, Allen L. Thomas, Cary Wood, and Fidelity National Title Company, a California corporation

LIST OF PROCEEDINGS BELOW AND RELATED CASES

Floyd M. Chodosh et al., v. John Saunders, et al., No. 20-56252, United States Court of Appeals for the Ninth Circuit. The Memorandum and Judgment was entered December 16, 2021.

Floyd M. Chodosh et al., v. John Saunders, et al., No.: SACV 20-01326-CJC(KESx), United States District Court for the Central District of California. The Order was entered November 5, 2020.

Floyd M. Chodosh et al., Plaintiffs, v. John Saunders, et al., No. SACV 20-01326-CJC(KESx), United States District Court for the Central District of California. The Order was entered October 8, 2020.

Sue Eicherly, Floyd Chodosh; et al., v. Kathleen O'Leary, et al., No. 17-55446; 721 F.App'x 625, 627 (9th Cir. 2018), United States Court of Appeals for the Ninth Circuit. A judgment of dismissal was entered January 3, 2018

Chodosh, et al. v. Palm Beach Park Association, ("PBPA") No. G053798, Court of Appeal of the State of California, Fourth Appellate District, Div. 3. The opinion was issued December 17, 2018.

Petition for Writ of Certiorari, No. 18-9669, United States Supreme Court, to the State Court of Appeal was denied November 25, 2019.

Floyd Chodosh, et al. v. John K. Trotter and JAMS, Inc., No. D070952, Court of Appeal of the State of

California, Fourth Appellate District, Div. 1. The Opinion was issued September 13, 2017.

Ole Haugen v. Palm Beach Park Association, a California non-profit mutual benefit corporation, No. 30-2015-00819837, Superior Court of the State of California, for the County of Orange. The case was dismissed March 9, 2016.

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PETITION FOR A WRIT OF CERTIORARI

Petitioners Floyd M. Chodosh, Sue Eicherly. Myrle Moore, Ole Haugen, Todd Peterson and Rodger Kane, Jr. respectfully petition for a writ of certiorari to review the judgment and orders of the United States Court of Appeal for the Ninth Circuit.

OPINIONS AND RULINGS BELOW

Judgment and orders in the case are unpublished and unreported. *Chodosh v. Saunders*, No. 20-56252 (9th Cir. Dec. 16, 2021) (App.A, 1a-5a), affirming dismissal for lack of jurisdiction under *Rooker-Feldman* (App.B), and denial of motion to disqualify District Judge Cormac J. Carney, 10/08/20, by District Judge David O. Carter, (App.C, 16a)

The Ninth Circuit denied Petitioners' Request for Rehearing *en banc* on January 20, 2022. (App.D, 20a)

Previously, in 2019, Petitioners filed Petition for Writ of Certiorari to this Court on the underlying state court litigation, California Court of Appeal, Fourth District Div. 3, *Chodosh, et al. v. Palm Beach Park Assoc.*, Opinion, No. G053798, dated December 17, 2018, unreported and unpublished. 2018 Cal. App. Unpub. LEXIS 85025*;* 2018 WL 6599824 . See, Petition for Writ of Certiorari No. 18-9669, October 28, 2019. Petitioners moved to file *in forma pauperis*, motion was denied with leave to submit a petition under Rule 33.1, which Petitioners did, and which was denied November 25, 2019. The prior petition provides state court case information.

In 2016, Petitioners filed a federal case under 42 U.S.C. § 1983 on earlier facts, which was dismissed in 2018 on

Rooker-Feldman, *Eicherly v. O'Leary*, 721 F.App'x 625, 627 (9th Cir. 2018)

JURISDICTION

The Ninth Circuit entered judgment December 16, 2021. (App.A) Petitioners timely petitioned for rehearing *en banc*. It was denied on January 20, 2002. (App. D, 20a)

Jurisdiction rests on 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The Fifth Amendment to the United States Constitution provides in relevant part:

> No person shall be . . . . . deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

The Fourteenth Amendment to the United States Constitution, section 1, provides in relevant part:

> 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.

18 U.S.C. § 1961(1) provides in relevant part:

> "[R]acketeering activity" means (A) any act or threat involving . . . . bribery, which is chargeable under State law and punishable by imprisonment for more than one year; (B) any act which is indictable under any of the following provisions of title 18, United States Code: section 1341 (relating to mail fraud), section 1343 (relating to wire fraud), section 1952 (relating to racketeering and bribery) . . .

18 U.S.C. §§ 1962(c) and (d) provide in relevant part:

> (c) It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.
>
> (d) It shall be unlawful for any person to conspire to violate any of the provisions of subsection (a), (b), or (c) of this section.

28 U. S. C. § 455 (a) provides in relevant part:

Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

STATEMENT OF THE CASE

Respondents conspired with state court judicial officers and alternative dispute resolution company and its

retired judge founder and attorneys to perpetrate fraud on the state court. The conspiracy denied Petitioners impartial justice; it transgressed their constitutional rights to procedural due process.

State court judges and justices sat on Petitioners' cases when they should have recused. They wrongly empaneled themselves on Petitioners' cases in violation of California law.

Respondents argued, and the District Court ruled, that Petitioners' racketeering civil "RICO" action[1] involving state court judges was *Rooker-Feldman*[2] barred, as the extrinsic fraud or "fraud on the court" exception did not apply because wrongdoer judges were in the racket and fraud; that fraud on the court excludes fraud by the court.

The Ninth Circuit affirmed that the *Rooker-Feldman* "fraud on the court" exception did not apply because state judicial officers were alleged to be part of the fraud. If judges were not involved, there would have been fraud on the court and *Rooker-Feldman* exemption. But, according to the decision, *Rooker Feldman* eliminates federal court jurisdiction on state court judgments entered by a bribed and conspiring state court wrongdoer judge because the individual judge was the "court" and therefore could not commit "fraud on the court."

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1. "RICO" means The Racketeer Influenced and Corrupt Organizations Act, codified at 18 U.S.C. §§ 1961, et seq.

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) ("*Rooker-Feldman*" is the doctrine of no lower federal court jurisdiction over state court judgments.)

The facts of underlying state court failures to recuse, denials of disqualification motions, and unlawful "self-re-qualification," along with the fiduciary fraud and conversion of seniors' real estate are not in dispute. Sequential court documents are the primary evidence.

The state courts denied Petitioners right to inquire as to facts behind state court judges' wrongdoing. The judges and justices prevented Petitioners exercise of their constitutional procedural due process rights to protect their property.

Memorandum decision that "Appellants had the opportunity to present their claims in state court" (App.A at 3a) is not true.

Petitioners were deprived of the most basic procedural due process – the right to an impartial judge. They were also prevented from exercising their California statutory right to conduct discovery surrounding the disqualified state court judge that purported to "requalify" himself just in time to enable the fiduciary fraudulent sale and conversion of the mobilehome park and homes.

A. Seniors Resident Owned Mobilehome Park

In 2007 Petitioners and other seniors converted their mobilehome park, situated on the Pacific Coast in Orange County, California, to "resident owned." Litigation ensued between members and the Palm Beach Homeowner Association ("PBPA") and its president and directors.

Petitioners commenced lawsuits against PBPA. Around 2013 the PBPA president and board of directors

plotted a scheme of fiduciary fraud and self-dealing to sell the mobilehome park on recommendation of the association president, herself a real estate broker. The seniors were deceived into selling the park to the broker's undisclosed allies at a price many millions under market.

For the sale there was no listing, marketing, competitive bidding, or appraisal. The president kept from the seniors an unsolicited higher cash offer with no broker fee, (11-ER-2512). The president falsely denied connection with the buyer, and that she and the board were being compensated on the sale. The president hired the buyer's lawyer to be PBPA's lawyer. The lawyer represented both the real estate buyer and HOA seller. (11-ER-2220, 2243, 2250;11-ER-2597)

Petitioners stood in the way of the illicit and lucrative park sale. In 2013 the trial judge recommended that Petitioners and the association have a mediation at Judicial, Arbitration and Mediation Services, "JAMS," the largest alternative dispute resolution ("ADR") company in the world. (7-ER-1521)

The mediator was John K. Trotter (Ret.) JAMS co-founder and retired first presiding justice of the court of appeal located in Orange County, California. He told Petitioners he knew their trial judge, and that if they did not take the promissory note settlement he was promoting, he would tell their judge that Petitioners were the reason for no settlement. (7-ER-1524) Petitioners refused. A few weeks later their judge retired and went to work at JAMS. (7-ER-1525) Hon. Robert J. Moss, Superior Court Judge, was appointed to take over the main case, *Chodosh v. PBPA*.

B. Petitioners sue JAMS – Judges Influenced

In 2014 Petitioners sued the mediator and JAMS, for mediator misconduct in threatening to turn their judge against them. *Chodosh v. Trotter, JAMS*. (Op. 9/13/17 at 7-ER-1520)

Petitioners moved to disqualify the entire appellate court because the justices knew their first presiding judge. He had retired to co-found JAMS, headquartered in Orange County, California.

All retired appellate justices in Orange County have gone to work at JAMS. As of this year, all the judges and justices that made wrong rulings against Petitioners and then retired went to JAMS.

C. Judges Do Not Recuse, Deny Disqualification, and "Self-re-Qualify"

State court procedural due process denial of impartial judge was achieved by wrongful refusals to recuse, disqualification denials, and the concoction of "self-re-qualification." At all times, the scheme was to deny Petitioners an impartial judicial officer.

In *Haugen v. PBPA,* a related action brought to block the fiduciary fraudulent park sale, Petitioner Haugen peremptorily challenged Judge Moss, the judge on the main case. The presiding judge disqualified him and appointed a new judge. To halt the park sale, Mr. Haugen applied for temporary restraining order ("TRO").

