Appeal #25-699

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Darryl C. Carter,
Plaintiff-Appellant

v.

Wells Fargo & Company, et al,
Defendant-Appellee

On Appeal from the United States District Court
for the Norther District of California
Lower Court Docket No: 3:24-cv-07406-JD

Brief of Appellant Darryl C. Carter

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STATEMENT OF JURISDICTION

This court has jurisdiction per 28. U.S.C. § 1291.

STATEMENT OF ISSUES ON APPEAL

1. Whether or not the underlying action involved one or more instances of 28 U.S.C § 351-364 and if so did such incident(s), also, warrant a referral to the Department of Justice for criminal prosecution?
2. Whether or not plaintiff's substantive due process right(s) was/were violated via abuse, malice, and or ill will from the bench at the intersection of 28 U.S.C. § 1915(e) and 28 U.S.C. § 1654 coupled with no appearance by any defendant?
3. Whether or not the lower court had jurisdiction per 28 U.S.C. 1332?
4. Whether or not plaintiff in the lower court was required to file an objection per 28 U.S.C. § 636 (b)(1) as a predicate to an appeal challenging jurisdiction? And if not, did this court err or otherwise prejudice plaintiff in rapidly closing plaintiff's interlocutory appeal, prior to the briefing deadline, without hearing from plaintiff?

STATEMENT OF THE CASE

This appeal addresses very serious staples as to the jurisprudence of this court and the federal court system at large *i.e.* subject matter jurisdiction, judicial integrity & conduct, and the foundation of the United States Constitution *i.e. Due Process*.

As a backdrop, the following empirical data comes into play. The 9th Circuit Court of Appeals ("9th Cir.") has jurisdiction over eight (8) states: Alaska, Arizona, Idaho, Montana, Nevada, California, Oregon, and Washington; and two (2) territories *i.e.* Guam and Hawaii. Collectively, the 9th Cir's land mass is the largest of the entire federal circuit map. Furthermore, the 9th Cir, with some twenty six (26) sitting circuit judges, and has direct jurisdiction over the lives of at least 67,990,639 individuals per the 2024 count excluding the included count of Guam (166,506) which count is from 2023. Thus, to say that the 9th Cir plays a pivotal role in shaping legal doctrine is a understatement at best.

While such a large circuit is not without ridicule from time to time, perhaps the single most consistent brand of this court has been its consistency with its jurisdiction precedence versus welcoming invitations to unfounded expansive or retracting doctrines. The

underlying case departed from this court's brand and stepped into the shadows of corporate governance versus its proper position being that of a neutral arbiter. This court has a duty and obligation to set the record straight as to the scope of not only this court's jurisdiction; but, also, that of the lower court, which tribunal cannot *bend a knee* in recognition of defendants' stature and influence in the lower court *i.e. Well Fargo N.A. et. al*. Even worse, the conduct of both the district and magistrate judges, in the lower court, were so outside of the ambit of the federal Judicial Cannons that not only did judicial misconduct rear its ugly head, plaintiff tendered a criminal referral to the Department of Justice. Furthermore, this court crossed the line, in a most reprehensible manner, with respect to judicial backscratching, versus adherence to well settled Constitutional directives regarding plaintiff's *Due Process* and *Equal Protection* rights.

As such is the case (pun intended), this appeal is effectively a primer on the jurisdiction of this court; the lower court; and the relevance of the United States Constitution which is fast becoming a relic of the past fit solely for museum observatory, demonstrative of the lower court action(s) or lack thereof regarding the interlocutory appeal in this court. Furthermore, no longer can the issue with respect

to plaintiff’s personal appearance be disregarded or lumped into a broad category of non-meritorious cases on account of some irrational fear of the court with respect to rendering precedence by which other *pro se* parties can abuse.

Surely, some *pro se* abuse can and will occur but such is not a categorical justification for either this or the lower court to displace plaintiff's Constitutional and statutory rights for fear of what other ‘copy cat(s)’ [abuse(s)] may follow. This federal appellate court system, alone, has a multi-billion dollar budget; thus, properly equipped to leverage all of the manpower necessary to manage bad actors pursuant 28 U.S.C. § 1654 while concurrently giving due regard per the statutory rights as created by Congress *i.e.* 28 U.S.C. § 1654, 28 U.S.C. § 1915. Lastly, although the *equal protection clause*, of the United States Constitution does not dictate the ceiling; but, rather the floor minimum, with respect to plaintiff’s rights, both this court and the lower court, nonetheless, violated plaintiff-appellant’s rights.

