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In Propria Persona

United States District Court
Central District of California

Adam Bereki, a man Plaintiff vs. Gary Humphreys, a man; Karen Humphreys, a woman; Defendants	Case No.: 8:19–CV–02050 (CBM)(ADSx) PLAINTIFF'S ADDITIONAL AUTHORITIES AND CORRECTED TESTIMONY TO BE CONSIDERED BY THE COURT RE: DEFENDANTS MOTION TO DISMISS FILED 11/19/19

Pursuant to this Court's Order at the hearing regarding Defendant's Motion to Dismiss on January 14, 2020, Plaintiff submits the following additional authorities for consideration with a brief reference to the issues raised in his Complaint and Opposition to Defendants Motion:

1. With regard to the issue of the "penal" and "draconian" nature of Business and Professions Code §7031: *American Sheet Metal, Inc. v. Emkay Engineering Co.*, 478 F.Supp. 809, 814 (1979); See also *Sheldon v. Metro–Goldwyn Pictures Corp.*, 309 U.S. 390, 400 (1940).
2. With regard to the issue that Defendants Motion to Dismiss on the grounds of FRCP 12(b)(1) and 12(b)(6): The Motion is *moot* because Defendants have not and cannot sustain the jurisdiction of the "trial" and "appellate" "Courts" upon whose judgments they rely. ("To qualify as a case fit for federal-court adjudication, an actual controversy must be extant at all stages of review..." [Citation]"), *Arizonans for Official English, v. Arizona*, 520 U.S. 43, 67 (1997). There is no controversy with regard to this Court's jurisdiction since Defendants *did not oppose* the sworn testimony and evidence (including the entire judgment roll) submitted by Plaintiff in his Complaint and Opposition that clearly and unambiguously exhibit the "trial" and "appellate" "Court" judgments are void for numerous violations of due and judicial process, extrinsic fraud, fraud on the Court, and lack of *in personam* and subject matter jurisdiction. In a challenge to jurisdiction, such as that initiated by Defendants, the burden to prove jurisdiction *also* rests upon them to prove that the judgments which they rely upon in asserting the Rooker-Feldman Doctrine are lawful, valid, judicial determinations of the Rights of the parties in which there was a full and fair hearing

commensurate with due process on each of the issues involved. This is because (1) the Rooker-Feldman Doctrine does not apply to void judgments (see issues 3, 4, and 5 below); (2) Plaintiff impeached the validity of the judgments with sworn testimony and evidence; and, (3) the Court was not sitting as a Court of common Law general jurisdiction, but in a special statutory jurisdiction whose jurisdiction must appear on the record and does not. (Fir. Am. Complaint pp.64-5). *Mc Nutt v. General Motors*, 298 U.S. 178, 189 (1936). The Court cannot assume the truth of allegations in Defendants pleading that are contradicted by Plaintiff's sworn affidavits and the judgment roll. *Data Disc, Inc. v. Systems Technology Access. Inc.*, 557 F.2d 1280, 1284 (9th Cir.).

3. With regard to the issue that judgments rendered in violation of due process are void and not entitled to full faith and credit: *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 291 (1980) citing *Pennoyer v. Neff*, 95 U.S. 714, 732-3 (1877) (overruled on other grounds); *Twin City Fire Ins. Co.*, 400 F.3d 293, 299 (6th Cir. 2005).
4. With regard to the issue that the Rooker-Feldman Doctrine does not apply to void judgments and that the United States Supreme Court has made it clear District Courts can entertain independent actions that attack State Court judgments as void: *Atchison, T & S.F. Ry. Co. v. Wells*, 265 U.S. 101, 103 (1924) (1 year post Rooker); *Simon v. Southern Railway Co.*, 236 U.S. 115, 122 (1915) (pre Rooker); *United States v. Bigford*, 365 F.3d 859, 865 (10th Cir.

2004) citing *Burnham v. Super. Ct. of Cal.*, 495 U.S. 604, 608–9 (1990); *Williams v. Life Sav. & Loan*, 802 F.2d 1200, 1202 (10th Cir. 1986).