Weeks later, to facilitate the fraudulent sale of the coastal park, the disqualified judge ordered the TRO delayed, then ordered his "self-re-qualification" back on to the case. The presiding judge, court of appeal and supreme court upheld the "self-re-qualification" even though law, rules and ethics prohibited it.[3]

Disqualified Judge Moss was on vacation when the motion for the TRO was to be heard. Suddenly , on the morning of the TRO hearing, he called in to his clerk, issued an order to delay the TRO so it would not jeopardize the park sale, and then ordered himself "self-re-qualified."

No law empowers a judge to "self-re-qualify." Here the unlawful requalification extinguished the TRO and enabled the illicit real estate sale. The deed recorded three hours after the vacationing judge's call to his clerk to first block the TRO then self-requalify.

Petitioners allege the judge made a "fix" under California law, meaning a bribe to have a judicial officer

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3. Only an appellate court can overturn a disqualification. California Code of Civil Procedure §170.3(d); *People v. Panah*, 35 Cal. 4th 395, 444 (2005) (writ is exclusive means to contest disqualification) Appellate justices can "re-qualify a judge," in that they can reverse an erroneous disqualification. But the disqualified judge himself or herself cannot "self-re-qualify," or as Judge Moss put it "reassume jurisdiction." (11-ER-2393). See, California Code of Judicial Ethics, Canon 1, "An independent, impartial, and honorable judiciary is indispensable to justice in our society;" Canon 3B.(1), "A judge shall hear and decide all matters assigned to the judge **except those in which he or she is disqualified**." (Emphasis added)

act corruptly for someone's benefit.[4] That a disqualified judge would call in and "self-re-qualify" – right on time - suggests and indicates a fix where the judge acted corruptly for a bribe to render a result – assured closing of the fraudulent real estate sale.

Before the California judiciary and the Ninth Circuit, the unlawful strategic disqualified judge re-qualification was implemented and upheld, displaying judicial misconduct by intentional disregard of the law and overriding the procedural due process limitations on judicial authority and power under law.

D. State Judges Biased by JAMS Job Prospect

In this 2020 RICO action, Petitioners alleged the consistent judicial misconduct was motivated by ambition to retire and join JAMS, which ruling against Petitioners – who had sued JAMS and its founder – would be perceived as a way for a sitting judge to improve prospects for a JAMS post.[5]

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4. "Fix" is commonly understood and legally defined. "[F]ixing is a quintessential bad act of a judge." "Fixing frequently involves . . . a judge acting in a matter where the judge is disqualified." (citations omitted) *California Judicial Conduct Handbook*, D. Rothman, Hon. R. Fybel, Hon. R. MacLaren, and M. Jacobson, (4th Ed. 2017) pgs. 180-1, §3:32, "[F]ix" indicates "that for money consideration, a certain result can be purchased from a judge of the court. . . also known as bribery. (See, Calif. Penal Code §92, et seq.)." *In re Koven*, (2005) 134 Cal.App.4th 262, 272

5. A successful JAMS "neutral" can earn twice or more the salary of a sitting justice or judge. More than ten years ago, average annual earnings reportedly exceeded $500,000 with some over $1,000,000. (See, e.g., 72 *Albany Law Review* 257, "*Making*

The allegations were denied. As of this year, all of the judicial officers that ruled against Petitioners and later retired have joined JAMS.

Petitioners' lost their lawsuit against JAMS for mediator misconduct, with the appellate court ruling that State Court of Appeal Justice John K. Trotter's (Ret.) coercion and threat to malign mediating parties to their trial judge was to be "discouraged," it was not prohibited. JAMS failure to disclose that it was hiring Petitioners' trial judge was held lawful. (7-ER—1538)

The new trial judge, Hon. Robert J. Moss, reversed prior ruling that Petitioners owned real property. In 2014 – 2016 he ruled against Petitioners, entered judgment in *Chodosh* in 2016 after fabricating in *Haugen* in 2015 his "self-re-qualification."[6]

E. Underlying Fiduciary Fraud Prize – The Coastal Parcel

The financial object to the Respondents was the illicit park purchase worth multi-millions. It closed December 22, 2015 when disqualified Judge Moss illegally enabled it by acting in the case while disqualified and the capstone of "self- requalification."

Peace and Making Money: Economic Analysis of the Market for Mediators in Private Practice," by Urska Velikonja (2009) pgs. 262, fn. 62, 268, fn. 80)

6. Sequential court documents, many altered and backdated, transcripts and declaration prove the illegal "self-re-qualification." Complaint, Exhibit C, 10-ER-2368)

In 2007, Petitioners and 120 other seniors had worked hard to convert their senior mobilehome park to "resident owned." Eight years later, the HOA Board breached fiduciary duty and self-dealt to sell the park to an undisclosed affiliate of the president, a real estate broker.

In November 2015 Petitioner Haugen filed the new action to prevent the sale expected in December 2015. On Haugen's peremptory challenge the Presiding Judge disqualified Judge Moss. (10-ER-2338) Weeks later, Petitioners applied for a TRO to halt the sale. The new judge did not appear. Instead, disqualified Judge Moss called in from vacation to thwart the TRO and save the sale. (10-ER-2338 et seq.)

With the services of a law firm that advertises ability to contact judges ex parte after hours,[7] disqualified Orange County Superior Court Judge Robert J. Moss

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7. The *National Law Journal* reported that Respondents' counsel:

> Attorney Daniel J. Callahan has no problem thinking outside the box. The flamboyant lawyer recalls how twelve years ago he tracked down a judge by phone at a late-night private poker party and asked him to show up early to court the next day to block the forfeiture of a friend's hotel. "I told him, 'my name is Dan Callahan. I need you to come in a half hour early and issue a restraining order to block the foreclosure of the Canyon Hotel,'" recalled Callahan. "[The judge] was so amazed. He said, 'not even his wife knew he was at this party.'" Callahan's plan worked, and the hotel was saved. Such tactics have become ingrained in Callahan. . . . *National Law Journal*, 6/21/04, pg. 55, (11-ER-2601; 6-ER-1442)

called in at 9:00 a.m. to order delay on the TRO. After he thwarted the TRO, at 9:29 a.m., Judge Moss "self-re-qualified," or as he put it, "reassumed jurisdiction." (11-ER-2357) Judge Moss got it backwards, acting while disqualified to halt the TRO, then "self-re-qualifying. The sale deed recorded at just after 1:00 p.m. (10-ER-2359)

Judge Moss denied wrongdoing. He declared that no one contacted him about the call in. (11-ER-2357)

F. Disqualified Judge Order to Self-Re-Qualify Upheld

California law does not allow a disqualified judge to "self-re-qualify." After the judge was disqualified by the presiding judge, the only challenge could have been an appeal by writ of mandate. A disqualified judge has no power to act in the case. See, fn. 3, *ante*.

The "re-qualification" was intentional judicial misconduct and crime under California law.[8] The tactic undermined due process by use of bribe to procure judicial decision. See, *In re Koven*, supra, 134 Cal.App.4th at 272

Petitioners reported the judge to the Superior Court Presiding Judge. Under presiding judge regulations, he had to report the judge wrongdoing to the judge disciplinary commission and law enforcement. (11-ER-2527) The Presiding Judge did nothing. Last year he retired and went to JAMS.

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8. California precedent has been to eject from the bench a disqualified judge that acts in the case. See, e.g., *Furey v. CJP*, 43 Cal.3d 1297, 1308 (1987) (Disqualified judge gave case advice to replacement judge).

Petitioners took a writ to the Orange County located state appellate court. It upheld the "self-re-qualification." (Calif. Court of Appeal, Order, 05/26/16)

G. Complaints to Judge Commission and Attorney General Futile

In April 2016 Petitioners complained to the California Commission on Judicial Performance ("CJP"). (11-ER-2413) Four years later, CJP ignored and allowed "self-re-qualification," closing its inquiry. (*Id.*, 2420)

The CJP asserts sole discretion whether to refer evidence of judge crime for possible prosecution. (11-ER-2540) In California, the judicial branch decides if there will be criminal prosecution of a judge. CJP tells the public it has referred judges for prosecution "on multiple occasions," (10-ER-2191, 11-ER-2571) but there is no public record of it. (10-ER-2212; 11-ER-2567)

In 2017 Petitioners complained to then California Attorney ("AG") General Xavier Becerra. (11-ER-2421) He pleaded "lack of resources" to investigate judge wrongdoing and deferred to the CJP. (11-ER-2422)

In 2016 and 2018 Petitioners Eicherly and Chodosh filed state constitutional actions against the CJP and AG. (7-ER-1606) CJP and AG said judge "self-re-qualification" was "exercise of jurisdiction," and impeded Petitioners' subpoena to take the "self-re-qualifying" judge's deposition, as specifically permitted by California Evidence Code §703.5. (10-ER-2190, 2192, 2214)

H. California Justice System Enduring Deficiencies

In 2015 the Center for Public Integrity flunked California, grading the state "F" on "judicial accountability." A 2019 state audit concluded CJP needed substantial change by state constitutional amendment. (11-ER-2517) Recent report of the state auditor on the California State Bar, (04/14/22) indicates lapse off attorney oversight and bar rules and law enforcement.

A dysfunctional California judicial system in peril is the backdrop to Petitioners' underlying state court cases where the judges and justices did not recuse, denied disqualification, and self-re-qualified in order to take away Petitioners' fundamental procedural due process right to an impartial judiciary.

I. Prior Federal Action – This Case Not A Repeat

In 2016 Petitioners sued Respondents and state court judges in the District Court under 42 USC § 1983, *Eicherly v. O'Leary*, No. 17-55446, 721 F.App'x 625 (9th Cir. Jan. 3, 2018)(7-ER-1561) The District Court and Ninth Circuit held that *Rooker-Feldman* barred federal court jurisdiction, because Petitioners "did not allege allege extrinsic fraud anywhere in their complaint." (*Id.* at pg. 5, fn.1; 7-ER-1565) The Ninth Circuit affirmed dismissal on *Rooker-Feldman* but reversed the District Court to make the dismissed "without prejudice."

