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UNITED STATES COURTS OF APPEALS
FOR THE SECOND CIRCUIT

MICHAEL D. MARKHAM,

Plaintiff - Appellant,

v.

MARK CHAUVIN BEZINQUE, KENNETH R. FISHER, LISA B. MORRIS,
& EDWARD W. RILEY.

Defendants - Appellees

On Appeal from the United States District Court
for the Western District of New York

Reply Brief of Michael D. Markham

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PRELIMINARY REPLY STATEMENT - BACKGROUND

Appellant, Michael D. Markham submits this Reply Brief in opposition to the Decision and Order of the United States Circuit Court - Western District of New York entered by Hon. Frank P. Geraci, Jr., dated June 18, 2020 and in opposition to the briefs submitted on behalf of Appellees, Rosenbaum, Dollinger, Snodgrass, Sayers, Speller, Coron, Bello, Pineau and DeLong. The District Court's dismissal of this Appellant's amended complaints of constitutional injury was in error and is in conspicuous violation of 42 U.S.C. Section 1983 and the United States Constitution. This Appellant respectfully requests it be immediately overturned by this Court.

Briefly, by way of Background, the Appellant Markham and Appellee DeLong were involved in Divorce proceedings before the New York State Supreme Court, Judge Kenneth Fisher beginning in September of 2015. During the pendency of those proceedings, Judge Fisher, Lisa Morris, Esq., (the Attorney for the Children), Mark Bezinque, Esq., Jennifer Speller, Esq., (Attorneys for Appellee DeLong), and Appellee DeLong herself, conspired to fake a trial (complete with false testimony), fabricate Lincoln hearings (again with fabricated testimony from the children) and then with the assistance of then Supervising Chief Justice for Seventh Judicial District, Matthew Rosenbaum, made all of the records, including the County Courthouse records, Judge Fisher's Chamber file and the New York State eRecords disappear in an attempt to cover up those highly illegal and unconstitutional acts.

According to Judge Fisher's Absolute Judgement of Divoce signed December 20th, 2016, (App. pg. 1) and Lisa Morris' Esq., (Attorney for the Children), Closing Argument from the Attorney for the Children (App. pg. 5), both fraudulently state explicitly that a trial was held in November of 2016 and testimony was taken by the mother (Appellee DeLong) at the trial. In his Absolute Judgement of Divorce Fisher says the father (the Appellant) did not appear and thus a default judgement was entered against him. Further, both fraudulently refer explicitly to Lincoln hearings that were also fraudulently reported to be taken the day before and false testimony from the children was presented that was willfully and with malice detrimental to the interests of this Appellent and his children. We now know with absolute certainty that neither the trial, nor the Lincoln hearings ever happened and there is an enormous amount of irrefutable evidence in support of that alarming reality. Fisher, Morris, DeLong and Bezinque conspired and completely fabricated both the existence of and the testimony purported to be given during the trial and hearings and according to the confession of fellow appellee Mark Bezinque, 'they never happened.' (App.pg.10).

At a Special Session Hearing on September 14th of 2017, the late Judge, Hon. Elma Bellini vacated the Absolute Judgement of Divorce when no one including the County Courthouse Clerk, Mr Bezinque, or Mr Ingersoll (Appellee DeLong's attorney #3) could or would produce any of the Court records she demanded, most notably a NOTICE TO APPEAR with service to this Appellant....that, in spite of a well documented written dialogue between Judge Fisher and this Appellant, (App.pg.13), suggesting Judge Fisher's actions meant to deprive this Appellant of his right to appear and right to procedural due process in his Court were calculated, deliberate and willful. His letter sent just two weeks prior to the trial date makes no mention of a trial.

Next, in a truly bizarre and unusual twist of events, before the then still healthy Judge Bellini (she continued hearing cases for another six months), could sign the ORDER TO VACATE, Judge Rosenbaum, transferred the case (over the immediate objection of this Appellent) to the highly conflicted Acting Supreme Court Judge Richard A. Dollinger, all before Judge Bellini's Order to Vacate was even signed. Judge Dollinger then wrote up a very diluted, nonsensical and fraudulent version of Judge Bellini's verbal order falsely stating among other things that he and not Judge Bellini was presiding that day over the Motion to Vacate in the Courtroom.(App.Pg.14). Judge Dollinger clearly was not. See minutes of Bellini Motion to Vacate Hearing on September 14, 2017 (App.pg17), and Judge Dollinger's Order to Vacate indicating he was presiding at the hearing on the very same time, date and place that Judge Bellini's hearing happened. Judge Dollinger was NOT present and his false representation that he was is fraudulent. Neither in *Dollinger's* ORDER TO VACATE (noted falsely in the record to be the product of a hearing presided over by him on the same date, time and place as the Special Session Hearing held by Judge Bellini), does Judge Dollinger state anywhere that these are the orders of Judge Bellini and not his own belying an almost bewildering degree of deceit and fraud before the New York State Supreme Court and any future courts that might review these court records without the benefit of Judge Bellini's courtroom minutes recorded on that 14th day of September in 2017. (App.pg17).

This Appellant repeatedly reported these unconstitutional and unlawful acts of Judge Fisher, and Judge Dollinger to, among other authorities, the New York State Commission on Judicial Conduct and the New York State Office of Court Administration. (App.pg.29), After numerous attempts to get the heavily corrupted Judge Fisher off the bench he was finally forced to step down and take an 'early retirement' with years left on his elected term to avoid further investigation by the Commission on Judicial Conduct into his nefarious and unscrupulous dealings while on the New York State Supreme Court bench including his willful and deliberate denial of this Appellant's constitutional rights in his New York State Supreme Courtroom.

Following Judge Dollinger's assignment to the case by Supervising Chief Justice Rosenbaum, Dollinger and attorneys Ingersoll, Mott, Pineau, Sayers, and AFC Riley continued to conspire to defraud this Appellant with their ongoing false narratives that he was wrong and the faked trial and all important Lincoln hearings really did happen. They all maintained that the testimony as reported was real and referenced it repeatedly and unapologetically in the litigation that followed, full in the knowledge that a serious measure of fraud was before the court. Rather than conceding the obvious and vitiating the fraudulent Fisher and Morris testimony before the court, Judge Dollinger and his conspirators doubled down and refused to acknowledge any fault with the Fisher court rulings in spite of Judge Bellini vacating them and all of the evidence before the court showing the fraud and corruption present. The remaining conspirators repeatedly insisted on record to the great satisfaction of the Dollinger Court that all of the missing records remained secure in the County Courthouse, in spite of a mountain of irrefutable evidence saying otherwise. Appellee Pineau gave sworn testimony that she had herself been to the County Courthouse and seen the missing records however, unsurprisingly she never presented one record to this Appellant

or the court to support her false representations. The named Appellee's conspired false affirmations and affidavits about testimony taken at the trial and at the hearings in the Fisher Court formed the basis for all of the future motions and litigation going forward, further depriving this pro se Appellant of his right to procedural due process and putting him at an unjust and insurmountable disadvantage in the heavily corrupted Dollinger Court. Evidence of their conspiring is plentiful in the written court record and given any opportunity to present evidence and question the appellees under oath by interrogatory, deposition or examination, their participation in the conspiracy against this Appellant would be obvious and undeniable. Likewise, a huge amount of evidence indisputably shows that the Fisher trial and Fisher Lincoln hearings were faked and all of the records pertaining to the Fisher docket are now either permanently missing or never existed.

Exhausted from four years of corrupted litigation 6000 miles from this Appellant's home, flying back and forth to New York from Hawaii for hearings many times a year, just prior to a trial on December 8th, 2018, this Appellant and Appellee DeLong, along with AFC Riley reached a settlement agreement in open court resolving the financial and custody marital issues between us. On April 3rd, 2019, Judge Dollinger issued an Judgement of Absolute Divorce based on the aforementioned settlement agreement which outlined the terms of the stipulated agreement made on that day.
(App.pg 37)

In the ongoing post-settlement litigation that followed (in the very same Dollinger Court) as recently as October 13, 2020, initiated by Appellee DeLong and her attorney, Appellee Pineau, Esq., this Appellant continued to attempt to make court requests for discovery for the missing files, including the Lincoln hearings, to further assess the degree of fraud and bad faith on the part of the Court and Appellees Dollinger, DeLong, Pineau, and Riley and was yet again denied by Judge Dollinger in his formal request asking the court to discover and produce those documents. (App.pg48), Of note, with Judge Dollinger's refusal to conduct new Lincoln hearings, the fabricated Lincoln hearings from the Fisher Court were still referenced and very relevant to the ongoing custody hearings. Dollinger denied those cross motions for discovery and unsurprisingly yet again refused to produce the Fisher Lincoln hearings, undoubtedly to cover up his part in the conspiracy and fraud that he was very much complicit in from the time of his assignment and refusal of recusal.

Beaten down by years of ongoing court sponsored unconstitutional bad faith, corruption and fraud, this Appellant filed this action along with a companion filing (19-cv-6930), pursuant to 42 U.S.C., Section 1983, and the US Constitution to the United States Circuit Court - Western District of New York on January 17th, 2020 and his Amended complaint on March 9th, 2020 outlining his complaints as asserted above requesting the Court examine the federal questions and procedural due process issues involved in the violation of his constitutional rights, specifically as they pertain to his right to procedural due process in the New York State Supreme Court. Of special note, nowhere in his amended complaint pleadings did this Appellant request this Court to reopen, review or reject any state court judgement in the Dollinger stipulated agreement or anywhere else. Instead, by evidence of record, this Appellant only requested that the circuit court

consider the constitutional deprivation of procedural due process issues contained therein as is their role in considering such federal and constitutional matters.

It should be noted that within 24 hours after filing the companion complaint to this case (19-cv-6930), in the U.S. District Court - Western New York, the just newly re-elected Supervising Chief Justice Matthew Rosenbaum was abruptly forced from Bench and barred from all but the public areas of the Hall of Justice just days before his swearing in for allegedly ordering state and county courthouse employees to destroy this Appellant's court records under threat of firing as reported by those employees to the New York Office of Court Administration and The New York State Commission on Judicial Conduct. By public record, unsurprisingly, on notice of his very serious pending legal troubles, Supervising Chief Justice Rosenbaum fled the country to the Middle East before being coaxed back for a secret settlement agreement with the Office of Court Administration and Commission on Judicial Conduct; a secret settlement agreement that may have served the immediate interests of the State of New York but due to its very nature of secrecy, only led to further procedural due process deprivation of Rosenbaum's victims, including this Appellant.