STATEMENT OF FACTS

1. On October 23, 2024, plaintiff-appellant filed a single count action of *Intentional Misrepresentation* in the lower court. *{See Appendix, Doc #1 Complaint, pgs. 6,10-43}*.
2. On October 23, 2024, the lower court action was filed and immediately referred to Oakland magistrate judge Donna M. Ryu. The defendants can be found in San Francisco not Oakland, CA. The civil cover sheet, therefore, points to San Francisco, CA as the venue per defendants' location, ant, not Oakland, CA. *{See Appendix, Lower Court Docket Sheet, pg. 6}*.
3. On October 23, 2024, the lower court action was filed with the docket sheet ubiquitously displaying "Cause: 28:2201 Constitutionality of State Statutes." No where anywhere in either the original or amended complaint was any issue ever raised with respect to the Constitutionality of any state statute. *{See, Appendix, Lower Court Docket Sheet, pg. 6}*.
4. On October 23, 2024, plaintiff, also, filed a summons and a motion to proceed *In Forma Pauperis*. The court never issued the summons. No defendant ever appeared in the lower court action. *{See Appendix, Lower Court Docket Sheet; Docs# 2-3, pgs. 6;46-*

49;50-51}.

5. On November 18, 2024, the lower court magistrate Donna M. Ryu issued an Order GRANTING the motion for IFP and to amend the complaint but effectively entering a Rule 12(b)(6) dismissal Order. The motion to amend added one additional count for *Intentional Infliction of Emotional Distress*. *{See Appendix, Lower Court Docket Sheet; Doc#10, pgs. 10;135-141}*.
6. On November 19, 2024, plaintiff filed a notice of appeal to this court. *{See Appendix, Lower Court Docket Sheet; Doc# 13, pgs. 7;212-281}*.
7. On November 22, 2024, this court filed a paper, in the lower court, with respect to USCA Case Number 24-7043 9th Circuit *i.e.* plaintiff's interlocutory appeal. *{See Doc# 14, Appendix, pgs. 282-284}*.
8. On December 19, 2024, Oakland magistrate judge Donna M. Ryu, *sua sponte*, filed a request to the lower court clerk for reassignment of the case to district judge James Donato. *{See Appendix, Lower Court Docket Sheet; Doc# 15, pgs. 7;284-285}*.
9. On December 20, 2024, the lower court clerk reassigned the case to district judge James Donato. *{See Appendix, Lower Court*

Docket Sheet; Doc# 16, pgs. 7;286}.

10. On December 20, 2024, this court entered an Order, in the lower court, dismissing plaintiff's appeal with neither notice nor an opportunity for plaintiff to be heard. *{See Appendix, Lower Court Docket Sheet; Doc# 17, pgs. 8;288}*.
11. On January 13, 2025, this court entered a mandate per plaintiff's interlocutory appeal, which this court dismissed on December 20, 2024 without notice nor an opportunity to be heard. *{See Appendix, Lower Court Docket Sheet; Doc# 19, pgs. 8;302}*.
12. On January 25, 2025, plaintiff filed an individual case management statement, in the lower court, given no appearance by any defendant. *{See Appendix, Lower Court Docket Sheet; Doc# 22, pgs. 8;316-328}*.
13. On January 31, 2025, the lower court district judge James Donato adopted Oakland magistrate judge Donna M. Ryu's report and recommendation dismissing the action. *{See Appendix, Lower Court Docket Sheet; Doc# 24, pgs. 8;337-338}*.
14. On January 31, 2025, plaintiff filed a notice of appeal to this court per the final order dismissing the action of the lower court.

{See Appendix, Lower Court Docket Sheet; Doc# 26, pgs. 8;346-362}.

15. On February 4, 2025, this court filed a notice, in the lower court, per USCA Case Number 25-699 9th Circuit. *{See Appendix, Lower Court Docket Sheet; Doc# 27, pgs. 8;363-364}*.

16. On February 5, 2025, this court filed a referral notice in the lower court, directed to district judge Donato, for the limited purpose of determining whether *in forma pauperis* status should continue for this appeal or whether the appeal is frivolous or taken in bad faith. This court issued a response deadline for the lower court set for February 26, 2025. As of March 3, 2025 @ 8:51 ET, the lower court never responded to this court's referral, *ante*. *{See Appendix, 9th Circuit Court Docket #25-699, pgs.3-5 }*.