Five years later, in this case, Petitioners allege extrinsic fraud, including bribery as part of a RICO conspiracy (18 U.S.C. §1962 (d)) in which the state court

judges acted to wrongly place themselves on Petitioners' cases in order to rule against them and thereby deny them procedural due process and impartial justice.

In the five years since the section 1983 action, investigation uncovered that the disqualified judge was contacted by Respondent and asked to "call in" the "fix." It was discovered that Respondents' counsel advertises the ability to arrange after hours state court judge communication.

There have been additional facts of judicial misconduct. Following appeal, the *Chodosh* case was remanded back to trial court Judge Moss. Appellants filed a peremptory challenge. (11-ER-2396) Judge Moss sat on it for months. He signed affidavits declaring he was up to date on decisions. (10-ER-2236, 11-ER-2398). He was not for failure to rule on the disqualification which mandated "instant" ruling. He waited months to grant it.

Judge Moss had suffered no inquiry or penalty for "self-re-qualification." His further misconduct to delay Petitioners' case by perjury for paycheck displayed a pattern of judges denying Petitioners' rights to procedural due process.

J. Petitioners' Counsel Declares Judge "Fix" – No Contempt

Petitioners' counsel declared the judge "fix" in open court. (11-ER-2254) The state appellate court stated the fix declaration was direct contempt and it would consider commencing a contempt proceeding, which it did. (*Id.*)

Under California law, a court is required to hold an attorney in contempt that declares a "fix" in open court – *if the "fix" charge is not true*. *In re: Koven*, *supra*. If the charge *is true*, there can be no contempt. The state appellate court did not find contempt. (7-ER-1587) No contempt further proves a fix. (See, footnote 4, *ante*)

K. Judges and Judge Commission and AG prevent inquiry

Under California law Petitioners had the right to take testimony from Judge Moss about his order to delay the TRO while disqualified and his "self-re-qualification." California Evid. Code §703.5 (10-ER-2214)

Judicial and executive branch officials acted to deny Petitioners their right to Judge Moss' deposition. The state appellate court, by one of the justices Petitioners sued in 2016, immediately on docketing denied Petitioners' motion to take Judge Moss' deposition, violating rule that motion decision cannot issue for 15 days. (10-ER-2185, 2271) In their complaint, Petitioners prayed for expedited Judge Moss deposition. (10-ER-2316)

Judges and judge commission and attorney general impeding and preventing the deposition was a direct procedural due process violation of Petitioners' rights, before an impartial tribunal, to seek redress for the taking of property and to inquire as to the taking.

L. Court Records and Documents for Underlying Facts

Non-recusal, disqualification denial and "self-re-qualification" facts, documents, sequential court filings,

altered and back-dated documents, transcripts, and admissions prove the state court judiciary wrongdoing. See, Complaint, Exhibits B-C, 10-ER—2333 – 2380) The disqualification denial and "re-qualification" orders are listed, described, and included in prior petition to this Court, *Chodosh v. PBPA*, No. 18-9669.

M. District Judge Disqualification Motion Denied

Petitioners' RICO action was assigned to Hon. Cormac J. Carney. He was the judge on the 2016 section 1983 action, which he dismissed on *Rooker-Feldman.* The Ninth Circuit affirmed.

In this case, Petitioners moved to disqualify District Judge Carney on the ground that he had personal and local bar activity connections with the state court judicial officers named in the RICO complaint and because the Ninth Circuit had partially reversed him in the 2016 case ("with prejudice" dismissal reversed to "without" prejudice.") (9-ER-2125, 2138); *Eicherly, supra.*

The clerk assigned the motion to District Judge Hon. David O. Carter. (Dkt. 8/07/20; 9-ER-2110) Two months later (10/08/20) he denied it. (App.C at 16a) The Ninth Circuit affirmed. (App.A, 4a-5a)

N. Recent Facts - During - Appeal – General Order Non-Compliant with Disqualification Statute

The California Central District General Order governing disqualification motion procedures, under which District Judge Carter denied Petitioners' motion to disqualify, did not comply with the disqualification statute, 28 U.S.C §455.

The Chief Judge stated the general order was replaced because it was not in accord with the disqualification statute. It did not address procedure for when the District Judge personally and collegially knows local state court judges named in the action before the district court.

The new facts of former Central District General Order 13-01 disqualification deficiency were provided to the Ninth Circuit under Motion to Supplement Record (01/18/22; DktEntry 63), which was denied January 20, 2022. (App.A, 5a, fn. 4)

O. Procedural Disposition - Ninth Circuit

Petitioners appeal from Ninth Circuit decision and judgment that their RICO action may not be heard in federal court based on *Rooker-Feldman*, (App.A), affirming the District Court (App.B)

Petitioners appeal from the order, affirmed by the Ninth Circuit, of Hon. Dist. Judge David O.' Carter's denial of Petitioner's motion to disqualify Hon. Cormac J. Carney. (App.C at 16a)

Post Ninth Circuit decision Petitioners filed a Motion for Rehearing *En Banc*, DktEntry 61, 12/29/21, and a motion to supplement the record, DktEntry 63. 01/18/22), both were denied 01/20/22. (App.D, at 20a)

P. Respondents' Motion for Frivolous Appeal; Sanctions

The Ninth Circuit panel held the RICO action was "perilously close to frivolity." (App.A at 5a) On Feb. 3,

2022 Respondents filed a motion seeking sanctions for "frivolous appeal," F.R.A.P. 38 (DktEntry: 62)

Respondents sought sanctions of about $80,000 in attorneys' fees and costs. The Ninth Circuit awarded around $1,000. (DktEntry 70, 02/24/22)

Q. This Case adds facts after the 2016 section 1983 action

In seeking sanctions for frivolous appeal Respondents repeated the argument that the 2016 action, dismissed on *Rooker Feldman*, was *res judicata* or collateral estoppel so that *Rooker Feldman* automatically applied again. (DktEntry 62-2, at p. 6, 02/03/22)

The key fact is that in 2016 Petitioners did not charge judge "fix" or bribery. As the Ninth Circuit found, the prior complaint did not allege extrinsic fraud. (*Eicherly, supra*, at fn.1; 7-ER-1565) The RICO action is grounded on the same earlier facts as the prior federal action – *plus many new facts over the last five (5) years*, including evidence Respondents hired a law firm that advertised ability to contact judges after hours. (See, fn. 7, *ante*)

R. Underlying Related State Court Cases

The principal mobilehome park litigation underlying the federal actions is *Chodosh, et al. v. Palm Beach Park Association*, Cal. Court of Appeal, 12/17/18) In *Chodosh*, Petitioners filed Petition for Certiorari No. 18-9669; 10/28/19. The petition was denied 11/19/19, 140 S.Ct. 555 (2019))

The Mobilehome Park litigation encompasses other lawsuits brought in 2015, 2016 and 2018, including against JAMS, the Commission on Judicial Performance and Attorney General. Petitioners prior Petition for a Writ of Certiorari, *Chodosh v. PBPA*, No. 18-9669 covers underlying state court cases.

REASONS FOR GRANTING THE WRIT

This Court should grant certiorari to establish that a federal court cannot deny jurisdiction for claims brought by an aggrieved person against litigation opponents who conspired with and bribed the state judiciary to procure favorable rulings that deprived the person of their property. The aggrieved person is entitled to an impartial judge and opportunity to seek discovery in matters of state judiciary wrongdoing where the person's procedural due process rights under the 5th and 14th amendments are at stake.

Petitioners alleged the state court judges were conspirators with the Respondents, that they did not recuse, wrongly denied disqualification, when disqualified self-re-qualified, and refused to allow or submit to discovery, all to deny Petitioners' due process rights in the underlying state court litigation and to thereby facilitate fiduciary fraudulent conversion of Petitioners' and other seniors' valuable coastal real estate.

The Ninth Circuit disallowed federal remedy by incorrectly holding that *Rooker-Feldman* bars federal jurisdiction. It declared Petitioners' fact-grounded claims of state court wrongdoing "frivolous" and sanctioned them and their counsel for the appeal. (DktEntry 70, 02/24/22)

State court and federal courts have refused to allow the Petitioners due process discovery on requalification and its unlawful use. Petitioners are prevented from inquiring into the judicial misconduct that stripped Petitioners of their procedural due process rights and property. Petitioners are entitled to their day in court to discover the facts of how their trial judge "requalification" happened and was utilized to take their property.

The misuse of *Rooker-Feldman* as a device to ignore and trample fundamental federal procedural due process rights is an extreme abuse of judicial authority that will impair public confidence in the courts.

I. RULE 10(a) AND (c) CALL THE QUESTIONS

Supreme Court Rule 10(a) and (c) call for answers to the questions presented. Rule 10 states:

> (a) a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; . . . . or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power;
>
> (b) - [omitted] –
>
> (c) a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an

> important federal question in a way that conflicts with relevant decisions of this Court.

The decision was on a federal law question that should be settled. It conflicts with other courts of appeal, and with this Court's relevant decisions.

Allowing *Rooker Feldman* to block federal court claims for state court judge bribery, "fixing," corruption and denial of due process will promote judge misconduct, and irretrievably blemish public perception of the judiciary, inflicting loss of public confidence in the courts.

This case presents the fundamental federal law to be settled that those who complain against wrongdoer state court judicial officers for corruptly acting to deny procedural due process have a right to be heard before the federal courts as an independent judiciary and to require judges to be subject to discovery in the event they are accused of corruption.