In his Decision and Order, entered on June 18th, 2020, Judge Geraci granted all of the Defendant-Appellee's motions to dismiss pursuant to Rule 12(b)(1) for lack of subject matter jurisdiction, 'to the extent the amended complaint (1) bears on an ongoing state proceeding and (2) requires the Court to review and reject a state judgement and was DENIED in all other respects. Defendant-Appellee motions to dismiss pursuant to Rule 12(b)(6) for failure to state a claim were also all granted. Finally Judge Geraci, declined to provide the Plaintiff (Appellant) with another opportunity to amend his complaint and directed the Clerk of Court to enter a judgment and close this Appellant's case.

Of note, the Judgement to deny this Appellant's amended complaint was decided by Judge Geraci alone, without any trial by Judge or trial by jury. Further, in direct violation of the procedures that due process requires as outlined by the late Judge Henry Friendly of the Court of Appeals for the Second Circuit. Judge Geraci failed to offer this Appellant any opportunity to formally collect or present evidence; he failed to hold or order a scheduling conference, he failed to set or order a discovery clock, he failed to afford this Appellant any opportunity to file interrogatories, to depose witnesses, to subpoena records, to examine witnesses or formally present any evidence other than what the Appellant was able to file in his very brief (by court instruction) amended complaint. It should be noted that this Appellant demanded a jury trial, (not guaranteed in civil cases) as did several of the defendants and was denied the opportunity to prove his case in open court without any reason or explanation provided by Judge Geraci. Perhaps most troubling (of all of the conspicuous violations of procedures that due process requires) was the denial by Judge Geraci of this Appellant's right to receive an unbiased hearing or tribunal. When it was discovered that Judge Geraci was heavily conflicted through his close and decades long relationships with several of the judicial defendant-appellee's appearing before him (they were by report and record close friends and colleagues), Judge Geraci refused to disclose those relationships to this Appellant, he refused to recuse himself and he refused this Appellant's Motion for Change of Venue to his home U.S. Circuit Court District due to what are very reasonable questions of

impartiality thus further derpriving this Appellant of his constitutional right to procedural due process, this time in the United States Circuit Court - Western District of New York.

REPLY TO ARGUMENTS AND POINTS PRESENTED:

POINT 1

IS THERE REAL EVIDENCE ON RECORD TO SUPPORT APPELLANT MARKHAM'S ALLEGATIONS THAT DURING THE PENDENCY OF HIS DIVORCE PROCEEDINGS IN NEW YORK STATE SUPREME COURT, A TRIAL WAS FAKED AND LINCOLN HEARINGS WERE FABRICATED? **Yes.**

There is an enormous amount of irrefutable evidence that the Fisher Trial in November, 2016 was faked and the Lincoln hearing testimony purported to be taken the day before was completely fabricated. False testimony regarding the faked trial and hearings was given by:

1) Judge Fisher in his **Decision and Order of Divorce** signed on December 20, 2016.
2) Lisa Morris, Esq., AFC, in her **Closing Argument of Attorney for the Children**. (Fisher D&O, Appendix page 1), (Morris Argument for the Children, (App.pg.5).

Judge Fisher offers on Page 1 of his Decision and Order, "The motion to conform the pleadings to the proof, especially to accommodate the wife's request for sole custody, made in her testimony **at trial,** is granted. The request made at the **outset of trial**, to effectuate the preclusion order issued last September is denied as academic. Defendant/husband defaulted in his required appearance **at the trial**, and otherwise offered no proof except via inadmissible unsigned and unsworn letters (with attachments) submitted to the court. On page 3, Judge Fisher goes on to say, "To protect their peace of mind, the children stopped seeing him in March, 2016 for reasons clearly and cogently explained in the **Lincoln hearing**." Further he states, "In short, mother asked in her **testimony** for a complete restriction of visitation and no other contact with father, and the court agrees."

In her sworn testimony Lisa Morris, Esq., AFC, in her Closing Argument of Attorney for the Children offers on Page 2, (App.pg.6), "The case was **set for trial** on November 14, 2016. The father did not appear for the trial and the matter proceeded by default. **At the trial,** Mother **testified** and requested sole custody of the children." Ms. Morris goes on to say on Page 3, "The children specifically requested to meet with the Court so that they could share their opinions with the Court. On November 15, 2016, the Court conducted a **Lincoln Hearing** wherein each child appeared individually on camera with the Court."

We now know beyond any doubt that neither the Trial, nor Lincoln Hearings referred to by both Fisher and Morris ever happened and all the 'testimony' referred to by Judge Fisher and Lisa Morris, Esq., AFC was completely fabricated. Evidence the Fisher Trial and Lincoln Hearings were faked and the testimony was fabricated already on court record:

1) There is no docket entry for a Trial on November 16th, 2016 or for any other date while this case was before Judge Kenneth Fisher. (Appendix pg. 53).

2) There is no docket entry for a Lincoln Hearing on November 15th, 2016 or for any other date while this case was before Judge Kenneth Fisher. (Appendix pg. 53).

3) The youngest child referred to (12 years of age at the time), has denied ever meeting with Judge Fisher, ever, for any purpose including answering questions about her parents.

4) There are no minutes, transcripts or pleadings of any kind for either a Trial or Lincoln Hearing in the Monroe County Courthouse Record, Judge Fisher's chamber file, or the New York eRecord.

5) No one including any of the Appellees have been able to produce one shred of evidence to show that either the Fisher Trial or the Lincoln Hearings ever took place during the years of corrupted litigation that followed in the New York State Supreme Court, nor have they provided one scintilla of proof that they exist during the pendency of litigation in the U.S. Circuit Court.

6) Appellee, Gregory J. Mott, Esq., then attorney for the Appellant, wrote to this Appellant and Sharon Kelly Sayers, Esq., (Appellant's 2nd counsel) on his firm (Davison and Fink) letterhead reporting that Appellee Mark Bezinque, Esq., confessed to him that there was no hearing. Mr Mott writes, "Fisher says he held a Lincoln Hearing. He refers to 'Mother's testimony', but there is no transcript in existence and no reference to a default hearing or notice of default hearing. In talking to Bezinque he admitted that there was no hearing." (App. pg. 9). Based on the evidence, it is overwhelmingly clear that the purported testimony from the Fisher Trial was faked and the testimony from the nonexistent Lincoln Hearings was fabricated.

POINT 2

IS THERE EVIDENCE ON RECORD THAT UNDER THE DIRECTION OF SUPERVISING CHIEF JUSTICE MATTHEW ROSENBAUM, ALL OF APPELLANT MARKHAM'S PERTINENT COURT RECORDS WENT MISSING FOR THE TIME HIS DIVORCE CASE WAS DOCKETED TO JUDGE KENNETH FISHER? **Yes.**

Perhaps equally alarming as the faked Trials and Hearings is the reality that all of the relevant records for the Appellant's case while on the Fisher docket are missing and have been since before the late Judge Elma Bellini vacated Kenneth Fisher's Decision and Order for Divorce. Evidence on record that the files from the Fisher Docket were purged under the direction of then Supervising Chief Justice for the Seventh Judicial District Matthew Rosenbaum:

1) There are no significant records remaining in the Monroe County Courthouse for Markham v Markham (DeLong) Index #: 2015/9826 while on the Docket of Judge Kenneth Fisher. (Appendix pgs.56-75).

2) There are and were no relevant records in the Chamber File of Kenneth Fisher. (App.pg.76).

3) The Markham v Markham case, Index #: 2015/9826 was completely deleted from the New York State eRecord while on the Judge Kenneth Fisher Docket.

4) The named attorney Appellees have refused to share any of the relevant documents in their case files with the Appellant or the court during the pendency of the State Court proceedings. (Appendix, page 64).

The record will show that once the Order to Show Cause to Vacate Default Judgement was filed on January 19th, 2017, the late Judge Bellini was assigned the case and she requested the following documents (1) Summons with Notice or Summons and Complaint; (2) Notice of Appearance; (3) Findings of Fact; and (4) Judgement of Divorce. As the Court is now aware, this Appellant was never served any of these documents so they were requested from Appellee DeLong and her attorney, Appellee Bezinque, Esq., who by record refused to provide the documents to the Court even under threat of Motion. (App.pgs.66,67). On April 18th, 2017 Appellee Mott (then counsel for this Appellant), filed an Order to Show Cause Directing the Monroe County Clerk to provide Defendant's (Appellant) attorney, Gregory J. Mott, Esq., with the following pleadings: 1) Copy of Summons with Notice/Summons and Complaint and 2) Notice of Appearance. Mr Mott also requested the court impose sanctions on Plaintiff (Appellee DeLong) personally, Diane R. Markham (DeLong), for her failure to allow her attorney to release copies of said documents requested in the application. At a Special Term Session of the Supreme Court of the State of New York held on May 17th, 2017, the late Judge Elma Bellini Ordered that the Monroe County Clerk (Appellee Adam Bello), shall provide Defendants attorney with copies of the following pleadings: 1) Copy of Summons with Notice / Summons and Complaint, 2) Consent to Change Attorney, 3) Findings of Fact 4) Judgement of Divorce. & 5) Notice of Appearance. See Appendix. After a request to the Clerk of Court for the entire case file, and after considerable time and hassle, even with a Court order this Appellant received just 9 pages from Appellee Adam Bello, the former Monroe County Clerk: 1) A partial original Judgment of Divorce, 2) Application for Index Number sheet, 3) Page 3 of the Summons & 4) Complaint. 9 pages was the total of this Appellant's case file in the Monroe County Clerk's Office after two years of active litigation. Of note, there were no complete summons with notice, no finding of fact, no Notice of Trial, no Notice of Appearance, and no Amended Judgements of Divorce. See Appendix page .

Walter Capell, Esq., Mr. Mott's law partner at Davison & Fink confirmed that these were the only documents that Appellee Adam Bello, the former Monroe County Clerk, provided this Appellant in his Affirmation to the late Judge Bellini's Court dated June 23, 2017. Mr Capell goes on to say in that annexed affirmation that, "Your Affiant was given the opportunity and did, in fact, review Justice Fisher's file in this case for the purpose of attempting to locate the missing documents listed in the Order, dated May 24th, 2017. Your Affiant found none of those documents in Justice Fisher's file. (Appendix pgs.76,77).