SUMMARY OF THE ARGUMENT

Plaintiff was not afforded the Constitutional and statutory protections properly due because of his filing status. In fact, not only did the lower court egregiously violate plaintiff's rights, so too did this court with respect to *due process* and *equal protection*. These Constitutional issues gave rise to facial concerns with respect to judicial misconduct and prompted a criminal referral to the *Department of Justice*. Thus, plaintiff argues that this case is illustrative of the how both this and the lower court prejudiced plaintiff leaving him with no timely nor substantive remedy other than by appeal to this court, again, which already prejudiced plaintiff, in the course of the lower court action via subsequent climb up to this court. Furthermore, due to said prejudice the net effect has been dilatory proceedings, in the lower court, which have done nothing except waste plaintiff's time and money. This argument is contrary to the usual displaced argument of plaintiff, as a *pro se* party, wasting the courts' time since the record is replete with instances of both courts engaging in dilatory or prejudicial conduct on account of the stature and influence of defendants who are situated in this circuit.

Plaintiff asserts that any other plaintiff appearing via paid

counsel would not have experienced any of these flagrant abuses from the bench. Even worse, plaintiff was subjected to an arbitrary and makeshift standard with respect to proceeding without the prepayment of fees which was worsened by the bench pleading on behalf of the defendants. The United States Supreme Court has never set forth countenance with respect to this double standard on account of the courts' disfavoring of plaintiff and his filing status.

ARGUMENT

I. The lower court action is replete with procedural irregularities designed to mask *due process* and *equal protection* assaults which on its face lending an inference to judicial misconduct and ultimately involved a criminal referral to the *Department of Justice*.

First, the standard of review here is plenary. See, *Miller v. Fenton*, 474 US 104 (S. Ct 1985); *Pierce v. Underwood*, 487 US 552 (S. Ct 1998); *Bose Corp. v. Consumers Union of United States, Inc.*, 466 US 485 (S. Ct 1984);

Next, the docket, on its face, illustrates *docketing irregularities* lending way to an inference of foul play, a cover up, or fraud within the halls of the court itself. Illustrative, "*Cause: 28:2201 Constitutionality of State Statutes.*" *{See, Appendix, Lower Court Docket Sheet, pg. 6}*. The lower court action has absolutely nothing to do with any state statute, whatsoever. To the contrary, there are, only, two (2) causes of action[1]: 1.) Intentional Misrepresentation; and 2.) Intentional Infliction of Emotional Distress. The remedies sought, in pertinent part, includes the *Declaratory Judgment Act* which is coded @ 28 U.S.C. § 2201. Perhaps the court can unearth where there is any reference to a state statute, since nothing is mentioned in the

1 See, first amended complaint, F.A.C. *Appendix*, pgs. 83-134

Complaint nor on the civil cover sheet[2]. Ironically, the exact same problem occurred in Southern District of Florida[3] See, Carter v. Vargas et al., 22-cv-10058-RKA, (S.D.FL 2023), District Judge Roy K. Atwater, a President Trump appointed judge, presiding. And the defense counsel in said case, *ante*, ***Ogletree, Deakins, Nash, Smoak & Stewart, P.C.*** is based out of San Francisco, CA. These circumstances , alone, lend way to an inference of *fraud upon the court*, counsel dirty dealings, and a court system willing to perfect a cover up of sorts for members of its own society. Incidentally, said case went all the way up to the *United States Supreme Court* where the clerk in the *United States Supreme Court* refused to file plaintiff's *Writ of Certiorari*, seeking review of the sideways dirty dealings in Southern District of Florida. *{See, Appendix, CA11 docket sheet 23-10680; Supreme Court clerk's letter per Writ of Certiorari, pgs. 367-373 }.*

Regarding due process SCOTUS has been clear in that, "[D]ue process is flexible and calls for such procedural protections as the

2 See, civil cover sheet, *Appendix*, pgs. 44-45

3 The self proclaimed "Free state," which is at the heart of an inquiry into fraud, criminal collusion, and a [criminal] cover up. Incidentally, Attorney General Pam Bondi, a close friend and ally of President Trump is, also, from Florida. Plaintiff has no knowledge of any criminal investigation into the affairs of Florida, ante, which appear to be closely connected to the underlying lower court action in California.