II. NINTH CONTRADICTS OTHER CIRCUITS

This case has the same fact pattern and defendant group as a Third Circuit case where defendants were the opposing litigants, their lawyers, state court judicial officers, and members of an "alternative dispute resolution" ("ADR") company. *Great Western Mining & Minerals v. Fox Rothschild,* 615 F.3d 159, 161 (3rd Cir. 2010), *cert. denied*, 563 U.S. 904 (2011) The court described the conspiracy:

> Great Western alleges that its state-court losses were the result of a corrupt conspiracy

> between the named defendants and certain members of the Pennsylvania state judiciary to exchange favorable rulings for future employment as arbitrators with ADR Options, Inc., an alternative dispute resolution entity.

In *Great Western*, like here, the ADR company conspirator was a large ADR vendor. (615 F. 3d 161) The Third Circuit followed the Seventh Circuit in *Nesses v. Shepard*, 68 F.3d 1003, 1004 (7th Cir. 1995) where the plaintiff sued "alleg[ing] a massive, tentacular conspiracy among the lawyers and judges to engineer Nesses' defeat."

The Third Circuit held that a conspiracy between litigants, state judiciary and ADR company was not subject to *Rooker Feldman*, as it was within the "fraud on the court" exception because procedural due process had been denied. The court stated:

> As a threshold matter, we address Defendants' contention that the *Rooker-Feldman* doctrine precludes the exercise of subject matter jurisdiction over this action. We disagree, as Great Western is not "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). Rather, Great Western **asserts an independent constitutional claim that the alleged conspiracy violated its right to be heard in an impartial forum**.

(Emphasis added, 615 F. 3d 161; see also, 164-172)

The Seventh Circuit raised this Court's pronouncement that violation of procedural due process is an independent injury. *Great Western*, *supra*, 615 F.3d at 171. In *Corey v. Piphus*, 435 U.S. 247, 266 (1978) this Court held that the right to procedural due process is "absolute" because "it does not depend upon the merits of a claimant's substantive assertions, and because of the importance to organized society that procedural due process be observed (citations omitted)."

In *Nesses* and *Great Western*, state court judge involvement in the alleged conspiracy did not make *Rooker-Feldman* applicable to deny federal jurisdiction. State court judicial wrongful conduct can cause breach of procedural due process; it is an independent injury.

The Ninth Circuit, contrary to Third and Seventh Circuits, would go against District Courts that have followed *Great Western*, including in California. In *Scripsamerica, Inc. v. Ironridge Global LLC*, 56 F. Supp. 3d 1121 (C.D. Cal. 2014) the court applied *Great Western* to find *Rooker Feldman* not applicable, stating:

> *Great Western, [supra]* 615 F.3d at 173 held in a case where plaintiff alleged that adverse judgments entered against it in state court were the result of a conspiracy between defendants and the Pennsylvania judiciary, that *Rooker–Feldman* did not bar the claim because "while Great Western's claim for damages may require review of state-court judgments and even a conclusion that they were erroneous, those

> judgments would not have to be rejected or overruled for Great Western to prevail".

(56 F. Supp. 3d at 1140)

The second and fifth circuits follow *Nesses* and *Great Western*. See, *Vossbrinck v. Accredited Home Lenders, Inc.*, 773 F.3d 423, 427, 428 fn. 2 (2nd Cir. 2014); *Truong v. Bank of Am., N.A.*, 717 F.3d 377, 384-385 (5th Cir. 2013)

In the Eleventh Circuit, *Dandar v. Church of Scientology Flag Serv. Org., Inc.* 924 F. Supp. 2d 1331, 1337 (M.D. Fla. 2013), adopted the "Third Circuit's explanation in *Great Western*," that vindication for violation of an independent right is not *Rooker Feldman* barred, and invoking *Nesses*, that it is not about a state court judgment, but that the "people involved in the decision violated some independent right," *Nesses*, *supra*, 68 F.3d at 1005. The Florida District Court made a point to quote *Great Western* to warn that "**if *Rooker–Feldman* barred jurisdiction, there would be no federal remedy for a violation of federal rights whenever the violator so far succeeded in corrupting the state judicial process as to obtain a favorable judgment.**" *Great Western*, 615 F.3d at 172 (emphasis added); *Dandar*, 924 F.Supp. 2d at 1337

III. FRAUD ON COURT INCLUDES JUDGE FRAUD

The panel adopted the District Court ruling that: [Petitioners] "allegations do not merely allege a wrongful act by Defendants but a wide-spread conspiracy between Defendants and members of the state judiciary which led to alleged legal errors by the state court. This is not extrinsic fraud." (App.B at 10a]

The panelists believed that fraud on the court did not include fraud by the judicial official. At oral argument, the panel judges stated, J. Berzon: (00:48) "[I]f court is part of conspiracy how could it be fraud on the court?" J. Dorsey: (01:31) "[H]as any case held that fraud by a judge acting in the case is fraud on the court?" J. Rawlinson: (01:51) Is there a "Ninth Circuit case . . . that fraud by an individual judge constitutes fraud on the court?"

The court held there is no fraud on the court where the fraud is by the court, stating (at App.A, 3a):

> The Appellants' argument that they can nonetheless avail themselves of the extrinsic fraud exception to the *Rooker-Feldman* doctrine because the deciding judges, alleged to be co-conspirators, are not equivalent to the court that made wrongful rulings has no support in Ninth Circuit case law and would significantly expand the extrinsic fraud exception.

The panel expressly held that "fraud on the court" is *Rooker-Feldman* protected if the "deciding judges" are alleged to be conspirators in the fraud, as they are "equivalent to the court."

The decision is plainly wrong. "Fraud on the court," or "extrinsic" fraud can and must exist when the individual judicial officer commits fraud. Fraud on the court can be fraud by the court.

The decision disregards Ninth Circuit opinion that fraud on the court includes fraud by the court. *In re Intermagnetics Am., Inc.*, 926 F.2d 912, 916 (9th Cir. 1991) (emphasis added) elaborates:

> [The Ninth Circuit] recently approved the following definition of fraud upon the court proposed by Professor Moore:
>
>> "'Fraud upon the court' should, we believe, embrace only that species of fraud which does or attempts to, defile the court itself, or is a fraud perpetrated by officers of the court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases that are presented for adjudication."

Ninth Circuit precedent is that judges that conspire and act for litigants to subvert judicial integrity are part of "fraud on the court." The decision in this case transgresses Ninth Circuit law that "fraud on the court" includes "fraud by an officer of the court."[9]

The Ninth Circuit should uphold federal remedy for state court judge wrongdoing. The individual judicial officer cannot, for purposes of "fraud on the court," be considered the same as the "court." A court is an institution, not an individual.[10] The *Rooker Feldman*

9. See, e.g., *Kimes v. Stone*, 84 F.3d 1121, 1126-7 (9th Cir. 1996)(Judge and attorney defendants allegedly conspired to deprive plaintiff due process in order to take his inheritance.)

10. Acknowledging courts are institutions, *Intermagnetics*, *supra*, 926 F.2d at 916-17, stated that the inquiry focuses not so much . whether "the alleged fraud prejudiced the opposing party but more . . .. whether the alleged fraud harms the integrity of the judicial process," and quoted this Court: "[T]ampering with

exception for extrinsic fraud or "fraud on the court" includes fraud by a court officer.

It should be settled federal law that claims of state judiciary wrongdoing, such as bribery and conspiracy, are "fraud on the court," especially when a judge is part of the fraud, and that fraud on the court takes the case out of a *Rooker-Feldman* jurisdiction bar, because there has been a denial of procedural due process.

IV. EXERCISE OF SUPERVISORY POWER – ESTABLISH FEDERAL REMEDY FOR STATE JUDICIARY WRONGDOING

Rule 10(a) applies because the Ninth Circuit and state courts, on recusal and disqualification, and on application of federal law to state judiciary malfeasance and wrongdoing, have "departed from . . the usual course" such that there can be "call for an exercise of this Court's supervisory power."

In *Dennis v. Sparks*, 449 U.S. 24, 25 (1980), the Court affirmed the importance of "providing a remedy against those private persons who participate in subverting the judicial process and in so doing inflict injury on other

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the administration of justice in the manner indisputably shown here involves far more than an injury to a single litigant. It is a wrong against the institutions set up to protect and safeguard the public, institutions in which fraud cannot complacently be tolerated consistently with the good order of society, institutions in which fraud cannot complacently be tolerated consistently with the good order of society." *Hazel-Atlas Glass Co. v. Hartford Empire Co.*, 322 U.S. 238, 246, (1944), overruled on other grounds, *Standard Oil of Cal. v. U. S.*, 429 U.S. 17, 18 (1976)

persons." In *Kimes*, *supra*, 84 F.3d at 1128, the court stated the "common law did not provide immunity to private attorneys conspiring with a judge to deprive someone of their constitutional rights."

Respondents sought and obtained court ruling that *Rooker-Feldman* shields them from consequences in federal court for having contacted and bribing the disqualified and vacationing judge to fix the sale. Quoting *Great Western*, *supra*, 615 F.3d at 172, the Florida District Court in *Dander*, *supra*, 924 F. Supp. at 1337 noted such danger, that "if *Rooker–Feldman* barred jurisdiction, there would be no federal remedy for a violation of federal rights whenever the violator so far succeeded in corrupting the state judicial process as to obtain a favorable judgment."

V. VITAL THAT FEDERAL COURTS FOLLOW DISQUALIFICATION STATUTE

District Judge David O. Carter denied Petitioner's motion to disqualify District Judge Cormac J. Carney. The District Court and Ninth Circuit did not follow proper disqualification procedures in accordance with 18 U.S.C. §455.