Still not convinced the case files had been completely purged, this Appellant hired Attorney Diane Ho, Esq., of Wailuku, Hawaii, very experienced in court record systems and legal forensics to search the New York State eRecord to find evidence of these documents and she was shocked to discover that the entire case eRecord for Markham v Markham, Index #: 2015/9826 had been completely deleted from the New York State eRecord system. Ms Ho followed up via telephone

with the court technical support in New York and confirmed again that all of the case files docketed under Judge Fisher had in fact been deleted from the New York State eRecord system.

It is now crystal clear, beyond any possible doubt that under the direction of the then Supervising Chief Justice Matthew Rosenbaum, all of the important documents in this Appellant's multiple case files had been willfully purged. An inconvenient fact that all of the named Appellee defendants have willfully conspired to repeatedly deny in court, and on record.

POINT 3

DOES THE U.S. CIRCUIT COURT HAVE JURISDICTION OVER THIS CASE UNDER **BOTH** FEDERAL QUESTION **AND** DIVERSITY OF CITIZENSHIP MAKING THE FEDERAL QUESTION PURELY ACADEMIC? **Yes.**

The Federal Courts have jurisdiction to hear two types of cases: cases involving a federal or constitutional question and cases involving a diversity of citizenship of the parties.

Title 28 U.S.C. Section 1331, states that cases arising under the United States Constitution and/or federal laws or treaties are federal question cases and United States District Courts DO have subject matter jurisdiction over cases addressing this subject matter.

Title 28 U.S.C. Section 1332, states that cases in which a citizen of one State sues a citizen(s) of another State and the amount at stake is more than $75,000 are 'diversity of citizenship' cases. Likewise the United States District Courts have jurisdiction over diversity of citizenship cases.

In this Appellant's amended complaints, he cites BOTH federal / constitutional question AND diversity of citizenship for federal jurisdiction.

In his Decision and Order Judge Geraci errs in his failure to address both of this Appellant's qualifications for federal court jurisdiction. On page 7, footnote 7, Judge Geraci states, "At the outset, the Court notes that despite Plaintiff's assertion that the Court has jurisdiction over his case under both federal question and diversity jurisdiction, only federal question applies because Plaintiff's claims appear to arise exclusively out of alleged federal constitutional violations under 42 U.S.C., Section 1983." Judge Geraci's error is that he fails to consider that federal question and diversity are not mutually exclusive and that this Appellant's amended complaint also qualifies, (as he acknowledges) for federal jurisdiction under diversity of citizenship.

To defeat the Appellant's amended complaints with a Rule 12(b)(1) challenge, the defendant's must defeat BOTH the federal question claims AND the diversity of citizenship claims. This Appellant is undisputedly a long standing resident of the State of Hawaii and all of the Appellees are residents of the State of New York. Accordingly, the United States Circuit Court has jurisdiction over this Appellant's amended complaint on the basis of diversity of citizenship alone based on Title 28 U.S.C., Section 1332, making his defense of the Appellee's Rule 12(b)(1) federal question challenges unnecessary and purely academic.

POINT 4

ARE APPELLANT MARKHAM'S CHARGES AS PRESENTED IN HIS AMENDED COMPLAINT TO THE CIRCUIT COURT SUBJECT TO A ROOKER-FELDMAN DOCTRINE CHALLENGE GIVEN THE CONSPICUOUS PROCEDURAL DUE PROCESS VIOLATIONS THAT GAVE RISE TO HIS REPORTED CONSTITUTIONAL INJURY? **No.**

Appellant Markham's charges as presented are very serious constitutional rights infractions. The 14th Amendment of the United States Constitution states, "No State shall 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."

Further, 42 U.S.C., Section 1983 works as an enforcement mechanism of the Fourteenth Amendment, "ensuring that individuals whose federal, constitutional, or statutory rights are abridged may recover damages or secure injunctive relief." Freeman v. Rideout, 808 F.2d 949, 950 (2d Cir. 1986).

Assuming the Appellees were acting within bounds of the United States Constitution, the actions of the State Actors would be fair game for a Rooker-Feldman Doctrine argument, however; the State Actors in this Appellant's case were so afoul of any Constitutional bounds, there is no accommodation to subordinate the United States Constitution by a Rooker-Feldman challenge to overlook constitutional violations and misdeeds of the State, simply because they happened during the course of matrimonial litigation in a State Court action. The Constitution is the supreme Law of the Land and all of the rights and privileges provided U.S. citizens therein are absolute.

For this Court of Appeals to suggest otherwise would create a conspicuous constitutional blindspot, setting a new precedent in the Second Circuit that would allow unlawful elements of the bar and bench to operate openly with immunity and impunity in State Court matrimonial proceedings, leaving litigants without any of the intended constitutional protections or oversight. Presented with purely constitutional due process injuries, Rooker-Feldmen challenges cannot and do not apply, no matter the nature of the litigation, according to the United States Constitution.

POINT 5

IF THE ROOKER-FELDMAN DOCTRINE TEST IS APPLIED, ARE ALL OF THE FOUR REQUIREMENTS PRESENT FOR ITS APPLICATION? **No.**

This Court of Appeals for the Second Circuit has delineated the following four requirements for the application of the Rooker-Feldman Doctrine: (1) **the federal court plaintiff must have lost in state court;** (2) **the plaintiff must complain of injuries caused by a state court judgement;** (3) **the plaintiff must invite district court review and rejection of that judgment;** and (4) **all of the state court judgements must have been rendered before the district court proceedings commenced.** All four requirements must be present for the Rooker-Feldman Doctrine to apply. In this Appellant's case, none of requirements are met.

"The Rooker-Feldman Doctrine bars cases brought by losing parties in state court actions complaining of injuries caused by state court judgments." Wik v. City of Rochester, 632 F. App' x 661, 662 (2d Cir. 2015). The Rooker-Feldman Doctrine precludes a district court from adjudicating "cases brought by state-court losers complaining of injuries caused by state-court judgments

rendered before district court proceedings commenced and inviting district court review and rejection of those judgments." Exxon Mobil v. Saudi Basic Indus. Corp., 544 U.S. 280, 284, (2005).

The first requirement for a Rooker-Feldman challenge is that. **'the federal court plaintiff must have lost in state court.'** This appellant did not lose in state court. This Appellant's Absolute Judgement of Divorce is the acknowledged product of a settlement agreement that was agreed to in open court by all parties. Settlement agreements by very definition do not have winners or losers.

In his Decision and Order Judge Geraci writes (page 8), "Plaintiff lost in state court when Justice Dollinger issued a Judgment of Divorce against him, even though it was the product of a stipulation." Justice Dollinger did not issue a Judgment of Divorce 'against' anyone. The Judgment of Divorce (App.pg37), was requested and agreed to by both parties and welcomed by this Appellant on the court record. Judge Geraci erred by suggesting this Appellant 'lost' in state court simply because Judge Dollinger granted the divorce both he and his ex-wife had wanted and requested. Given the circumstances, Judge Dollinger's granting of his divorce was a clear win and this Appellant was truly grateful for the Judgment, making Judge Geraci's suggestion otherwise puzzling and on its face, just wrong.

Requirement #1 IS NOT MET.

Requirement number two for a Rooker-Feldman challenge is **'the plaintiff must complain of injuries caused by a state court judgment.'** This Appellant does NOT complain of any injuries caused by a state court judgment in his amended complaint. He rather complains that his injuries were caused by an intentional and willful deprivation of constitutionally protected procedural due process rights....an important and significant distinction. In his Decision and Order (page 8) , Judge Geraci admits, "It is unclear, however, that Plaintiff's injuries were *caused* by the state court judgment." In his amended complaint, this Appellant made no such complaints against any state court decisions or judgments. Judge Geraci goes on to acknowledge, "He (*this Appellant*) avers that his claims are not matrimonial in nature; they are based solely on 'a deprivation of his Constitutional rights alone." Judge Geraci then further concedes, "holding that Second Circuit precedent "suggests that a plaintiff's claims seeking only monetary damages or prospective-only relief against court procedures rather than modification of a family court's temporary custody or other orders would not run afoul of the Rooker-Feldman doctrine." Dowlah v. Dowlah, No. 09 Civ. 2020. 2010 WL 889292, at *2. In his amended complaint, this Appellant DOES NOT complain of injuries caused by any state court judgments and in his D&O Judge Geraci acknowledges exactly that.

Requirement #2 IS NOT MET.

Requirement number three is, **'the plaintiff must invite district court review and rejection of that judgment.'** Nowhere in his amended complaint does this Appellant ask the district court to amend, review or reject any state court judgment. He rather ONLY asks the district court to consider the procedural due process violations leading to this Appellants claims of constitutional injury. Again, a very important distinction. In his Decision and Order, Judge Geraci concedes, (page 9), "it is not clear that the Court here would necessarily be required to review and

reject the state court judgment itself." Judge Geraci goes on to provide, "The *(Rooker-Feldman)* doctrine only applies where the requested federal court remedy of an alleged injury caused by a state court judgment would require overturning or modifying that state court judgment." McKnight v. Middleton, 699 F. Supp. 2d 507, 515, (E.D.N.Y. 2010). This issue is very clear, this Appellant in his amended complaint DOES NOT invite district court review and rejection of any state court judgement and further, the requested federal court remedy to this Appellant's constitutional injury, WOULD NOT require overturning or modifying any state court judgment. Again it appears that Judge Geraci strongly agrees when on page 9 of his Decision and Order he states, **"Therefore, it does not appear the Rooker-Feldman doctrine bars all of Plaintiff's claims."**
Requirement #3 IS NOT MET.

Requirement number four is, **"all of the state court judgments must have been rendered before the district court proceedings commenced."** In his Decision and Order (page 9), Judge Geraci notes, "With respect to the fourth element, the state court judgment was entered months before Plaintiff filed this lawsuit." While it is true that Judge Dollinger's Judgment of Divorce was signed in April, 2019 and the district court proceedings commenced in January, 2020, there have been post-divorce judgment litigation and judgments regarding this unlying case handed down by Judge Dollinger in the New York State Supreme Court, as recently as Oct 13, 2020. (App pg.48).
Requirement #4 IS NOT MET.