particular situation demands[,]" *Mathews v. Eldridge*, 424 US 319, 334 (S. Ct 1976), it has never postured that *due process* can be turned on its head whenever the bench is burdened by compliance with it thereby seeking to dispense with it -- to plaintiff's detriment. Moreover, "The fundamental requirement of due process is the opportunity to be heard "at a meaningful time and in a meaningful manner."" *id* @ 333 quoting, *Armstrong v. Manzo*, 380 U. S. 545, 552 (1965). In the first appeal before this Court (Appeal 24-7043 9th Circuit) plaintiff had no opportunity to be heard whatsoever as this court rushed to extinguish plaintiff's due process right before the briefing deadline and to clean up the err or misconduct of the lower court chief magistrate judge Donna M. Ryu.

The chain of events lend way to this court's assist in backscratching for a chief magistrate judge's err or intentional misconduct – neither bodes well for either court. In pertinent part, the chain of events include: 1.) plaintiff's notice of appeal filed on November 19, 2024; 2.) This court's case docketing notice filed in the lower court on November 22, 2024; 3.) A request for reassignment filed on December 19, 2024 by magistrate judge Donna M. Ryu to the clerk in the lower court; 4.) the Clerk's Order reassigning the case on

December 20, 2024; 5) this court's dismissal of plaintiff's appeal (24-7043) on same day December 20,2024 immediately following the clerk's Order reassigning the case in the lower court; 6.) The entire time transpired between docketing of appeal 24-7043 in this court, and dismissal (without notice or an opportunity to be heard by plaintiff) was exactly thirty (30) days whereas even on an expedited briefing schedule a given plaintiff is afforded at least forty five (45) days. Not so in the case of plaintiff-appellant. *{See, Appendix, Lower court docket sheet, pgs. 7-8 }*.

Ironically, plaintiff sought to appear in this court via *IFP* while challenging the lower court's jurisdiction, in turn this court rushed to the aid of the lower court judge rather than adherence to Constitutional requirements as to plaintiff's rights. Equal protection violations entered the ambit as the Supreme Court has shown: "The [States and federal government including the federal courts], of course, are prohibited by the Equal Protection Clause from discriminating between "rich" and "poor" as such in the formulation and application of their laws." *Douglas v. California*, 372 US 353 (S. Ct 1963). The rich and wealthy defendants bothered not to appear, which this procedural posture illustrates no need to do so when the bench is

pleading on behalf of the defendants such as to ensure the case went away. And plaintiff, despite the merits of his action, was treated in an inferior manner by this court and the lower court with respect to his civil rights.

And this court's argument that the lower court's Order was not an appealable is at best far from sound and ripe to be overturned and at worst frivolous. *{See, Appendix, Order Dismissing 9th Cir. Appeal No. 24-7043, pg. 288}.* Regarding jurisdiction the general rule has always been that such an argument must be raised at the earliest possible time. And there can be no doubt the magistrate judge had no jurisdiction to enter the Order dismissing plaintiff's action, with or without leave to amend, to which the judge rushed to clean up after the first notice of appeal was filed. *Illustrative*, "Since all parties have not consented to the jurisdiction of a magistrate judge pursuant to 28 U.S.C. § 636(c), the court issues this Report and Recommendation and reassigns this case to a district judge for final disposition[...]" *{See Appendix, Lower Court Docket Sheet; Doc# 24, pgs. 8;337-338}.* Again, this is the chief magistrate judge in Oakland, CA which took these actions. If the judge did not know the jurisdiction limits, beforehand, as a chief judge such raises issues with respect to 28

U.S.C § 351-364. And to the extent the chief magistrate judge Donna M. Ryu knew precisely the jurisdiction limits and proceeded to prejudice plaintiff, anyway, such raises issues and concerns with malice, ill will, bad faith or even worse a potential judicial [criminal] cover up. *{See, Appendix, CA11 docket sheet 23-10680; Supreme Court clerk's letter per Writ of Certiorari, pgs. 367-373}.*

And in any case, "A fair trial in a fair tribunal is a basic requirement of due process. Fairness of course requires an absence of actual bias in the trial of cases. But **our system of law has always endeavored to prevent even the probability of unfairness**." *In re Murchison.*, 349 US 133,136 (Supreme Court 1955). (emphasis added).