An Eastern District, California District Court decision succinctly held what should happen where a case comes into federal court in which the local state court judges are sued. The court stated:

> Any justice, judge or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might

> reasonably be questioned." 28 U.S.C. § 455(a). Because the judges of the Fresno Division of the Eastern District of California **maintain personal and professional relationships with local state court judges, including the judges of the Fifth District Court of Appeal for the State of California**, the judges of the Fresno Division **must recuse** themselves from this case to avoid any appearance of such partiality." [emphasis added]

(Eastern District, Fresno Division, Hon. Anthony W. Ishii, Senior District Court Judge, in *Ronald E. Pierce vs. Stephen Kane, et al.* No. 1:13-cv-00178-AWI-SMS, filed March 11, 2013 (Dkt. 10/20/21, #50))

Petitioners requested judicial notice of the order, (DktEntry 50, 10/20/21) which was denied. (App.A. 5a, fn. 3)

California Central District General Order 13-01, (replaced by 21-01), did not follow the disqualification statute, 18 U.S.C §455. (DktEntry 63, 01/18/22) If it had, Petitioners case could have transferred venue.

VI. ETHICS AND PUBLIC CONFIDENCE IN JUDICIARY AT STAKE

In the 2021 Year End Report, Chief Justice Roberts highlighted the importance of federal court adherence to the highest ethics. A federal judge should not sit on a case where the named or implicated local state court judges are personally known to the federal judge or in contact through local bar and judicial activities.

The facts of state court disregard for disqualification and recusal, which the federal courts upheld, will not pass muster with the public. It is apparent that a disqualified judge that called in from vacation to enable the real estate sale did so because someone asked him to. It is not credible that no one contacted the vacationing disqualified judge and asked that he make the "call in" to save the lucrative illicit sale.

The public will struggle to figure out how the courts could allow litigants to be judged by judges that should have recused, and how judges upheld a wrongful disqualified judge "self-re-qualification."

On the federal side, there was a defective Central District General Order that did not prevent a District Judge sitting on a case where named or implicated parties include the local state court judges who are personally and collegially known to the judge.

The Court should exercise its supervisory powers to address both state and federal court failure and appearance of refusal to follow and respect rules and ethics of recusal and disqualification, thereby inflicting on Petitioners procedural due process deprivation and harming the integrity of the judiciary.

VII. RULE 10 (c) SUPPORTS THE PETITION

Rule 10(c) applies because the Ninth Circuit has denied and undermined the availability of federal remedy to persons damaged by state court malfeasance. If state court judicial officers cannot be sued in federal court because of *Rooker Feldman*, there will be no federal

remedy for state judiciary wrongdoing and harm, and violation of constitutional rights.

The public will lose confidence when facts show that an ADR company can, or it appears it can, direct judicial decisions by tempting the sitting judges with post-retirement financial opportunities.

In *Caperton v. A.T. Massey Coal Co.,* 556 U.S. 868, 876 (2009) this Court stated:

> As new problems have emerged that were not discussed at common law, however, the Court has identified additional instances which, as an objective matter, require recusal. These are circumstances "in which experience teaches that the probability of actual bias on the part of the judge or decisionmaker is too high to be constitutionally tolerable." *Withrow*, 421 U.S., at 47.

Co-existence of courts and ADR companies did not exist at common law. This is a modern judicial system development that calls for new law. Guardrails must be set where a judge that could appear to be influenced by an ADR company's post-bench retirement opportunities must recuse. The jurisprudence as to how sitting judges and ADR can lawfully mesh and not impair due process has not been established.

The failure to recuse, denials of disqualification, a justice empaneling herself or himself on an appeal where the appellants had sued the justice, while allowing and upholding patent wrongdoing of disqualified judge "self-re-qualification," transgress this Court's holdings

that courts and decision-makers "must avoid even the appearance of bias." *Commonwealth Coatings Corp. v. Cont'l. Cas. Co.*, 393 U.S. 145, 150 (1968).

VIII. JUSTICE EMPANELING HIMSELF ON APPEAL OF APPELLANTS THAT SUED THE JUSTICE

In the 2016 federal action Petitioners sued two justices of the Orange County based California Court of Appeal. The action was dismissed without prejudice January 2018., *Eicherly v. O'Leary*, *supra*, (9-ER-2125) In 2018 the justices empaneled themselves on Petitioners' appeal and denied Petitioners disqualification motions. They made decisions in the appeal, including instant denial of motion to take Judge Moss' deposition. One justice wrote the *Chodosh v. PBPA* opinion. (12/17/18; 8-ER-1709)

Misguided litigants sometimes sue judges to "judge shop." They try to force the judge off their case. See, e.g., *Andersen v. Roszkowski*, 681 F. Supp. 1284, 1289 (N.D. Ill. 1988), aff'd without opinion, 894 F.2d 1338 (7th Cir. 1990) (adding District Court judge as defendant in case improper; recusal not mandatory). When Petitioners sued the state court appellate justices they were not before the justices in any case or appeal.

Petitioners sued the two state appellate court justices. Later, over Petitioners' objections, they empaneled themselves on Petitioners' state court appeal. State Court of Appeal justices placed themselves in position to pass judgment on the appeal of parties that had sued them in federal court, on a case still viable for dismissal "without prejudice."

IX. PECUNIARY MOTIVE IMPAIRS IMPARTIALITY

Caperton, supra, 556 U.S. at 876, quotes prior opinion: "'It is axiomatic that [a] fair trial in a fair tribunal is a basic requirement of due process.' *In re Murchison*, 349 U.S. 133, 136 (1955)." However, "most matters relating to judicial disqualification [do] not rise to a constitutional level." *Id.* In this case, the complete lack of qualified judicial officers because of disregard for recusal and disqualification exceeds constitutional tolerance. On extreme facts of judicial misconduct, Petitioners' were denied impartial judiciary.

Starting in 2014, based on JAMS influence with the Orange County judiciary, and Petitioners' lawsuit against it and its co-founder the first presiding appellate justice, Petitioners made multiple disqualification motions which were denied. The judges and justices refused to recuse despite alarming appearance of bias that made impartiality intolerably improbable. They upheld disqualified judge "self-re-qualification."

This Court stated almost a century ago that it "violates the Fourteenth Amendment . . . to subject [a person's] liberty or property to the judgment of a court the judge of which has a direct, personal, substantial, pecuniary interest in reaching a conclusion against him in his case." *Tumey v. Ohio*, 273 U.S. 510, 523 (1927)

Post-bench JAMS job pecuniary interest implicates *Tumey*. Future monetary compensation can make for a disqualifying financial interest. The "financial stake need not be as direct or positive as it appeared to be in *Tumey*."

Gibson v. Berryhill, 411 U.S. 564, 579 (1973), citing *Ward v. Village of Monroeville*, 409 U.S. 57 (1972).

Justices' prospects for post–retirement positions at JAMS motivated or appeared to incentivize them to ingratiate themselves with JAMS and its founder, the first Orange Count appellate court presiding justice. The Justices had reason to rule against Petitioners that sued JAMS and its founder.[11]

This Court looks to prevent the "probability of unfairness," *In re Murchison*, *supra*, 349 U.S. at 136 This Court succinctly decreed*:* "justice must satisfy the appearance of justice." *Offutt v. U.S*., 348 U.S. 11, 14 (1954) In this case, the abundant range of suspect appearances, each grounded in documents and facts, inescapably compel the conclusion that, to "satisfy the appearance of justice", the judges and justices had to recuse and could not lawfully effectuate judge "self-re-qualification."

Former judicial officers that own ADR companies have ties with judicial officers on the bench. The law must prevent ADR company influence on sitting judges.

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11. *Monster Energy Co. v. City Beverages, LLC*, 940 F.3d 1130, 1134, 1138 (9th Cir. 2019), *cert. denied* 141 S.Ct. 164 (2020) considered how "repeat player bias" favors JAMS. It is plausible that sitting judges would be influenced to rule for JAMS "repeat players" to curry favor with JAMS for a post – bench job. Respondents are businesspeople, real estate investors, law firms, and attorneys; they can provide more JAMS business. Retired seniors will not. Judges were or appear to have been incentivized to disregard law and ethics to favor JAMS "repeat players."

X. THE DECISION CONFERS IMMUNITY TO BRIBE

Respondents assert and the Ninth Circuit agrees that their racketeering in bribing judges and obstructing justice is beyond federal jurisdiction because state court judges are involved. Judges are immune from civil liability. This court has soundly rejected the idea that private parties that bribe a judge – as alleged in this case - should also be immune from civil liability. *Dennis v. Sparks*, *supra*, 449 U.S. at 26-28 states in relevant part:

> [T]he claim was that the injunction had been corruptly issued as the result of a conspiracy between the judge and the other defendants, thus causing a deprivation of property. . . . Defendants urg[ed] dismissal for failure to allege action 'under color' of state law, a necessary component of a § 1983 cause of action . . . The court [5th Cir. *en banc*] [p. 27] ruled that there was no good reason in law, logic, or policy for conferring immunity on private persons who persuaded the immune judge to exercise his jurisdiction corruptly. . . . . [p. 28] [R]esorting to the courts and being on the winning side of a lawsuit does not make a party a co-conspirator or a joint actor with the judge. But here the allegations were that an official act of the defendant judge was the product of a corrupt conspiracy involving bribery of the judge.

The judiciary cannot immunize persons that bribe judges.

XI. THE DECISION UPHOLDS JUDGMENT FOR BRIBE

In *United States v. Manton*, 107 F.2d 834 (2d Cir. 1938), a circuit judge conspired to obstruct justice. The wrongdoer litigants argued the conspiracy to obstruct was of no effect, as the judicial decisions were legally correct. The court rejected the travesty of respect for decisions born of judge conspiracy or bribe, stating:

> No breath of suspicion has been directed against any of [the other judges that were on decisions] and justly none could be…Judicial action, whether just or unjust, right or wrong, is not for sale; and if the rule shall ever be accepted that the correctness of judicial action *taken for a price* removes the stain of corruption and exonerates the judge, the event will mark the first step toward the abandonment of that imperative requisite of even-handed justice proclaimed by Chief Justice Marshall more than a century ago; that the judge must be "perfectly and completely independent with nothing to influence or control him but God and his conscience.