In his Decision and Order, Judge Geraci writes, "it does not appear that the Rooker-Feldman doctrine bars all of the Plaintiff's claims." Then, in an illogical and unexplainable about face Judge Geraci writes, "To the extent Plaintiff asks the Court to review and reject any previous state court judgment, the Rooker-Feldman doctrine would indeed divest the Court of subject matter jurisdiction." Nowhere in this Appellant's amended complaint or pleadings has or does this Appellant ask the Court to review or reject any state court judgement so it is unclear as to why Judge Geraci would pose such an unsupported hypothetical as "to the extent". There is no extent and this Appellant by record did not ask or invite the circuit court to review or reject any state court judgments. In the Appellant's amended complaint, he only asks the circuit court to consider the procedural due process violations and constitutional deprivations this Appellant alleges occurred.

To the extent that not one of the four requirements for a Rooker-Feldman challenge were met, Judge Geraci erred in even suggesting hypothetically that a Rooker-Feldman argument could possibly support a Rule 12(b)(1) argument to dismiss for lack of subject matter jurisdiction. None of the four requirements are present and therefore Rooker-Feldman inarguably does not apply.

POINT 6

DOES THE DOMESTIC RELATIONS EXEMPTION DIVEST STATE ACTORS AND THEIR CONSPIRATORS ACTING UNDER COLOR OF LAW OF ACCOUNTABILITY FOR VIOLATIONS OF CONSTITUTIONALLY PROTECTED PROCEDURAL DUE PROCESS RIGHTS? **No.**

In his Decision and Order, Judge Geraci notes, "Several Defendant-Appellees have attempted to argue that the domestic relations exception divests the Court of subject matter jurisdiction simply because this case involves divorce and child custody disputes that were the subject of state court litigation." He goes on to say, "The Court disagrees. The Second Circuit has held that domestic relations exception only applies to cases whose basis for jurisdiction is diversity, not federal question." Deem v DiMella-Deem, 941 F. 3d. 618, 623 (2d Cir. 2019). Lastly, Judge Geraci offers, "Because this case is premised on a federal question arising out of 42 U.S.C., Section 1983, the domestic relations exception does not divest the Court of subject matter jurisdiction." This Appellant agrees. If this Court was to suggest otherwise, it would again create a conspicuous constitutional blindspot, setting a new precedent in the Second Circuit that would allow unlawful elements of the bar and bench to operate openly with immunity and impunity in State Court matrimonial and domestic relations proceedings, leaving litigants facing constitutional injury without any of the intended constitutional protections that are secured only via the right of due process in federal circuit and appellate courts.

POINT 7

DOES THE YOUNGER ABSTENTION DOCTRINE PRECLUDE FEDERAL COURTS FROM HEARING CASES STEMMING FROM LITIGATION THAT HAPPENED OR IS HAPPENING IN STATE COURTS? **No.**

In his Decision and Order, Judge Geraci notes, "some Defendants argue that the Court should abstain under Younger v. Harris, 410 U.S. 37 (1971) which "generally requires federal courts to abstain from taking jurisdiction over federal constitutional claims that involve or call into question ongoing state proceedings." Diamond "D" Constr. V. McGowan, 282 F.3d 191, 198 (2d Cir. 2002). He goes on, "the Court is not persuaded based on the pleadings that exercising jurisdiction over this case would necessarily call into question ongoing state proceedings. However, to the extent any of Plaintiff's claims do bear on an ongoing state proceeding, the Court will abstain from hearing them."

This Appellant appreciates Judge Geraci's concern, and there are no ongoing State Court proceedings, however, I would respectfully point out that Judge Geraci's presentation of Younger Abstention doctrine is not current, obsolete and due to the nature of the doctrine's evolution, in its current interpretation, it is not applicable and legally irrelevant to this Appellant's case.

Judge Geraci's most current Younger Abstention doctrine case reference is from 2002. On December 10th, 2013, the United States Supreme Court handed down a unanimous decision that very narrowly redefined the future of the Younger Abstention doctrine. Sprint Communications v. Jacobs, 571 U.S. (2013), No. 12-815. In that unanimous strongly worded opinion of the United States Supreme Court delivered by the late Justice Ruth Bader Ginsberg in December 2013, the Court decided the following: Federal Courts have a 'virtually unflagging' obligation to hear case within their jurisdiction; and Federal Courts should abstain from hearing and deciding a case only in "exceptional circumstances" as narrowly defined in the ruling. This case as defined in that decision is not exceptional. Lastly, the Supreme Court decided that abstention pursuant to Younger

v. Harris, 1971, (cited) is not approppropriate merely because a state court is considering a case involving the same subject matter.

Inarguably Younger Abstention doctrine could not and does not apply in this Appellant's federal circuit case.

POINT 8

IS THE APPELLANT'S CLAIM VALID UNDER 42 U.S.C., SECTION 1983? **Yes.**

"Every person, under color of any statute, ordinance or regulation, custom, or usage, of any State subjects, or caused to be subjected to, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act of omission taken in such officer's judicial capacity." 42 U.S.C., Section 1983.

Valid claims under 42 U.S.C., Section 1983 usually have the following six (6) components:

1) Has there been a violation of a Constitutionally protected right? **Yes.**

2) Are the actors all persons that are subject to Section 1983? **Yes.**

All of the Appellee's are either state actors acting under color of law or they were actively engaged in a conspiracy with state actors acting under color of law. "A private person is generally not considered a state actor unless; the state provides significant encouragement to the entity or the entity is a **willful participant in joint activity with the state.**" Justice v. King, No. 08-cv-6417-FPG, 2015 WL 1433303, at *15 (W.D.N.Y. Mar.27, 2015). "To demonstrate that a private party was a state actor encaged in a conspiracy with other state actors under 1983, a plaintiff must allege (1) an **agreement between the private party and state actors**, (2) **concerted acts to inflict an unconstitutional injury**, (3) **an overt act in furtherance of that goal.**" Young v. Suffolk Cty., 705 F. Supp. 2d 183, 197 (E.D.N.Y. 2010). "A plaintiff is not required to list the place and date of the defendant's meetings and summary of their conversions when he pleads conspiracy...but pleadings must present facts tending to show agreement and concerted action." Fisk v. Letterman, 401 F. Supp. 2d 362, 376 (S.D.N.Y. 2005).

3) Did this person act under color of law? **Yes.**

4) Are the actions explained complained of connected to the deprivation of rights in a reasonably proximate manner? **Yes.**

5) Are there defenses to liability such as immunity, lack of standing, or lack of ripeness? **No.** The acts complained of were taken in the complete absence of all jurisdiction. The Supreme Court has held that 1983 does allow immunity defenses with some caveats. "Actions that are taken with 'deliberate indifference' may impose liability. This is a very high standard beyond negligence (recklessness) and involves a 'conscious disregard." Farmer v. Brennan, 1994. The actions taken by the actors involved were taken with both deliberate indifference to the rights of this Appellant and with a conscious disregard for the integrity of the court and the Constitution of the United States.

6) Is a monetary judgment collectable from a governmental entity or, in the case of an individual defendant, personal assets or personal insurance policies? **Yes.**

The Appellant's claim has ALL of the necessary components for a valid claim under 42 U.S.C., Section 1983.

POINT 9

DOES THE SUCCESSFUL ORDER TO VACATE AND SUBSEQUENT SUCCESSFUL SETTLEMENT AGREEMENT ABSOLVE THE STATE COURT ACTORS AND CONSPIRATORS OF CONSTITUTIONAL ACCOUNTABILITY FOR PROCEDURAL DUE PROCESS VIOLATIONS THAT OCCURRED PRIOR TO AND DURING THE PENDENCY OF THOSE PROCEEDINGS? **No.**

Considering the federal nature of the allegation and the severity of the constitutional injury, it is an absurd suggestion that a successful motion to vacate and a subsequent successful settlement agreement would be offered as a mitigating circumstance and as redemptive evidence of a 'better late than never' due process argument in defense of the actors who willfully conspired to unlawfully deprive a U.S. citizen and honorably discharged U.S. Army veteran of their constitutional rights....but amazingly that is exactly what several of the Appellees have attempted to argue in their briefs.

Again, this Appellant is not and has not asked this or the circuit court to amend, review or reject any state court decision or judgment and offers this more by way of legal hypothetical than any pleading for any kind of action in this Appellant's former matrimonial case. The financial and custody issues surrounding this Appellant's matrimonial case were eventually settled to everyone's satisfaction by way of a stipulated settlement agreement, but the constitutional infractions and procedural due process issues underlying the litigation during the pendency of those proceedings were never addressed or resolved nor is there any appropriate avenue or legal remedy available in State courts for this Appellant to seek relief for his very serious constitutional injuries that occurred there. The most appropriate place for a citizen, including this Appellant to seek relief for a complaint of constitutional injury is in the federal court system which has with few exceptions exclusive jurisdiction over such 'federal question' matters.

POINT 10

DOES JUDICIAL DEFENDANT FORMER JUDGE FISHER HAVE JUDICIAL IMMUNITY AGAINST ATTACKS FOR WILLFUL AND DELIBERATE DEPRIVATIONS OF APPELLANT MARKHAM'S CONSTITUTIONAL RIGHTS? **No.**

"Judges are granted absolute immunity from liability for acts taken pursuant to their judicial power and authority." Oliva v. Heller, 839 F. 2d 37, 39 (2d Cir. 1988).
"Even allegations of bad faith or malice cannot overcome judicial immunity", "a judge will not be deprived of immunity because the action he took was in error, was done maliciously, or was in excess of his authority; rather he will only be subject to liability when he has acted in the clear absence of all jurisdiction." Stump v. Sparkman, 435 U.S. 349, 356-57, 98 S. Ct. 1099, 55 L. Ed. 2d 331 (1978). "When faced with a pro se complaint, the Court must construe the complaint liberally and interpret it to raise the strongest arguments that it suggests." Chavis v. Chappius, 618 F. 3d 162, 170 (2d Cir. 2010).

This Appellant would point out that the crimes committed by this state actor leading to this Appellant's constitutional injury were not acts taken pursuant to any judicial power or authority and therefore were acts taken in the clear absence of any and all jurisdiction. The acts of faking a trial, fabricating hearings, destroying court records and conspiring to hide those crimes could never be taken pursuant to any form of judicial power or authority, they are patently criminal and unlawful; therefore, as patently illegal and unlawful acts, they are and were inarguably acts that were taken in the complete absence of any and all judicial jurisdiction.