II. As as disfavored party and filer plaintiff's substantive due process right(s) was/were violated from the bench at the intersection of 28 U.S.C. § 1915(e) and 28 U.S.C. § 1654.

First, here, also, the standard of review here is plenary. See, *Miller v. Fenton*, 474 US 104 (S. Ct 1985); *Pierce v. Underwood*, 487 US 552 (S. Ct 1998); *Bose Corp. v. Consumers Union of United States, Inc.*, 466 US 485 (S. Ct 1984). Moreover, a district court's dismissal of a complaint per 28 U.S.C. § 1915A is subject to de novo review. See, *Resnick v. Hayes*, 213 F.3d 443, 447 (9th Cir.2000); First Options of

Chicago, Inc. v. Kaplan, 514 US 938 (1995).

The court alleges that plaintiff did not state a cause of action which is frivolous on its face. *First*, plaintiff clearly brings the *Declaratory Judgment Act* squarely within the four corners of the complaint and the prayer for relief; to state otherwise is plainly frivolous and again raises issues with respect to 28 U.S.C § 351-364. *Second*, the court takes issue with the first cause of action: *Intentional Misrepresentation to which is Engalla is controlling: See, Engalla v. Permanente Medical Group, Inc.* (1997) 15 Cal.4th 951, 974 [64 Cal.Rptr.2d 843, 938 P.2d 903]. As this is a fraud claim Rule 9 (b) steps into the ambit to which plaintiff pleaded with great particularity. *{See, Appendix, Complaint, pgs. 18-23 ¶¶ 11-16}. Third,* the court takes exception with plaintiff I.I.E.D claim to which *Hughes* is controlling. See, *Hughes v. Pair (2009)* 46 Cal.4th 1035, 1050–1051 [95 Cal.Rptr.3d 636, 209 P.3d 963]. See, also, *Fletcher* for the proposition: “Severe emotional distress [is] emotional distress of such substantial quantity or enduring quality that no reasonable man in a civilized society should be expected to endure it.” *Fletcher v. Western Life Insurance Co. (1970)* 10 Cal.App.3d 376, 397 [89 Cal.Rptr. 78]. Here the court, pleading on behalf of the defendants posits that plaintiff is

supposed to be all ‘smiles and giggles’ with conduct whereas the bank lied to plaintiff as to having control over his account; refused to comply with banking regulations surrounding disputed transactions; lied to the CFPB surrounding plaintiff’s complaint(s) to the CFPB, not once but twice; had the brazen audacity to send plaintiff at least one letter doubling down on the lies; continued to disregard banking regulations regarding disputes and as a consequence the same transaction hit plaintiff’s account more than once – all the while the bank continued to disregard plaintiff’s financial interests and kept lying to the very end. *{See, Appendix, F.A.C, pgs. 103-106 ¶¶ 22-26}.*

Bottom line, the court had an issue with plaintiff exercising his statutory right *i.e.* 28 U.S.C. § 1654 and as a consequence sought to prejudice plaintiff with frivolous rulings that cannot be supported by precedence either in this court or ultimately by the United States Supreme Court to which this court is bound by the Supreme Court’s rulings. And there can be no doubt that the Orders and ultimate dismissal would not have occurred, but for plaintiff’s filing status. And any other party appearing via counsel with the exact same Complaint would have proceeded without a Rule 12 (b)(6) dismissal motion by the adverse party. And, “The Court has **no authority to enact rules**

that "**abridge, enlarge or modify any substantive right.**"" (emphasis added). *Westmoreland v. CBS, Inc.*, 248 U. S. App. D. C. 255, 770 F. 2d 1168 (1985). *Lastly*, what this court conveniently overlooked is the fact that by dismissing plaintiff's first appeal, *ante*, this court essentially condoned the scenario whereas the court created its own heightened pleading standard inconsistent with *Iqbal. Ashcroft v. Iqbal, 55 U.S. 662, 679 (2009).* And even if the court corrects that err, now, such still does nothing to address the irreparable harm suffered to plaintiff's rights via the dilatory conduct occasioned by this court's disregard of plaintiff's due process rights. And even if it could be said that *Iqbal* was properly applied, which no reasonable judicial officer could agree, at no point does *Iqbal* call for a judge to interject his/her own opinion of belief into a claim for relief. *Illustrative*, "[r]ule 12 (b) (6) does not countenance…dismissals based on a judge's disbelief of a complaint's factual allegations." *Neitzke v. Williams*, 490 U.S. 319, 327 (1989). The court by substituting plaintiff's well pleaded Complaint for its own bias and substitution of facts with its own opinion, the court did in fact dismiss plaintiff's claims based upon its disbelief as to the facts. Otherwise, the alternate is even worse – the court's dismissal in this regard

represents, yet, another instance where judicial competence is brought into question per 28 U.S.C § 351-364.