(*Id.* at 846, italics original; bracketed words added).

For *Rooker-Feldman* to apply where the state-court judgment is the product of a bribe or conspiracy to obstruct justice, the court would have to give legal effect to the bribery or conspiracy. A court cannot make an illegal bargain pay off.

XII. THE QUESTIONS PRESENTED ARE VITAL TO THE PRESERVATION OF PUBLIC CONFIDENCE IN THE COURTS

Citizens know that a disqualified person, as athlete, contestant, team member, candidate, juror, or judge cannot "self-re-qualify." It is not credible that a disqualified judge, on vacation, without anyone asking him to do so, suddenly called into the case on which he was disqualified just in time to enable closing of a fiduciary fraudulent real estate sale facing a TRO. There is actual and appearance of state court judicial corruption for which there must be due process redress and right to inquiry.

A litigant that declares and alleges state court judiciary bribery, corruption and malfeasance must have remedy in federal court to protect and secure federal rights, starting with procedural due process provided by fair and impartial judicial officers.

The judicial system is impaired where litigants are denied discovery as to why a judge illegally "self-re-qualified" just in time to enable fiduciary fraud that took their homes and real estate.

Petitioners have been denied the procedural due process of impartial justice. At the same time, the denial– at minimum – is one of extreme facts that make for appearance of high probability that Petitioners were denied impartial justice because of fraud by the state court judges and justices. Petitioners should be afforded federal remedy to secure their day in court.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully Submitted,

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Dated: April ____, 2022

APPENDIX

APPENDIX A — MEMORANDUM OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, FILED DECEMBER 16, 2021

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 20-56252
D.C. No. 8:20-cv-01326-CJC-KES

FLOYD CHODOSH; et al.,

Plaintiffs-Appellants,

v.

JOHN SAUNDERS; et al.,

Defendants-Appellees.

Appeal from the United States District Court
for the Central District of California
Cormac J. Carney, District Judge, Presiding

Argued and Submitted November 19, 2021
Pasadena, California

MEMORANDUM*

Before: BERZON and RAWLINSON, Circuit Judges, and DORSEY,** District Judge.

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

** The Honorable Jennifer A. Dorsey, United States District Judge for the District of Nevada, sitting by designation.

Plaintiffs-Appellants (Appellants) appeal from the orders denying their motion to disqualify District Judge Cormac J. Carney and dismissing their claims asserting Racketeer Influenced and Corrupt Organizations (RICO) violations, RICO conspiracy, and unjust enrichment. We have jurisdiction pursuant to 28 U.S.C. § 1291. We review dismissals under the *Rooker-Feldman* doctrine de novo.[1] *See Noel v. Hall*, 341 F.3d 1148, 1154 (9th Cir. 2003). We review for abuse of discretion the denial of a motion to recuse. *See United States v. Hernandez*, 109 F.3d 1450, 1453 (9th Cir. 1997) (per curiam). We affirm the district court's ruling in its entirety.

Just as in state court and in a previous federal action,[2] Appellants allege a vast conspiracy among appellees and numerous non-defendant co-conspirators—now including the presiding district court judge, a mediation organization, former California Attorneys General, and many members of the California state judiciary—to

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1. *See Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 44 S. Ct. 149, 68 L. Ed. 362 (1923); *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 103 S. Ct. 1303, 75 L. Ed. 2d 206 (1983).

2. Appellants brought materially similar claims in 2016, then framed as violations of the Due Process Clause and the Truth in Lending Act (TILA), breach of fiduciary duty, and aiding and abetting of the same, except that the state court judges were named as defendants rather than, as now, co-conspirators but not defendants. *See Eicherly v. Moss*, No. SACV 16-02233-CJC(KESx), 2017 WL 6021426, at *2 (C.D. Cal. Mar. 29, 2017). The district court dismissed that case under *Rooker-Feldman* with prejudice. *See id.* at *3. This Court affirmed that *Rooker-Feldman* barred plaintiffs' federal claims, but remanded for dismissal without prejudice to the claims being "reassert[ed] in a competent court." *Eicherly v. O'Leary*, 721 F.App'x 625, 627 (9th Cir. 2018).

deprive them of property. *See Eicherly*, 721 F.App'x. at 626; *see also Chodosh v. Palm Beach Park Ass'n (PBPA)*, No. G053798, 2018 Cal. App. Unpub. LEXIS 8502, 2018 WL 6599824, at *11-13 (Cal. Ct. App. Dec. 17, 2018). Appellants seek damages for the actions of the alleged conspiracy although the state appellate court ruled that no conspiracy exists, and for loss of the same property rights that the state courts have repeatedly held Appellants never had. *See Chodosh v. PBPA*, 2018 Cal. App. Unpub. LEXIS 8502, 2018 WL 6599824, at *1, *11-13 & n.22; *see also Chodosh v. Saunders*, No. SACV 20-01326-CJC(KESx), 2020 U.S. Dist. LEXIS 225001, 2020 WL 7020303, at *1-*2 (C.D. Cal. Nov. 5, 2020). And Appellants consistently concede that the causes of their injury were the state courts' allegedly wrongful rulings.

The Appellants' argument that they can nonetheless avail themselves of the extrinsic fraud exception to the *Rooker-Feldman* doctrine because the deciding judges, alleged to be co-conspirators, are not equivalent to the court that made wrongful rulings has no support in Ninth Circuit case law and would significantly expand the extrinsic fraud exception. *Kougasian v. TMSL, Inc.*, 359 F.3d 1136 (9th Cir. 2004), explained that the extrinsic fraud exception applies only when a federal court plaintiff "is alleging a wrongful act by the adverse party" which "prevents a party from presenting his claim in court," not when a plaintiff solely alleges "a legal error by the state court." *Id.* at 1140-41 (citation omitted). But, as explained, Appellants had the opportunity to present their claims in state court, and the basis of Appellants' asserted injury and RICO claim is not a wrongful act by the adverse party but rather the state court's purportedly "wrongful[] adjudicat[ion]" that they were not entitled to damages.

The district court thus properly dismissed Appellants' action for lack of subject-matter jurisdiction under the *Rooker-Feldman* doctrine because it was in part a "de facto appeal" of prior state-court decisions and, to the extent it was not, it raised only claims "inextricably intertwined" with the issues decided in those state-court decisions. *Noel*, 341 F.3d at 1163-65. If "the injury alleged by the federal plaintiff resulted from the state[-]court judgment itself," the case must be dismissed. *Bianchi v. Rylaarsdam*, 334 F.3d 895, 900-01 (9th Cir. 2003) (citations omitted); *see also Cooper v. Ramos*, 704 F.3d 772, 782 (9th Cir. 2012) (explaining that claims, as well as requests for relief "contingent upon a finding that the state court decision was in error" are "inextricably intertwined" with state-court decisions when federal adjudication "would impermissibly undercut the state ruling on the same issues" (citation and internal quotation marks omitted)).

Appellants also seek to disqualify Judge Carney under 28 U.S.C. §§ 144 and 455. "Section 144 provides a procedure for a party to recuse a judge. Section 455 imposes an affirmative duty upon judges to recuse themselves." *Yagman v. Republic Ins.*, 987 F.2d 622, 626 (9th Cir. 1993). Under both statutes, disqualification is appropriate if "a reasonable person with knowledge of all the facts would conclude that the judge's impartiality might reasonably be questioned. . . ." *Id.* (citations and internal quotation marks omitted). Appellants argue that Judge Carney should have been disqualified because he ruled against them in their prior federal case and this Court "reversed" that ruling.[3] But this Court did not

3. Appellants' speculation about Judge Carney's finances, personal relationships, or future plans is without any support in the record and is so obviously meritless that we deem it unnecessary to address it.

"reverse" the district court in the previous action—it affirmed the dismissal and remanded. *See Eicherly*, 721 F. App'x at 627-28. And, regardless, adverse rulings by the district court provide no basis for recusal. *See United States v. Studley*, 783 F.2d 934, 939 (9th Cir. 1986). We conclude, therefore, that the district court did not abuse its discretion by denying Appellants' motion to disqualify Judge Carney.

This litigation has dragged on unnecessarily for years and is now perilously close to frivolity. *See Ingle v. Circuit City*, 408 F.3d 592, 595 (9th Cir. 2005) (describing an appeal as frivolous "if the result is obvious or the appellant's arguments are wholly without merit") (citation omitted). Appellants should consider themselves warned that any future filings asserting these meritless claims may result in the imposition of substantial monetary sanctions. *See id.*

AFFIRMED.[4]

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4. All Requests for Judicial Notice (Docket numbers 31, 50, 52) are DENIED as unnecessary to resolution of this appeal.

APPENDIX B — ORDER OF THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA, SOUTHERN DIVISION, FILED NOVEMBER 5, 2020

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA,
SOUTHERN DIVISION

November 5, 2020, Decided;
November 5, 2020, Filed

Case No.: SACV 20-01326-CJC(KESx)

FLOYD CHODOSH, SUE EICHERLY, MYRLE MOORE, OLE HAUGEN, TODD PETERSON, AND RODGER KANE, JR.,

Plaintiffs,

v.

JOHN SAUNDERS, *et al.*,

Defendants.