Likewise it is not within any jurisdictional authority to deliberately conspire to cover up such crimes with a conscious disregard for this Appellant's rights guaranteed under the United States Constitution, a Constitution that Judge Kenneth Fisher, took a solemn oath to uphold. Given these actions, the 'absence of jurisdiction' burden is not only met, it is exceeded by an almost embarrassing measure.

The Supreme Court has held that U.S.C., Section 1983 does allow some immunity defenses with caveats. "Actions that are taken with 'deliberate indifference' may impose liability. This is a very high standard beyond negligence (recklessness) and involves a 'conscious disregard." Farmer v. Brennan, 1994.

The actions taken by the actors involved were taken with both deliberate indifference to the rights of this Appellant and with a conscious disregard for the integrity of the court and the Constitution of the United States. Because this Appellee Judge was acting and conspiring in the complete absence of any and all jurisdiction in the realm of the criminal and unconstitutional, with deliberate indifference and with a conscious disregard to the constitutional rights of this Appellant, by statute and by law, Judge Fisher neither deserves nor is he legally entitled to any measure of judicial immunity.

POINT 11

DO ANY OF THE NON-JUDICIAL DEFENDANT-APPELLEES HAVE IMMUNITY AGAINST A 42 U.S.C., 1983 ACTION AS PRIVATE CITIZENS IF THEY WERE WILLFUL PARTICIPANTS IN JOINT ACTIVITIES OR THEY DEMONSTRABLY CONSPIRED WITH STATE ACTORS IN ACTS INTENDED TO DEPRIVE APPELLANT MARKHAM OF HIS RIGHT TO PROCEDURAL DUE PROCESS IN A UNITED STATES COURT OF LAW? **No.**

"A private person is generally not considered a state actor unless; the state provides significant encouragement to the entity or **the entity is a willful participant in joint activity with the state.**" Justice v. King, No. 08-cv-6417-FPG, 2015 WL 1433303, at *15 (W.D.N.Y. Mar.27, 2015). "To demonstrate that a private party was a state actor encaged in a conspiracy with other state actors under 1983, a plaintiff must allege (1) an agreement between the private party and state actors, (2) concerted acts to inflict an unconstitutional injury, (3) an overt act in furtherance of that goal." Young v. Suffolk Cty., 705 F. Supp. 2d 183, 197 (E.D.N.Y. 2010).

"Although a plaintiff is not required to list the place and date of defendants meetings and summary of his conversations, when he pleads conspiracy, the pleadings must present facts tending to show

agreement and concerted action." Conception v. City of NewYork, 2008 U.S. Dist. LEXIS 91554, 2008 WL 2020363, (S.D.N.Y. May 7, 2008).,Fisk v. Letterman, 401 F. Supp. 2d 362, 376 (S.D.N.Y. 2005).

All of the named non-judicial Appellees have liability for their actions under 42 U.S.C., 1983. They were all willful participants in 'joint activities' with state actors and they all met, (supported by facts and evidence) all of the criteria to demonstrate that they engaged in a conspiracy (to deny this Appellant his right to due process) with state actors who were acting, or more accurately, pretending to act, under color of law. See Point 15 for the specific claims made against each of the named Appellees.

POINT 12

DID APPELLANT MARKHAM RECEIVE THE PROCEDURAL DUE PROCESS HE IS ENTITLED TO UNDER HON. FRANK P. GERACI, JR., IN THE UNITED STATES CIRCUIT COURT - WESTERN NEW YORK? **No.**

The late Judge Henry Friendly, who served on the Court of Appeals for the 2nd Circuit for over 25 years (1959-1986), created a highly respected and influential list of required elements that due process requires. While the list is not exhaustive, it remains a standard measure for the minimum requirements of procedural due process, both in this, the Second Circuit and in virtually every court at every level in the United States. Through an examination of that list this Appellant makes an overwhelming argument that he was deprived of procedural due process not just in the New York State Supreme Court, but also in the United States Circuit Court - Western District of New York. This Appellant will focus on that experience in the circuit court for the brief analysis of Judge Friendly's requirements that follow: *Requirements are in general order of importance.* Henry J. Friendly, *Some Kind of Hearing*, 123 U. Pa. L. Rev. 1267 (1975).

1) **An unbiased tribunal. NOT MET.**

This Appellant did not receive an unbiased tribunal under the presiding Judge Geraci in the United States Circuit Court - Western New York. By record and by report, Judge Geraci had decades long personal and professional relationships with several of the named defendants that were never disclosed to this Appellant at the outset of this litigation. When those relationships were uncovered and Judge Geraci was formally asked to recuse himself for reasonable questions of impartiality and/or to allow for a change of venue to give this Appellant a fair and unbiased hearing, Judge Geraci denied those Appellant motions. 6:20-cv-0639-FPG, Dkt. 44,45,47. "Any justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned. He shall also disqualify himself in the following circumstance: (1) where he has a personal bias or prejudice concerning a party." 28 U.S.C., Section 455 (a), (b)(1). Reasonable questions of impartiality were asked, yet Judge Geraci refused to afford this Appellant any relief, relief that he is entitled to under 28, United States Code, 455.

2) **The notice of proposed action and the grounds asserted for it. NOT MET.**

This Appellant was never given notice as required of a scheduling conference or the setting of a discovery clock, nor was he given notice that his complaints were going to be decided by the conflicted Judge Geraci alone, in the absence of an opportunity to present evidence, without a trial

by Judge, or a trial by jury. Both the Appellant and several of the Appellees demanded a trial by jury and that request was apparently denied without any notice or explanation. The first notice that this Appellant received indicating that he would not be able to produce or request any discovery or formally present any evidence to the circuit court, was when he received Judge Geraci's final Decision and Order and to the shock and dismay of this Appellant, a directive to the Clerk of Court to close this Appellant's case. 6:20-cv-0639-FPG, Dkt. 51,52.

3) **Opportunity to present reasons why the proposed action should not be taken. NOT MET.** See 2). This Appellant was never given any opportunity to present any reasons to oppose the circuit court's actions. This Appellant requested a hearing and again that request was denied, without reason, notice or explanation, excepting perhaps Judge Geraci's understandable allegiance to his friends and colleagues...to the conspicuous detriment of this Appellant.

4) **The right to present evidence, including the right to call witnesses. NOT MET.** Aside from his complaint, that by court instruction is required to be brief and his responses to the defendant's motions to dismiss, this Appellee was given no opportunity to present evidence and certainly was never given the opportunity to call witnesses, conduct depositions or request interrogatories in spite of specifically asking for and fully expecting that opportunity.

5) **The right to know opposing evidence. NOT MET.**
Because this Appellant was deprived of procedural due process in the U.S. circuit court, and there was no scheduled opportunity for discovery, other than denials mostly due to inapplicable case law and statutes (see above), there was no opposing evidence ever presented; no dockets, no minutes, no transcripts, no findings of facts, no video taped Lincoln Hearings, not one shred of opposing evidence was presented in circuit court to defend against this Appellant's claim and his considerable volume of facts and evidence presented in support of them.

6) **The right to cross-examine adverse witnesses. NOT MET.**
Again, this Appellant was never afforded any opportunity by the circuit court to examine, depose, or question by interrogatory or any other means, any of many witnesses both supporting and adversarial to this Appellant's claims.

7) **A decision based exclusively on the evidence presented. NOT MET.**
See above. This Appellant was never formally able to produce or request any evidence as a scheduling Order was never filed, a discovery clock was never set and, there was never any opportunity for discovery to be exchanged between the opposing parties.

8) **Opportunity to be represented by counsel. NOT MET.**
This Appellant filed motions for leave to proceed in forma pauperis, and for the Court to appoint counsel. Not surprisingly, both of these reasonable requests were denied. 6:20-cv-0639-FPG, Dkt. 2, 3, 6.

9) **Requirement that the tribunal prepare a record of the evidence presented. NOT MET.** Because there was never any hearing or tribunal, nor was there any formal way to submit or exchange discovery and evidence, there is no record for a tribunal in the circuit court docket. Further, recall that unlying the litigation in circuit court are claims of faked trials and

hearings in state court that have neither docket entries, transcripts, minutes, pleadings, recordings or any court records at all, evidence those fictional *tribunals* in State court likewise never occurred.

10) **Requirement that the tribunal prepare written findings of fact and reasons for its decision. NOT MET.**

While it is true that Judge Geraci did prepare a final Decision and Order, it would be difficult to frame his Decision as a 'tribunal' given it was so bereft of any of the requirements that a tribunal requires, with almost none of the necessary elements of procedural due process as laid out by the late Hon. Henry Friendly while serving on the Court of Appeals for the Second Circuit.

It's clear that this Appellant never received anything close to the required measure of procedural due process in the United States Circuit Court - Western District of New York and on that basis alone, this Court of Appeals for the Second Circuit should overturn the Decision and Order of Hon. Frank P. Geraci, Jr. and grant this Appellant the relief he has requested.

POINT 13

DOES PRO SE APPELLANT MARKHAM'S COMPLAINT HAVE SUFFICIENT 'FACIAL PLAUSIBILITY' AND STATE ENOUGH FACTS TO DEFEND AND OVERCOME RULE 12(b)(6) CHALLENGES FOR FAILURE TO STATE A CLAIM? **Yes.**

"The Court should not dismiss the complaint if the Plaintiff (Appellant) has stated enough facts to state a claim for relief that is plausible on its face, and must accept as true all of the factual allegations contained in the complaint." Bell Atl. Corp v. Twombly, 550 U.S. 544, 570, 127 S. Ct. 1955, 167 L.Ed. 2d 929 (2007).

"A court must draw all reasonable inferences in Plaintiff's favor." Faber v. Metro. Life Ins. Co., 648 F. 3d 98, 104 (2d Cir. 2011).

"A claim has facial plausibility when the plaintiff (Appellant) pleads factual content that allows the court to draw the reasonable inference the defendants (Appellees) are liable for the misconduct alleged." Ashcroft v iqbal, 556 U.S. 662, 678, 129 S. Ct 1937, 173, L.Ed 868 (2009).

"The court must take all facts alleged in the complaint as true and draw all reasonable inferences in favor of the plaintiff." Council v. Johnson, 461, F.3d 164, 171 (2d Cir. 2006).

"When faced with a pro se complaint, the Court must construe the complaint liberally and interpret it to raise the strongest arguments that it suggests." Chavis v. Chappius, 618 F. 3d 162, 170 (2d Cir. 2010).