III. The lower court argued that it had no subject matter jurisdiction in a diversity suit as a way to prejudice plaintiff and contrary to federal statute.

It is difficult to surmise how any competent judge – district or magistrate could raise the argument as to no jurisdiction. The controlling statute is 28 U.S.C. § 1332 *i.e.* diversity jurisdiction. The requirements for diversity jurisdiction are set forth in 28 U.S.C. § 1332 (a); and diversity of citizenship specifically set forth in 28 U.S.C. § 1332 (a)(1). The court, in search of an end run around diversity jurisdiction, takes issue with plaintiff's "Current address," which plaintiff's current address has been so for the past 14 months and no where in the controlling statute is there any requirement on permanence of plaintiff's 'Current address' as a qualifier for diversity jurisdiction nor has there every been. The court's argument is entirely and utterly frivolous; let alone acting *ultra vires* via its attempt to [re]write legislation instead of being bound by the plain language of it. The court goes on to allege that the defendants are citizens of multiple states and casts doubt on California as being one of such

states. This is flagrant abuse from the bench as nothing could be further from the truth. Defendant(s) has/have been [a] citizen(s) of California for the purposes of suit for more than twenty (20) years and is currently the defendant(s) in one or more fraud actions in the same lower court, during which at no time did defendant(s) raise an issue with jurisdiction. See, *Joseph Bacigalupi v. Wells Fargo Bank*, N.A. et al., 3:24-cv-06778- SK (N.D. C.A.) , filed 09/26/24; Gonzalez v. Wells Fargo & Company et. al., 24-cv-01223-TLT (N.D. C.A.), filed 02/29/24 – a diversity fraud class action suit. Only in this case is jurisdiction raised – by the bench – clearly there is no need for the defendant(s) to appear and raise such an argument with the bench acting on its behalf. And by the bench raising defendants' frivolous argument they get to do so without the threat of sanctions nor equitable payment of fees and costs responding to such a completely and utterly frivolous argument. *{See, Appendix, Civil Cover Sheet; Complaint; Magistrate's Order of Dismissal Citing No Subject Matter Jurisdiction, pgs. 44-45;11-12 ¶¶ 1-2;137-139}. See, also, "A district court would necessarily abuse its discretion if it based its ruling on an erroneous view of the law or on a clearly erroneous assessment of the evidence." Pierce v. Underwood, 487 U. S. 552 (1988).*

IV. Once again plaintiff was prejudiced by this and the lower court regarding the contours of a report and recommendation from a magistrate judge and the ability to take a direct appeal there from consistent with 28 U.S.C. § 636 (b)(1).

First, the standard of review here is plenary. See, *Miller v. Fenton*, 474 US 104 (S. Ct 1985); *Pierce v. Underwood*, 487 US 552 (S. Ct 1998); *Bose Corp. v. Consumers Union of United States, Inc.*, 466 US 485 (S. Ct 1984); See, also, "A district court would necessarily abuse its discretion if it based its ruling on an erroneous view of the law or on a clearly erroneous assessment of the evidence." See, *Pierce v. Underwood*, 487 U. S. 552 (1988).

The plain language 28 U.S.C. § 636 (b)(1) is instructive which in pertinent part states:

> "Within fourteen days of being served with a copy, any party **may** serve and file written objections to such proposed findings and recommendations as provided by the rules of court. A judge of the court **shall make a de novo determination** of those portions of the report or specified proposed findings or recommendations to which objection is made. A judge of the court **may** accept, reject. or modify. in whole or in part, the findings or recommendations made by the magistrate judge."