ORDER GRANTING DEFENDANTS' MOTION TO DISMISS [Dkt. 37] AND DENYING DEFENDANTS' MOTION TO STRIKE [Dkt. 38] AND MOTION FOR SANCTIONS [Dkt. 35]

I. INTRODUCTION

Plaintiffs Floyd Chodosh, Sue Eicherly, Myrtle Moore, Ole Haugen, Todd Peterson, and Rodger Kane, Jr. bring this action against John Saunders, Robert Coldren, ICC 35902 LLC, 3187 Redhill LLC, Pacific Current Partners, Diana Mantelli, George Fiori, Lisa Salisbury, Allen L. Thomas, Cary Wood, Edward Susolik, and Fidelity National Title Company. (Dkt. 1 [Complaint, hereinafter "Compl."].) Defendants 3187 Redhill LLC, Robert Coldren, George Fiori, ICC 35902 LLC, Diana Mantelli, Pacific Current Partners, Lisa Salisbury, John Saunders, and Edward Susolik now move to dismiss Plaintiffs' Complaint. (Dkt. 37.) Defendants also move to strike Plaintiffs' claim for unjust enrichment pursuant to California's Anti-SLAPP law and for sanctions pursuant to Federal Rule of Civil Procedure 11. (Dkts. 35 [Motion for Sanctions, hereinafter "Rule 11 Mot."], 38 [Motion to Strike, hereinafter "MTS"].) For the following reasons, the motion to dismiss is **GRANTED** pursuant to the *Rooker—Feldman* doctrine and the entire case is **DISMISSED WITHOUT PREJUDICE**. The motion to strike and the motion for sanctions are **DENIED**.[1]

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1. Having read and considered the papers presented by the parties, the Court finds this matter appropriate for disposition without a hearing. *See* Fed. R. Civ. P. 78; Local Rule 7-15. Accordingly, the hearings set for November 9, 2020 and November 16, 2020, at 1:30 p.m. are hereby vacated and off calendar.

II. BACKGROUND

Plaintiffs are former residents of or owners of property in Palm Beach Park, a mobile home park in San Clemente, California. (Compl. ¶ 10.) The core of their 157-page complaint is that Defendants agreed and conspired with each other and other non-Defendants to enforce purportedly unlawful leases, HOA memberships, and residential loans pertaining to Palm Beach Park, resulting in judgments against Plaintiffs in two cases decided by California Superior Court Judge Robert Moss, *Chodosh v. Palm Beach Park Assoc., et al.*, Cal. Super. Ct. No. 30-2010-00423544, and *Haugen v. PBPA*, Cal. Super. Ct. Case No. 30-2015-0081937. (*Id.* ¶¶ 78-239.) Plaintiffs allege that Defendants, members of the California state judiciary, mediation organization JAMS, and others engaged in bribery, perjury, extortion, "judge crime," and other misconduct to "fix" the cases against Plaintiffs. (*See, e.g., id.* ¶¶ 87-88, 93-100, 130-35, 148-50, 156-57, 174-78, 200-02.)

Prior to this suit, Plaintiffs sued Judge Moss and other defendants in this Court asserting a violation of the Truth in Lending Act, 15 U.S.C. §§ 1601 *et seq.*, and breach of fiduciary duties, based on the same allegations. *See Eicherly v. Moss*, 2018 U.S. Dist. LEXIS 24776, 2018 WL 813361 (C.D. Cal. Feb. 1, 2018) (the "*Eicherly* action"). This Court dismissed Plaintiffs' complaint in its entirety without prejudice under the *Rooker Feldman* doctrine.[2]

2. The Court initially dismissed the complaint with prejudice. *Eicherly v. Moss*, 2017 WL 6021426, at *3 (C.D. Cal. Mar. 29, 2017). The Ninth Circuit affirmed the dismissal but remanded the case for this Court to dismiss plaintiffs' claims without prejudice for lack of

Eicherly v. Moss, 2018 U.S. Dist. LEXIS 24776, 2018 WL 813361, at *3 (C.D. Cal. Feb. 1, 2018).

As a result of Defendants' alleged conduct, Plaintiffs assert three claims for (1) violation of the Racketeer Influenced and Corrupt Organizations ("RICO") Act, (2) RICO conspiracy, and (3) unjust enrichment. (Compl. ¶¶ 778-829.)

III. DISCUSSION

A. Motion to Dismiss

The Court does not have subject matter jurisdiction over this case pursuant to the *Rooker Feldman* doctrine, which provides that federal courts do not have jurisdiction over cases that constitute de facto appeals from state court judgments. *Bianchi v. Rylaarsdam*, 334 F.3d 895, 898 (9th Cir. 2003). If "claims raised in the federal court action are 'inextricably intertwined' with the state court's decision such that the adjudication of the federal claims would undercut the state ruling or require the district court to interpret the application of state laws or procedural rules, then the federal complaint must be dismissed for lack of subject matter jurisdiction." *Id.* This doctrine applies even if the plaintiff asserts that the state judgment violated his or her federal rights. *Worldwide Church of God v. McNair*, 805 F.2d 888, 891 (9th Cir. 1986). If the alleged injury resulted in the state judgment itself, *Rooker—Feldman* applies. *Bianchi*, 334 F.3d at 900.

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subject matter jurisdiction. *Eicherly v. O'Leary*, 721 Fed. App'x 625 (9th Cir. 2018).

Plaintiffs rely on *Kougasian v. TMSL, Inc.*, 359 F.3d 1136 (9th Cir. 2004), for the proposition that *Rooker—Feldman* does not apply because they allege "fraud on the court" as "a direct post-judgment attack," and not "a legal error by the state court," *see id.* at 1140. (Dkt. 54 at 5-6.) Yet this is the exact type of case precluded by *Rooker—Feldman*, which bars "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, 125 S. Ct. 1517, 161 L. Ed. 2d 454 (2005).

Plaintiffs fail to establish that their claims fall within the narrow extrinsic fraud exception, which permits causes of action where a plaintiff "alleg[es] a wrongful act by the adverse party," not "a legal error by the state court." *Kougasian*, 359 F.3d at 1140-41. Plaintiff's allegations do not merely allege a wrongful act by Defendants but a wide-spread conspiracy between Defendants and members of the state judiciary which led to alleged legal errors by the state court. This is not extrinsic fraud. *See Scannell v. Wash. State Bar Ass'n* 2013 U.S. Dist. LEXIS 203701, 2013 WL 12423276, at *8 (W.D. Wash. July 1, 2013) (refusing to apply the extrinsic fraud exception when "Plaintiff here does not allege fraud on the State Court by WSBA Defendants—he alleges that the State Court, in conjunction with the WSBA Defendants, conspired to deprive him of his rights.").

"Plaintiffs may not make an end-run around *Rooker—Feldman* by limiting their claim" to monetary damages. *O'Leary*, 721 F. App'x at 627. Here, just as in the *Eicherly* action, "plaintiffs' federal claims (1) complain of legal wrongs committed by the state court and (2) seek relief from the decisions of that court. As such, they are de facto appeals barred by *Rooker Feldman.*" *Id.* That Plaintiffs now stylize their claims for relief as rising from RICO does not cure this deficiency. Accordingly, dismissal of the entire case is warranted because the Court lacks subject-matter jurisdiction over Plaintiffs' claims. *See Riding v. Cach LLC*, 992 F. Supp. 2d 987, 992 (C.D. Cal. 2014) ("A challenge under the *Rooker Feldman* doctrine is a challenge for lack of subject-matter jurisdiction and may be raised at any time by either party or sua sponte by the court.").

B. Motion to Strike

In addition to their motion to dismiss, Defendants separately moved to strike Plaintiffs' state law claim for unjust enrichment under California's anti-SLAPP statute, Cal. Code Civ. Proc. § 425.16. (MTS.) California's anti-SLAPP statute was "enacted to allow early dismissal of meritless first amendment cases aimed at chilling expression through costly, time-consuming litigation." *Metabolife Intern., Inc. v. Wornick*, 264 F.3d 832, 839 (9th Cir. 2001). To support an anti-SLAPP motion, "a defendant must make an initial prima facie showing that the plaintiff's suit arises from an act in furtherance of the defendants' rights of petition or free speech." *Vess v. Ciba-Geigy Corp. USA*, 317 F.3d 1097, 1110 (9th Cir. 2003).

The fact that Plaintiffs filed their unjust enrichment claim due to previous litigation does not mean that the claim "arises from" protected activity. *See Sonoma Foods, Inc. v. Sonoma Cheese Factory, LLC*, 634 F. Supp. 2d 1009, 1016 (N.D. Cal. 2007). "[T]he critical point is whether the cause of action itself was *based on an* act in furtherance of [Defendants'] right of petition or free speech." *Id.* at 1017. Defendants have not demonstrated "that the actual acts underlying [Plaintiffs' claim for unjust enrichment] were acts taken by [Defendants] in furtherance of the right to petition or free speech." *See id.* Specifically, they fail to identify what expressive actions were targeted by Plaintiffs' unjust enrichment claim. (*See* MTS at 10-11.) From the face of the Complaint, Plaintiffs' unjust enrichment claim is based on Defendants' involvement in the sale of Palm Beach Park, not on Defendants' right to petition or free speech.

C. Motion for Sanctions

Defendants also move for sanctions against Plaintiffs pursuant to Federal Rule of Civil Procedure 11. Imposing sanctions under Rule 11 "is an extraordinary remedy, one to be exercised with extreme caution." *Operating Eng'r Pension Tr. v. A-C Co.*, 859 F.2d 1336,1345 (9th Cir. 1988). Courts have "significant discretion" when determining whether to award sanctions. *See* Fed. R. Civ. P. 11(b), Advisory Committee Notes (1993 Amendment). "[T]he central purpose of Rule 11 is to deter baseless filings in district court and . . . streamline the administration and procedure of the federal courts." *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 393, 110 S. Ct. 2447, 110 L. Ed. 2d 359 (1990).