Legally, 'facial plausibility' of the facts presented is the legal standard that this Appellant must meet and overcome in order to defeat a Rule 12(b)(6) challenge for failure to state a claim. Both in his amended complaint and in his cited pleadings before the United States Circuit Court, this Appellant has both met and exceeded that standard by a significant measure. The facts this Appellant presents in support of his claims are neither vague nor conclusory and conversely the claims are very specific and are supported by an impressive volume evidence on record...evidence even more impressive considering the fact that this Appellant was deprived of any real opportunity to formally enter evidence into record, exchange discovery or present witnesses during the pendency of these proceedings in the United States Circuit Court.

This Appellant will briefly review his claims against each of the Appellees in turn separately because while the overarching conspiracy that led to a deprivation of this Appellant's constitutional right of due process in a United States court of law is the same, the details about each of the named Appellees specific acts and roles in the conspiracy differ.

Former - NEW YORK STATE SUPREME COURT JUSTICE, KENNETH R. FISHER:

The evidence presented in this Appellants' pleadings against the actions of former Judge FISHER are as disturbing as they are convincing. In his Amended Complaint, this Appellent states, "the Defendant's *including Judge Fisher,* willfully and knowingly conspired to deprive Plaintiff (this Appellant), of his Constitutional right to due process in a United States Court of law by fabricating evidence including Lincoln Hearings and a Trial that the facts will show never actually occurred." This Appellant goes on to say, "the Defendant's conspired by way of false affidavit and false testimony….." Lastly the Appellant charges, "the Defendant's conspired to destroy all the Court Records including the Monroe County Courthouse Record, the NYS eRecord, and the *Fisher* judicial chamber chamber file in an attempt to obfuscate their collusion and illegal behaviour that was well outside the official capacity and duties of officer of the Court." He goes on, "no relief was ultimately provided by the New York State Supreme Court for the extreme deprivation of rights there. Having all legal remedies in New York Courts finally exhausted has resulted in this timely petition for relief in U.S. federal court."

In support of his claims this Appellant attached as **Exhibit B**, The *Affirmation of Walter Capell, Esq.,* 6:20-cv-0639-FPG, Dkt. 17, B, (Appendix, pg. 76), in which he testified that this Appellant only received 13 pages from the Monroe County Court Clerk: A) Original Judgment, B) Application for index number, C) Page 3 of Summons, D) Complaint. Mr Capell, Esq., goes on to say, "Your Affiant was given the opportunity and did, in fact, review Justice Fisher's file in this case for the purpose of attempting to locate the missing documents listed in the Order, dated May24, 2017, Your Affiant found none of those documents in Justice Fisher's file."

Also attached as **Exhibit C**, was The *Admission of intent to conspire from Bezinque, Esq., to Mott, Esq.,* 6:20-cv-0639-FPG, Dkt. 17, C, (Appendix pg. 9, (10a)), which was a letter sent between this Appellant's attorneys in which Appellant's attorney Mott reports to Appellant's attorney Sayers that, "In talking to Mark Bezinque, Esq., he admitted that there was no hearing." Mr Mott goes on to say in his letter. "Fisher says he held a Lincoln Hearing. He refers to 'Mother's testimony' but there is no transcript in existence and no reference to a default hearing or notice of a default hearing. When Fisher refers to 'Mother's testimony', no idea what he is talking about." Finally Mr. Mott closes out the paragraph with, "Interesting reading' is my comment on Judge Fisher's Decision and Order. Apparently he is not familiar with the phrase Judgement of Divorce."

In his Decision and Order, Judge Geraci concedes, "Plaintiff alleges that Justice Fisher fabricated a hearing and trial and 'acted well outside the scope of his official duties...when he conspired with the other Defendants to rid his official chamber file of any incriminating documents." "Plaintiff's claims against Justice Fisher must be dismissed because Justice Fisher is entitled to absolute Judicial Immunity," In support of that Decision, Judge Geraci offered, "neither

claims that a judge's decision was 'biased and prejudicial' nor that proceedings were conducted 'irregular or erroneous manner' abrogates absolute immunity." Levine v. Lawrence, No. 03-CV-1694, 2005 WL 1412143, at *5 (E.D.N.Y June 15, 20015.

The issue this Appellant takes with Judge Geraci's decision is that he never suggested that the proceedings in the Fisher Court were conducted in an 'irregular or erroneous' manner, this Appellant alleges that Judge Fisher never conducted the proceedings at all, but said he did....an important distinction. Clearly if this Appellant was just unhappy with the 'proceedings', Judge Fisher would be protected and immune for acts that happened as 'quintessential judicial functions'. Leathersich v. Cohen, No. 18-CV 6363, 2018 WL 3537073, at *2 (W.D.N.Y. July 23, 2018). The facts and evidence show however that Judge Fisher faked the 'proceedings' and faked the testimony that could not have been taken with the realization that neither a Default Trial, nor a Lincoln Hearing ever occured.

This Appellant would point out that the crimes committed by Judge Fisher leading to this Appellant's constitutional injury were not acts taken pursuant to any judicial power or authority and therefore were acts taken in the clear absence of any and all jurisdiction. The acts of faking a trial, fabricating hearings, destroying court records and conspiring with others to hide those crimes could never be taken pursuant to any form of judicial power or authority, they are patently criminal and unlawful; therefore, as patently illegal and unlawful acts, they are and were inarguably acts that were taken in the complete absence of any and all judicial jurisdiction.

Likewise it is not within any jurisdictional authority to deliberately conspire to cover up such crimes with a conscious disregard for this Appellant's rights guaranteed under the United States Constitution, a Constitution former New York State Supreme Court Judge Kenneth Fisher took a solemn oath to uphold. Given these actions, the 'absence of jurisdiction' burden is not only met, it is exceeded by an almost embarrassing measure.

The Supreme Court has held that U.S.C., Section 1983 does allow some immunity defenses with caveats. "Actions that are taken with 'deliberate indifference' impose liability. This is a standard that involves a 'conscious disregard." Farmer v. Brennan, 1994.

The nonjudicial actions taken by Judge Fisher were taken with both deliberate indifference to the rights of this Appellant and with a conscious disregard for the integrity of the court and the Constitution of the United States. Because Judge Fisher was acting and conspiring in the complete absence of any and all jurisdiction in the realm of the criminal and unconstitutional, with deliberate indifference and with a conscious disregard to the constitutional rights of this Appellant, by statute and by law, Judge Fisher neither deserves nor is he legally entitled to any measure of judicial immunity.

This Appellant's complaints have both facial plausibility and evidence of his conspiracy with the named non-judicial Defendant - Applees.

The circuit court erred in Granting Judge Fisher's Motion to Dismiss based on Rule 12(b)(6),and 12(b)(1), and this Appellant respectfully requests that it be overturned and this

Appellant be given the full measure of relief requested and any other relief as seems just and proper to the Court.

MARK CHAUVIN BEZINQUE, ESQ., - FIRST ATTORNEY FOR MS. DELONG:

In his amended complaint and pleading this Appellant alleges that the first attorney for Appellee DeLong, consciously and with malice, "conspired with the Fisher Court to fabricate a trial, falsify hearings and then destroy the court records in a deliberate attempt to willfully conspire to deprive the Plaintiff of his Constitutional right to due process."

This Appellent specifically states, "the Defendant's *including Mark Bezinque,* willfully and knowingly conspired to deprive the Plaintiff (this Appellant), of his Constitutional right to due process in a United States Court of law by fabricating evidence including Lincoln Hearings and a Trial that the facts will show never actually occurred." This Appellant goes on to say, "the Defendant's *including Mr. Bezinque* conspired by way of false affidavit and false testimony….." Lastly the Appellant charges, "the Defendant's conspired to destroy all this Appellant's Court Records."

This Appellant further provides, "Mr. Bezinque admitted to Mr Mott (former attorney for Plaintiff) when questioned as to why there were no court records and no docket entries of a default trial or a Lincoln Hearing ever happening that, 'there is no record, because they never happened." In his Amended Complaint, **Exhibit C**, was The *Admission of intent to conspire from Bezinque, Esq., to Mott, Esq.,* 6:20-cv-0639-FPG, Dkt. 17, C. (Appendix pg. 9, (10a)), Mr. Mott reports to Appellant's attorney Sayers that, "In talking to Mark Bezinque, Esq., he admitted that there was no hearing." Mr Mott goes on to say in his letter. "Fisher says he held a Lincoln Hearing. He refers to 'Mother's testimony' but there is no transcript in existence and no reference to a default hearing or notice of a default hearing. When Fisher refers to 'Mother's testimony', no idea what he is talking about."

By evidence of the record it is irrefutable that there is not one shred of evidence to support that a default trial was ever conducted nor Lincoln Hearings ever held. By proof of evidence, or a lack thereof, at the successful Judge Bellini Motion to Vacate, there was no Notice of Trial ever produced as repeatedly promised ...undoubtedly because as we now know, there was no trial. This Appellant goes on in Amended Complaint to say, "the Defendant's conspired by way of false affidavit and false testimony….." As additional evidence of Mark Bezinque conspiring with Judge Fisher and the other Defendants, on May 11, 2017 Mr Bezinque filed an Attorney Affirmation where he falsely stated, "Defendant (this Appellant) defaulted after he received due notice of the trial date." Mark Bezinque further falsely states in the Amended Judgment of Divorce (Appendix pg.81), he prepared and wrote and Judge Fisher signed on March 20th, 2017, "Plaintiff having applied on due notice to the Court for a Judgment for the relief demanded in the Complaint; and this matter having been presented to this Court; having presented testimony and proof of service at a default hearing before this Court on November 14, 2016…..etc."