5. With regard to the issue that District Courts can entertain independent actions to vacate void judgments when such claims are also authorized by State law: *Fontana Empire Ctr., LLC v. City of Fontana*, 307 F.3d 987, 993, 995 (9th Cir. 2002); *Simon v. Southern Railway Co.*, 236 U.S. 115, 122-3 (1915); *Wells Fargo & Co. v. Taylor*, 254 U.S. 175, 189 (1920); *Davis v. Bayless,* 70 F.3d 367, 376 (5th Cir. 1995). California law supports such actions: *Rochin v. Pat Johnson Manufacturing Co.,* 67 Cal. App.4th 1228, 1239 (1998); Cal. Code of Civil Proc. §1916. See also Article IV, Section 1 which *only* applies to *judicial* proceedings.
6. With regard to the issue that the Rooker-Feldman Doctrine – or *any* other rules or legislative enactments – cannot be used as a means to abrogate Plaintiffs Rights secured by the Constitution: *Miranda v. Arizona*, 384 U.S. 436, 491 (1966).
7. With regard to the issue that Rooker-Feldman does *not* apply to claims not determined on appeal: See *Simes v. Huckabee*, 354 F.3d 823, 828-9 (8th Cir. 2004) citing *Gulla v. North Strabane Township*, 146 F.3d 168, 172–3 (3d. Cir. 1998) and *Robinson v. Ariyoshi*, 753. F.2d 1468, 1471 (9th Cir. 1985). Because there was not a full and fair hearing in this matter, none of the claims or issues were determined at "trial" or "appeal".

8. With regard to the issue that the People of California have no access to a judicial Constitutional Court that will follow substantive due and judicial process in the adjudication of the alleged non-punitive, equitable, "disgorgement" claims under Business and Professions Code §7031: The complete failure of California's system as evidenced in and of itself precludes the application of any abstention or preclusion doctrines, including Rooker-Feldman, because the use thereof would ("deprive [a] Plaintiff of any forum, state or federal, where he has a reasonable opportunity to present his federal constitutional claims, [as required by] due process"). *Simes v. Huckabee*, 354 F.3d 823, 828 (8th Cir., 2004) citing *Wood v. Orange County*, 715 F.2d 1543, 1547 (11th Cir., 1983).
9. With regard to the issue that the United States Supreme Court has confirmed the power of federal district courts to set aside or enjoin state-court judgments procured by fraud. *Kougasian v. TMSL*, Inc. 359 F.3d 1136, 1141 (9th Cir. 2004); *Barrow v. Hunton,* 99 U.S. 80, 83 (1878); *Marshall v. Holmes*, 141 U.S. 589, 601 (1891). It is extrinsic fraud and fraud on the Court when a judicial officer, such as the trial Court judge and all three appellate Court Justices base their findings and determinations on evidence that is <u>not</u> on the record. See Plaintiffs Fir. Am. Complaint p.70, and his Declaration in Opposition to Defendants Motion to Dismiss.
10. With regard to the issue that a Court sitting in Equity reviewing a judgment for fraud is <u>not</u> acting as a Court of review and

therefore not conducting a "de facto appeal": *McDaniel v. Taylor*, 196 U.S. 415, 422-3 (1905).

11. With regard to the issue that vacating a void judgment is a mere formality, *not* a "de facto appeal", and does not intrude upon the notion of state-federal interests: *In re James*, 940 F.2d 46, (3rd Cir. 1991).

12. With regard to the issue that the State "Courts" were without subject matter jurisdiction: Each of the financial transactions that took place in this case between the parties were made by commercial negotiable instruments, circulating in interstate commerce. See Exhibit [L] pp. 559-594. In *Bank of Columbia v. Okely*, the US Supreme Court held, ("[b]y making the note negotiable at the Bank of Columbia, the debtor chose his own jurisdiction; in consideration of the credit given him, he voluntarily relinquished his claims to the ordinary administration of justice and placed himself only in the situation of an hypothecater of goods, with power to sell on default, or a stipulator in the admiralty..."). 17 U.S. 235 at 243 (1819). Every competent jurist knows that money and law go hand in glove. This is precisely why the Constitution declares at Article 1, Section 10 that "No State shall... make any Thing but gold and silver Coin a Tender in Payment of Debts..."; and why the authority to exercise

Admiralty (aka interstate commerce[1]) was specifically given to Congress and not the States. Article 1, Section 8, Cl. 3. It is also precisely why section 9 of the Judiciary Act of 1789 declares ([t]hat the district courts shall have, exclusive... cognizance of all civil causes of admiralty and maritime jurisdiction). See also Article 3, Section 2. ("The case of a State which pays off its own debts with paper money [ie Federal Reserve *Notes*] no more resembles this than do those to which we have already adverted. The Courts have no jurisdiction over the contract. They cannot enforce it, nor judge of its violation"). *Cohens v. Virginia*, 19 U.S. 264, 403-4 (1821). ("Let it be that the act discharging the debt is a mere nullity, and that it is still due"). *Id.* See also: (1) the Report of the Debates in the Convention of California on the formation of the State Constitution in September and October, 1849 regarding the "evils" of paper money, pp. 108-121, as well as sections 34 and 35 of the Constitution of 1849 resulting from this convention[2]. It should also be carefully noted that according to the California Secretary

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[1] See *New Jersey Steam Navigation Co. v. Merchants Bank of Boston*, 47 U.S. 344, 392 (1848) ("The exclusive jurisdiction in admiralty cases was conferred on the national government, as closely connected with the grant of the commercial power)".