Under Rule 11, the party moving for sanctions must serve the motion on the opposing party pursuant to Rule 5 no less than twenty-one days before filing the motion with the court. Fed. R. Civ. P. 11(c)(2). This safe harbor period allows the opposing party to withdraw or appropriately correct "the challenged paper, claim, defense, contention, or denial" without penalty. *Id.; Holgate v. Baldwin*, 425 F.3d 671, 678 (9th Cir. 2005). The Court must strictly apply these procedural requirements. *See Radcliffe v. Rainbow Constr. Co.*, 254 F.3d 772, 789 (9th Cir. 2001). If the opposing party fails to remediate the concern, the moving party may file the motion with the court "describ[ing] the specific conduct that allegedly violates Rule 11(b)." Fed. R. Civ. P. 11(c)(2).

Provided these procedural requirements are met, the court may sanction an attorney under Rule 11 for filing a pleading or other paper that is "frivolous, legally unreasonable, or without factual foundation, or is brought for an improper purpose." *Estate of Blue v. Cty. of Los Angeles*, 120 F.3d 982, 985 (9th Cir. 1997); Fed. R. Civ. P. 11(b). However, if "judged by an objective standard, a reasonable basis for the position exists in both law and in fact at the time that the position was adopted, then sanctions should not be imposed." *Golden Eagle Distrib. Corp. v. Burroughs Corp.*, 801 F.2d 1531, 1538 (9th Cir. 1986).

Defendants have not met the strict procedural requirements for a motion to strike. Defendants served Plaintiffs with their motion to strike on September 4, 2020 by leaving the documents at Plaintiffs' counsel's office

door. (Dkt. 35-3 [Rule 11 Motion Proof of Service].) The same day, Defendants also provided a draft of the motion to Plaintiffs' counsel by email. (Dkt. 35-1 [Declaration of James M. Sabovich] ¶ 2; *see* Dkt. 35-2 [Rule 11 Motion email].)

When completing service by leaving documents at a person's office, documents must be left "with a clerk or other person in charge." *Id.* 5(b)(2)(B)(i). If the office is closed, the documents must be served "at the person's dwelling or usual place of abode with someone of suitable age and discretion who resides there." *Id.* 5(b)(2)(B)(ii). Leaving documents at Plaintiffs' counsel's office door is not proper service under Rule 5. *See Van v. Language Line LLC*, 2016 U.S. Dist. LEXIS 130753, 2016 WL 5339805, at *6 (N.D. Cal. Sept. 23, 2016) ("Leaving documents at a recipient's door does not fall within the methods of service expressly approved in Rule 5(b)."); *see also Davis v. Electronic Arts Inc.*, 2017 U.S. Dist. LEXIS 147621, 2017 WL 8948082, at *1 (N.D. Cal. Sept. 12, 2017) (service was improper under Rule 5 when plaintiffs attempted to serve defendant by "sliding the discovery requests under defense counsel's office door").

Nor is emailing documents to defense counsel without consent in writing. *See* Fed. R. Civ. P. 5(b)(2)(E); *Davis*, 2017 U.S. Dist. LEXIS 147621, 2017 WL 8948082, at *2. Consent "must be express, and cannot be implied from conduct." Fed. R. Civ. P. 5, Advisory Committee Notes, 2001 Amendment. Defendants have not provided evidence that Plaintiffs consented to service by email. Because Defendants failed to comply with the strict procedural

requirements of Rule 11, their motion for sanctions must be denied. *See Radcliffe*, 254 F.3d at 789.

IV. CONCLUSION

For the foregoing reasons, Defendants' motion to dismiss is **GRANTED** and Defendants' motion to strike and motion for sanctions are **DENIED**. Because the Court lacks subject matter jurisdiction over Plaintiffs' claims, the entire case is **DISMISSED WITHOUT PREJUDICE**.[3]

DATED: November 5, 2020

/s/ Cormac J. Carney
HON. CORMAC J. CARNEY
UNITED STATES
DISTRICT JUDGE

3. Accordingly, the remaining Defendants' motions to dismiss, (Dkts. 39, 43, 44), are **DENIED AS MOOT**.

APPENDIX C — ORDER OF THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA, FILED OCTOBER 8, 2020

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Case No. SA CV 20-01326-CJC-KES

CIVIL MINUTES — GENERAL

FLOYD CHODOSH *et al.*,

v.

JOHN SAUNDERS *et al.*

October 8, 2020, Decided
October 8, 2020, Filed

PRESENT: THE HONORABLE
DAVID O. CARTER, JUDGE

PROCEEDINGS (IN CHAMBERS): ORDER DENYING PLAINTIFF'S MOTION TO DISQUALIFY JUDGE CORMAC C. CARNEY [11]

Before the Court is Plaintiff Floyd Chodosh's ("Plaintiff") Motion to Disqualify Assigned Judge Hon. Cormac J. Carney ((Dkt. 11). The Court finds this matter appropriate for resolution without oral argument. *See* Fed. R. Civ. P. 78; C.D. Cal. R. 7-15. Having considered Plaintiff's Motion, the Court hereby DENIES the requested relief.

I. Legal Standard

Title 28 of the U.S. Code provides for disqualification of a judge whenever "a party to any proceeding in a district court makes and files a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party." 28 U.S.C. § 144. The affidavit must set forth "the facts and the reasons for the belief that bias or prejudice exists." *Id.*

Under § 144 this Court asks "whether a reasonable person with knowledge of all the facts would conclude that the judge's impartiality might reasonably be questioned." *United States v. Hernandez*, 109 F.3d 1450, 1453-54 (9th Cir. 1997) (per curiam) (quoting *United States v. Studley*, 783 F.2d 934, 939 (9th Cir. 1986)). Impermissible "personal bias" is generally a bias derived from extra-judicial origins, as opposed to an opinion formed during the course of litigation. *Craven v. United States*, 22 F.2d 605, 607 (1st Cir. 1927), *accord United States v. Carignan*, 600 F.2d 762, 763-64 (9th Cir. 1979). Indeed, "opinions formed by the judge on the basis of facts introduced or events occurring in the course of the current proceedings, or of prior proceedings, do not constitute a basis for a bias or partiality motion unless they display a deep-seated favoritism or antagonism that would make fair judgment impossible." *Liteky v. United States*, 510 U.S. 540, 555, 114 S. Ct. 1147, 127 L. Ed. 2d 474 (1994). More specifically, "judicial remarks during the course of a trial that are critical or disapproving of, or even hostile to, counsel, the parties, or their cases, ordinarily do not support a bias

or partiality challenge." *Id.* (noting that "expressions of impatience, dissatisfaction, annoyance, and even anger" do not establish bias, nor do "ordinary efforts at courtroom administration"). Further, "judicial rulings almost never constitute a valid basis for a bias or partiality motion." *Id.*

II. Discussion

Chodosh seeks to disqualify Judge Carney. Mot. at 2. Thus, the Court must consider whether Chodosh has demonstrated that Judge Carney's "impartiality might reasonably be questioned" under a reasonable person standard. *Hernandez*, 109 F.3d at 1453-54. Chodosh does not meet the standard.

In support of his Motion, Chodosh reviews the lengthy history of this case and describes Judge Carney's previous rulings against the Plaintiff. Mot. at 2-8. Plaintiff further argues that Judge Carney is involved in a conspiracy with Judge Robert J. Moss to "dismiss Plaintiffs' case with prejudice so that it would be forever lost." *Id.* ¶ 6. As part of this conspiracy, Plaintiff argues that Judge Carney intentionally failed to follow the law and committed what plaintiff refers to as "judge crime." *Id.* at ¶ 2, 3.

The crux of Plaintiff's argument is that Judge Carney's adverse rulings demonstrate prejudice or bias against Chodosh. *See* Mot. at 17. However, adverse rulings do not provide grounds for disqualification. Indeed, it is well established that "a judge's prior adverse ruling is not sufficient cause for recusal." *Studley*, 783 F.2d at 939; *see also Liteky*, 510 U.S. at 555 ("[J]udicial rulings alone almost never constitute a valid basis for a bias or partiality recusal motion.").

Based on the foregoing, the Court finds no reasonable person with knowledge of all the facts would conclude Judge Carney's "impartiality might reasonably be questioned." *Hernandez*, 109 F.3d at 1453-54. Accordingly, the Court **DENIES** the Motion.

The Clerk shall serve this minute order on the parties.

APPENDIX D — ORDER DENYING REHEARING OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, FILED JANUARY 20, 2022

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 20-56252
D.C. No. 8:20-cv-01326-CJC-KES
Central District of California,
Santa Ana

FLOYD CHODOSH; SUE EICHERLY; MYRLE MOORE; OLE HAUGEN; TODD PETERSON; RODGER KANE, JR.,

Plaintiffs-Appellants,

v.

JOHN SAUNDERS; ROBERT S. COLDREN; ICC 35902 LLC, A DELAWARE LIMITED LIABILITY COMPANY; 3187 REDHILL LLC, A DELAWARE LIMITED LIABILITY COMPANY; PACIFIC CURRENT PARTNERS, A CALIFORNIA LIMITED LIABILITY COMPANY; DIANA MANTELLI; GEORGE FIORI; LISA SALISBURY; EDWARD SUSOLIK; ALLEN L. THOMAS; CARY WOOD; FIDELITY NATIONAL TITLE COMPANY, A CALIFORNIA CORPORATION,

Defendants-Appellees.

Appendix D

January 20, 2022, Filed

Before: BERZON and RAWLINSON, Circuit Judges, and DORSEY,* District Judge.

ORDER

Judges Berzon and Rawlinson voted to deny, and Judge Dorsey recommended denying, the Petition for Rehearing En Banc.

The full court has been advised of the Petition for Rehearing En Banc, and no judge of the court has requested a vote.

Appellants' Petition for Rehearing En Banc, filed December 29, 2021, is DENIED.

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* The Honorable Jennifer A. Dorsey, United States District Judge for the District of Nevada, sitting by designation.