Further, in this Appellant's Amended Complaint **Exhibit E,** *Deposition of Diane Delong* 6:20-cv-0639-FPG, Dkt. 17, E, held on December 14, 2017, Ms. DeLong is asked about her participation in the faked default trial while being represented by Mark Bezinque, Esq., QUESTION: "Did you testify to anything at the default trial?"; ANSWER: "I did testify." We now know that Neither Ms. DeLong nor her Attorney Mark Bezinque were being truthful because there never was a default trial and all testimony purported to have been taken was completely fabricated. Mr. Bezinque and Ms. Delong, with the complete knowledge of and at the pleasure of Judge Kenneth Fisher, were conspiring to knowingly and deliberately put forth a false narrative in a conspicuous attempt to deprive this Appellant of his constitutional right to due process in a court of law. This false narrative became the foundation for the stated conspiracy and cover up that Ms. DeLong and her future attorneys have continued right through to the commencement of litigation with the successful settlement agreement in December of 2018, presumably to protect Mark Bezinque, Esq., from accountability for his, the Fisher, Riley and Morris' unspeakable fraud committed to the detriment of this Appellant. On November 7th, 2018, just one month before the Dollinger Divorce Settlement Agreement, Maureen Pinuea, Esq., the forth attorney for the Plaintiff (Appellee DeLong), falsely wrote in her sworn Affirmation, *with a clear motive to protect Bezinque and Morris* (Appendix pg. 89), "Deponent has personally reviewed the file at the Monroe County Clerk's Office. All of the exhibits admitted at **the trial** are in a box at the Monroe County Clerk's Office (Appellee Bello 20-2223). All of the exhibits admitted at **the trial** are in a box that the Monroe County Clerk is storing the file in this manner. I believe the minutes of the trial are in the box as well as motions, pleadings, orders - all the usual documents associated with an action." We now know that like Mr. Bezinque before her, Ms. Pinueau's testimony in her Affirmation is completely false; there are no docket entries, no trial minutes, no notice, no pleadings, no findings of fact; not one shred of evidence that there ever was a default trial. Ms. Pineau was obviously covering for her Colleague Mr. Bezinque, covering his despicable acts with a reckless disregard for this Appellant's constitutional right to due process in a court of law.

In his Decision and Order, Judge Geraci writes, "Plaintiff has not set forth any allegations that give rise to Bezinque's liability under 42 U.S.C., 1983 as a private attorney." This Appellant disagrees, all of the criteria are met for conspiracy under 42 U.S.C., 1983 and under that statute, Mark Chauvin Bezinque is conspicuously liable for the deprivation of this Appellant's rights, privileges and immunities secured by the 14th Amendment of the United States Constitution.

"A private person is generally not considered a state actor unless; the state provides significant encouragement to the entity **or the entity is a willful participant in joint activity with the state.**" Justice v. King, No. 08-cv-6417-FPG, 2015 WL 1433303, at *15 (W.D.N.Y. Mar.27, 2015).

"To demonstrate that a private party was a state actor encaged in a conspiracy with other state actors under 1983, a plaintiff must allege (1) an agreement between the private party and state actors, (2) concerted acts to inflict an unconstitutional injury, (3) an overt act in furtherance of that goal." Young v. Suffolk Cty., 705 F. Supp. 2d 183, 197 (E.D.N.Y. 2010).

"Although a plaintiff is not required to list the place and date of defendants meetings and summary of his conversations, when he pleads conspiracy, the pleadings must present facts tending to show agreement and concerted action." Conception v. City of NewYork, 2008 U.S. Dist. LEXIS 91554, 2008 WL 2020363, (S.D.N.Y. May 7, 2008).,Fisk v. Letterman, 401 F. Supp. 2d 362, 376 (S.D.N.Y. 2005).

In his Decision and Order, Judge Geraci states, "Plaintiff's claim that Bezinque participated in a conspiracy to deprive him of his constitutional right is vague and conclusory." This Appellant strongly disagrees. The allegations in his Amended Complaint with attached exhibits against Mark Bezinque are highly detailed and full of specific examples. They have facial plausibility and are far from vague and conclusory.

Mark Bezinque acted in a conspiracy and with deliberate joint activity with the state, Judge Kenneth Fisher, when he participated in the faking of a trial and Lincoln Hearings, and worked with the other Appellees in a coordinated effort to hide and destroy this Appellant's court records in a transparent attempt to deprive this Appellant of his right to due process in court in agreement with and at the pleasure of the presiding Judge Kenneth Fisher. Far from being vague and conclusory, this Appellant's Amended Complaint describes in great detail how Mark Bezinque with false testimony and false affirmations attempted to defraud this Appellant with a clear motive to intentionally harm this Appellant for the benefit of his client and the pleasure of the Court.

- This Appellant complaints are supported with facts and they have facial plausibility.
- The accusations are specific and detailed and are neither vague nor conclusory.
- Mark Bezinque was a willful participant in joint activity with the state, Judge Fisher.
- There is agreement of purpose and action between Mark Bezinque and Judge Fisher.
- Mark Bezinque submitted a false testimony, false Attorney Affirmations, and even knowingly wrote two false Judgments on behalf of Fisher in a concerted act to inflict an unconstitutional injury on this Appellant.
- To inflict a constitutional injury, Mark Bezinque willfully and with malice, submitted a false testimony in the court record of this Appellant, a 'overt act' intended to deprive this Appellant of rights and with the deliberate intention to harm him in furtherance of that goal.

"The Court should not dismiss the complaint if the Plaintiff (Appellant) has stated enough facts to state a claim for relief that is plausible on its face, and must accept as true all of the factual allegations contained in the complaint." Bell Atl. Corp v. Twombly, 550 U.S. 544, 570, 127 S. Ct. 1955, 167 L.Ed. 2d 929 (2007).

"A court must draw all reasonable inferences in Plaintiff's favor." Faber v. Metro. Life Ins. Co., 648 F. 3d 98, 104 (2d Cir. 2011).

"A claim has facial plausibility when the plaintiff (Appellant) pleads factual content that allows the court to draw the reasonable inference the defendants (Appellees) are liable for the misconduct alleged." Ashcroft v iqbal, 556 U.S. 662, 678, 129 S. Ct 1937, 173, L.Ed 868 (2009).

"The court must take all facts alleged in the complaint as true and draw all reasonable inferences in favor of the plaintiff." Council v. Johnson, 461, F.3d 164, 171 (2d Cir. 2006).

"When faced with a pro se complaint, the Court must construe the complaint liberally and interpret it to raise the strongest arguments that it suggests." Chavis v. Chappius, 618 F. 3d 162, 170 (2d Cir. 2010).

All of the criteria are met for conspiracy under 42 U.S.C., 1983 and under that statute, Mark Bezinque shall be liable to the injured party for the deprivation of this Appellant's rights, privileges guaranteed by the United States Constitution.

The circuit court erred in Granting Mark Bezinque's Motion to Dismiss based on Rule 12(b)(6),and 12(b)(1), and this Appellant respectfully requests that it be overturned and this Appellant be given the full measure of relief requested and any other relief as seems just and proper to the Court.

LISA B. MORRIS, ESQ., - FIRST ATTORNEY FOR THE CHILDREN:

Perhaps there is no one involved in this case *(with the possible exception of Fisher)* who was more deliberate and brazen in documenting their participation in the conspiracy and fraud committed than Lisa B. Morris, Esq., the first attorney for the children.

In her sworn testimony Lisa Morris, Esq., AFC, in her Closing Argument of Attorney for the Children offers on Page 2, (App.pg.6), "The case was **set for trial** on November 14, 2016. The father did not appear for the trial and the matter proceeded by default. **At the trial**, Mother **testified** and requested sole custody of the children." Ms. Morris goes on to say on Page 3, "The children specifically requested to meet with the Court so that they could share their opinions with the Court. On November 15, 2016, the Court conducted a **Lincoln Hearing** wherein each child appeared individually on camera with the Court."

We now know beyond any doubt that neither the Trial, nor Lincoln Hearings referred to by Lisa B. Morris, Esq., Attorney for the Children, ever happened and all the 'testimony' referred to by Lisa Morris, Esq., AFC was completely fabricated. Presented here is irrefutable evidence that both the Fisher Trial and the Lincoln Hearings were faked and the testimony purported to be given was fabricated:

1) There is no docket entry for a Trial on November 16th, 2016 or for any other date while this case was before Judge Kenneth Fisher. (Appendix pg. 53).

2) There is no docket entry for a Lincoln Hearing on November 15th, 2016 or for any other date while this case was before Judge Kenneth Fisher. (Appendix pg. 53).

3) The youngest child referred to (12 years of age at the time), has denied ever meeting with Judge Fisher, ever, for any purpose including answering questions about her parents.

4) There are no minutes, transcripts or pleadings of any kind for either a Trial or Lincoln Hearing in the Monroe County Courthouse Record, Judge Fisher's chamber file, or the New York eRecord.

5) No one including any of the Appellees have been able to produce one shred of evidence to show that either the Fisher Trial or the Lincoln Hearings ever took place during the years of corrupted litigation that followed in the New York State Supreme Court, nor have they

provided one scintilla of proof that they exist during the pendency of litigation in the U.S. Circuit Court.

In his REPLY/ANSWERING AFFIRMATION SUBMITTED ON BEHALF OF DEFENDANTS MORRIS AND RILEY IN OPPOSITION TO AMENDED COMPLAINT, AND OPPOSING PLAINTIFF'S CROSS MOTION, 6:20-cv-0639-FPG, Dkt. 20 pg. 6 (20). Frank Aloi, Esq., Attorney for Ms Morris and Mr Riley writes, "Lisa B. Morris, Esq., was the AFC during the default Trail and Lincoln Hearing before Justice Fisher. Ms Morris confirmed in her Affidavit filed previously in this manner on February 14th, 2020 tha both the default Trial were held by Justice Fisher as indicated." "At page 2 of her Affidavit she *Lisa Morris,* summarizes the chronology of events before Justice Fisher during her tenure as AFC:" Of note in her Affidavit, 6:20-cv-0639-FPG, Dkt.10,11. Ms. Morris offers, "C. 11/14/16, Justice Fisher conducted a Default Trail when Dr. Markham failed to show for a Trial date." Ms Morris goes on, " D. 11/15/16 Justice Fisher conducted a Lincoln Hearing with the Markham Children." Amazingly, Lisa Morris makes these claims without providing one sherd of evidence to the court to support her false claims: no docket entries, no trial minutes, no pleadings, no findings of fact, no Lincoln Hearing tapes or transcripts, nothing...not one shred of evidence.

In an almost comically stupid attempt to bluff this pro se litigant, Mr Aloi offers, "Attached hereto as Exhibit AA, is the New York State Unifed Court System E Courts, WebCivil Supreme - Appearance Detail, (Appendix pg. 53), for all of the proceedings in the matrimonial litigation between the parties, Diane R. Markham-vs-Michael D. Markham, Index No. 2015/09826, which details the appearances before Justice Fisher from 10/19/2015 to 1/20/2017. 6:20-cv-0639-FPG, Dkt.20 pg.6(21,22). Mr. Aloi goes on, "On 11/14/2016, appears the entry before Justice Fisher's trial part that the "Trail was set for", 10:00am on that date." He then says, "Without question, the Trial before Justice Fisher did take place on November 14, 2016."