The operative plain language is "may" and "shall," *ante*. By Congress choosing the language "may" on its face such illustrates that there is no requirement to first raise magistrate

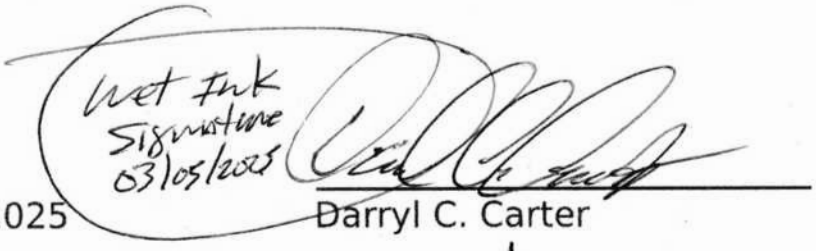
determination issues via a report and recommendation via objections to a district judge rather than taking said issues directly to this court for adjudication.

The court cannot have it both ways *i.e.* the court cannot commission magistrate judges (many of which are one or two rungs above a private practicing lawyer wearing a black judicial robe, without the vetting of regular sitting district judges) to make judicial decisions that a district judge would normally make but at the same time posturing that a party cannot take a appeal from a magistrate's Order, the same as a party can take an appeal of a district judge's Order. This logic on its face is flawed and subject to abuse. For if this logic were to prevail, like here, a magistrate judge could simply issue sideways unsound determinations in hopes that a party would not know the err in the magistrate's ways and therefore such a determination would stand with no avenue to correct the err, if even detected by a party, prior to the onset of irreparable harm to a party's rights, and in plaintiff's case, – property rights – waiting for a final Order which may come months or even years after the introduction of err by the

magistrate judge. *Furthermore*, the district judge made no determination *de novo* but simply deferred to the magistrate's determination by positing that plaintiff did not file objections which is was not required to file, *ante*, relative to dismissal of plaintiff's complaint, irrespective of with or without leave to amend, which the magistrate judge had no jurisdiction to dismiss plaintiff's well pleaded complaint, *ante*. This case on its face is demonstrative of how the lower court routinely and as course of business violates plaintiff's civil rights without repercussions based on frivolous unsound reasoning requiring months if not years to correct, all the while doing so shielded from the consequences thereof excepting by properly raising issues with respect to 28 U.S.C § 351-364 which plaintiff did so, timely, and on numerous occasions. Furthermore, this case as set forth in the notice of appeal is proper and ripe for referral to the *Department of Justice* for a criminal inquiry and/or intentional abuse of civil rights, since judges (conveniently) cloak themselves in absolute immunity with the only avenue to address such behavior, aside from 28 U.S.C § 351-364, is via a criminal inquiry via the Department of Justice.

CONCLUSION

Per the foregoing, the lower court's dismissal of plaintiff's action should be reversed.

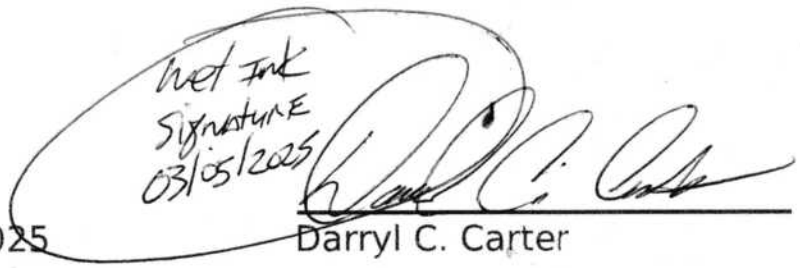


Dated: March 5, 2025

Darryl C. Carter

CERTIFICATE OF COMPLIANCE

Per Fed. R. App. P 32 (a) (5); (a) (6); (g) (1), this brief uses Book Antiqua proportional type fourteen point or larger. Moreover, per Fed. R. App. P 32 (a) (7) (B) this brief's word limit of 5503 is in compliance excluding parts Fed. R. App. P 32 (f).



Dated: March 5, 2025 Darryl C. Carter

CERTIFICATE OF SERVICE

On date, March 5, 2025 , I did submit the following document(s) with respect to appeal no: 9th Circuit Court of Appeals No.: 25-699

1. Appellant's Opening Brief;
2. Appendix;

☒ by submitting the, herein, referenced documents to a U.S.P.S postal employee/representative, with pre-paid postage attached thereto for first class delivery. Note: below counsel was terminated by the court but consistent with due process is served the foregoing by first class mail, email, or both.

NO APPEARANCE BY ANY DEFENDANT PERSONALLY OR BY COUNSEL

Dated: March 5, 2025

Wet Ink Signature 03/05/2025

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