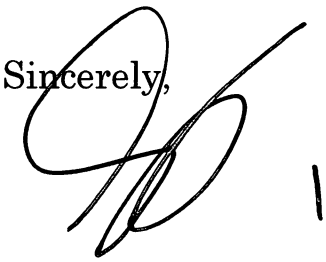
[2] "Sec. 34. The Legislature shall have no power to pass any act granting any charter for banking purposes; but associations may be formed, under general laws, for the deposite of gold and silver, but no such association shall make, issue, or put in circulation, any bill, check, ticket, certificate, promissory note, or other paper, or the paper of any bank, to circulate as money. **Sec.35. The Legislature of this State shall prohibit, by law, any person or persons, association, company, or corporation, from exercising the privileges of banking, or creating paper to circulate as money."**

of State, the Constitution of 1849 has never been repealed; (2) Congressional Record– House August 19, 1940 pp.10548-10555 ("the Federal Reserve System is a private banking system, and every dollar of credit it puts into circulation is based on someone's debt...") p.10550. In other words, with the government confiscation of Lawful money in connection with the Trading With The Enemy Act [12 USC 95a; *United States v. Levy*, 137 F.2d 778 (1943)], the American People have no right to their property in the form of their time and labor and no right to own property since the only currency in circulation is mere evidence of a debt. All transactions regarding Federal Reserve Notes and other commercial negotiable instruments are in admiralty, not common Law upon which, in this case, California was admitted. The result is that all of the property purchased with Federal Reserve Notes or other negotiable, commercial instruments is not the property of the People or the holders, but of the creditor(s), aka the Federal Reserve Bank. This is precisely the reason the Founders, in addition to the aforementioned declarations in Articles 1 and 3, termed the Rights of the People "inalienable". That is, not lien-able, non-commercial. Refer also to Exhibit [F] pp.268-270, whereby even the People of California's birth certificates, such as Plaintiff's, have been monetized, assigned bank note numbers (p.268) and are printed on commercial bond security paper. Plaintiff is a living being, not a negotiable instrument or article (thing) in commerce. "California" therefore is not sitting in its

Constitutional Lawful de jure sovereign capacity as a State, but is instead operating as a fiction/thing in Admiralty/Commerce which is anti–Constitutional and treasonous. *Cohens*, supra p.404.

13. With regard to the issue that the purported "State" entity of "California" to which the Rooker-Feldman Doctrine *could* apply is *not* exercising a republican form of government and therefore does not have the status, standing, or capacity of a Lawful de jure State admitted into "this union", see Plaintiff's Fir. Am. Complaint pp.56-68: Without access to a judicial Constitutional Court, no access to Lawful money to pay debts and no Legislative quorum commensurate with a republican and representative form of government to do any business, it is unknown exactly which entity Defendants are asserting the Rooker-Feldman Doctrine could apply. They have again failed to meet their burden on this issue.
14. Plaintiff noticed a discrepancy in his testimony on p.15, lines 12-20 of his Declaration in Support of his Opposition and wishes to correct it: the sentence should read: "This is significant in and of itself as the record reveals not only that Brockway didn't testify, but that Defendants also failed to provide the evidence on this issue. This is because Brockway's conclusions that Spartan performed the work and contracted with the Humphreys (Exhibit [H] p.300) would not support their scheme to commit fraud on the Court through their amended first cause of action". I declare under penalty of perjury under the laws of the United State of America that the foregoing is true and correct.

Sincerely,



1/16/20

Adam Bereki

PROOF OF SERVICE

I hereby certify that I served a complete copy of PLAINTIFFS ADDITIONAL AUTHORITIES AND CORRECTED TESTIMOY TO BE CONSIDERED BY THE COURT RE: DEFENDANTS MOTION TO DISMISS FILED 11/19/19 upon the following parties on January 16, 2020

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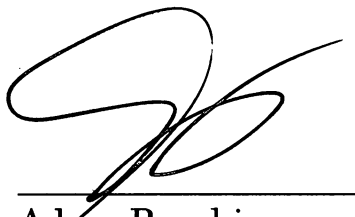

Adam Bereki

1/16/20
Date