Quite shocked at the almost laughably transparent attempted bluff, this Appellant offers in his, "AFFIRMATION OF PLAINTIFF IN RESPONSE TO THE THE REPLY ANSWERING AFFIRMATION SUBMITTED ON BEHALF OF DEFENDANTS MORRIS AND RILEY BY FRANK A. ALOI ON MARCH 24, 2020." 6:20-cv-0639-FPG, Dkt.24, pg2-3., in a reply to Mr Aloi's offering of the docket as proof of a Trial this Appellant offers, "Rarely in Federal Court proceedings is there a 'smoking gun' presented into evidence. Rarer yet is the 'smoking gun' unwittingly entered into evidence by an arrogant and overconfident defense attorney who only through his own delusion believes the said, 'smoking gun' is somehow supporting the case rather than destroying it." This Appellant goes on, "We have here just such a black swan if you will." "Mr. Aloi states, on 11/14/2016, appears the entry before Justice Fisher's trial part that the 'Trial was set for' , 10:00 am on that date." This Appellant then offers, "Mr Aloi is doing nothing more than willfully attempting to defraud this Court. Anyone (let alone a former NYS Supreme Court Judge, *Geraci)* with a modicum of understanding of how to read a Docket can see that there is NO entry showing that a Trial was ever **'HELD'.**" " As the Plaintiff is certain, the Court and in fact everyone with the possible exception of Mr Aloi knows: if a trial was held on November 16, 2020, the docket entry under Row 4, "Outcome Type" would read either **'HELD' or Trial**

HELD." Lastly this Appellant points out just to drive the point home, "There are in fact two other "Trial Set For" entries on the docket on 9/26/2016 and 3/26/2018. Everyone agrees that there were in fact no Trials held on those days either, reaffirming that Mr. Aloi's implication that a "Trial Set For" is in any way proof of a Trial is complete and utter nonsense."

In his Amended Complaint this Appellant alleges, "The evidence (6:20-cv-0639-FPG, Dkt. 17, D , **Exhibit D,** *Lisa Morris Closing Argument for the Children),* will show that Lisa B. Morris (former attorney for the children) willfully participated in and contributed to the conspiracy against Plaintiff by knowingly submitting false sworn testimony in her 'Closing Argument for the Children', (Appendix pg. 5), that gives testimony that she says was given during Lincoln Hearing and a Trial in November 2016 that she knew never occurred." "Her willful participation in this conspiracy deprived the Plaintiff (this Appellant) of his 14th Amendment Constitutional Right to Due Process in a United States Court of Law."

By record, Lisa B. Morris did not fairly represent the rights of this Appellant's children with respect to this Appellant and she was more than ready to share that bias with anyone who would listen. In his Affirmation to the Court, Gregory Mott, Esq., on behalf of this Appellant, states " Defendant does not believe that the reappointment of said AFC (Morris) will provide the Court with an unbiased assessment of the custodial situation." Mr. Mott goes on, "I spoke with Lisa Morris, Esq., briefly before the first motion argument date to vacate on September 6, 2017 at the Hall of Justice. She made a remark as to what she thought about the Defendant, which to me was inappropriate and unfounded, I will not repeat it in this Affirmation, but I represent to the Court that based on that remark alone, I would have asked any AFC to decline this reappointment and I am asking the Court that if that does not occur, that the Court vacate its Order Appointing Lisa Morris, Esq., as AFC and appoint another AFC so that both parties can believe that the AFC representing their children (not just Plaintiff's children) will have unbiased representation and provide the Court with unbiased information on behalf of the two children ages 15 and 13." (Appendix pg. 91).

Not surprisingly, like most bullies when confronted, Ms. Morris after committing horrific fraud and inflicting huge constitutional injury to this Appellant, wrote to Judge Bellini and asked to be removed from the case, "Although I disagree with the Affidavit that Mr. Mott submitted to the Court, I would prefer that the Court assign alternate counsel so that I do not become a distraction to the case." (Appendix pg. 95). With Lisa B. Morris' fraudulent Closing Argument for the Children it was a little too late for a mea culpa.

In his Decision and Order, Judge Geraci says, "Plaintiff's allegations are vague and conclusory." He also states, "Nor has Plaintiff established any over, concerted act on the part of Morris to give rise to section 1983 liability."

This Appellant could not disagree more. In his Amended Complaint this Appellant accuses Lisa B. Morris of, "knowingly submitting false testimony in her 'Closing Argument for the Children." This Appellant then annexed and incorporated that document to his Amended Complaint to give specific evidence of her false testimony. (6:20-cv-0639-FPG, Dkt. 17, D , **Exhibit D,** *Lisa Morris Closing Argument for the Children),* (Appendix pg.5).

Far from being vague and conclusory, this Appellant's Amended Complaint describes in great detail how Lisa B. Morris with false testimony attempted to defraud this Appellant with a clear motive to intentionally harm this Appellant for the benefit of his client and the pleasure of the Court.

- This Appellant complaints are supported with facts and they have facial plausibility.
- The accusations are specific and detailed and are neither vague nor conclusory.
- Lisa B. Morris was a willful participant in joint activity with the state, Judge Fisher.
- There is agreement of purpose and action between Lisa B. Morris, and Judge Fisher.
- Lisa B. Morris submitted a false testimony, in a concerted and overt act meant to inflict an unconstitutional injury on this Appellant.
- To inflict a constitutional injury, Lisa B Morris submitted false Closing Argument for the Children entered into the court record of this Appellant, a 'overt act' intended to deprive this Appellant of constitutional rights and with the deliberate intention to harm him in furtherance of that goal.

All of the criteria are met for conspiracy under 42 U.S.C., 1983 and under that statute, Lisa B. Morris shall be liable to the injured party for the deprivation of this Appellant's rights, privileges and immunities guaranteed by the United States Constitution.

Again, to be crystal clear, this Appellant is not asking for and has no interest in this Court reviewing or rejecting any state Court judgments, we eventually arrived at a successful settlement agreement. This Appellant is only interested in the Court taking up the very serious violation of protected due process and constitutional rights issues that occurred here and inflicted considerable constitutional injury on this Appellant.

The circuit court erred in granting Lisa B. Morris' Motion to Dismiss based on Rule 12(b)(6),and 12(b)(1), and this Appellant respectfully requests that it be overturned and this Appellant be given the full measure of relief requested and any other relief as seems just and proper to the Court.

EDWARD W. RILEY, ESQ., - SECOND ATTORNEY FOR THE CHILDREN:

While his counterpart Lisa B. Morris may have been more brazen in her willingness to conspire with the state, perhaps there is no one in this entire case who inflicted more deliberate constitutional injury to this Appellant than Edward W. Riley, Esq., the second attorney for the children.

Out of the AFC frying pan and into the AFC fire.

As soon as Edward Riley was selected by Court Referee Snodgrass (See 20-2223) this Appellant objected for reason of conflict. Ed Riley was well known this Appellant being childhood friend of his estranged father and a highly visible and conspicuous figure in the town of Brockport, NY that they both called home, (until this Appellant moved to Hawaii many years before this litigation began). When Mr. Riley showed up to a first meeting in his Brockport Law Office wearing pajamas, this Appellant knew that Edward Riley was being intentionally disrespectful and undoubtedly would be heavily biased (through his lifelong relationship with this Appellant's

estranged father) and this Appellant immediately objected to his selection. Of all the gin joints in all the world, Ed Riley walks into mine, wearing pajamas, pretending to represent the interests of my children before the New York State Supreme Court.

Before long it was very clear that Mr. Riley was colluding with the now Judge Dollinger Court and was hell bent on continuing to put forth the fraudulent and false narrative created by Lisa Morris and the Fisher Court. Mr Riley refused to allow the children to participate in a custody evaluation, nor would Judge Dollinger order one. Mr. Riley said repeatedly on record that he would not allow the children to 'engage' with the Court for any reason, leaving him as the sole arbiter and reporter of the interests of this Appellant's children. Fed up, this Appellant demanded Mr. Riley recuse himself for conflict and not surprisingly he refused. In his Attorney Affirmation, Edward Riley admitting to knowing this Appellant's estranged father and the grandfather of his new wards in his words, "since I was approximately seven years old, as a result of us both being altar boys at the time in the local Catholic Church," yet in spite of that admission, he still refused to recuse himself for conflict. (Appendix pg. 98). The motion was eventually heard by Judge Dolliger and because Mr Riley was deliberately installed to do Dollinger's bidding and actively participate in the cover up on behalf of the Court, not surprisingly, Dollinger refused to remove Mr Riley.

This Appellent specifically states in his Amended Complaint, "the Defendant's *including Edward W. Riley,* willfully and knowingly conspired to deprive the Plaintiff (this Appellant), of his Constitutional right to due process in a United States Court of law by fabricating *or conspiring to cover up* evidence including Lincoln Hearings and a Trial that the facts will show never actually occurred." This Appellant goes on to say, "the Defendant's *including Mr. Riley* conspired by way of false affidavit and false testimony….." Lastly the Appellant charges, "the Defendant's conspired to destroy *and deny the destruction of,* all this Appellant's Court Records."

In his *Affidavit of Edward W. Riley, Esq.,* filed in the U.S. Circuit Court in response to this Appellant's claims in his Amended Complaint, Mr. Riley fraudulently states, "Dr. Markham's arguments concerning there having been no prior trial before Justice Fisher, nor a Lincoln Hearing as part of those proceedings are incorrect." (6:20-cv-0639-FPG, Dkt. 11-3, pg. 2 (3). This Appellant then responds in his responding motion, (6:20-cv-0639-FPG, Dkt. 18, "The Plaintiff would respectfully point out that Mr. Riley makes this bold statement, that plaintiff's arguments are incorrect, *regarding there being no trial or Lincoln Hearing,* without offering any evidence whatsoever to refute the plaintiff's claims." Mr. Riley goes on, "Dr. Markham was never deprived of his 'rights', Constitutional or otherwise." This Appellant responds, "He, *Mr. Riley,* makes this statement again without offering any context or proof of his claims." It's crystal clear that Mr. Riley is conspiring with the state to continue to present a false and fraudulent narrative about the very due process issues this Appellant is asking this federal court to address.

In his Decision and Order, Judge Geraci states, "Like Morris, Riley is a private actor. Plaintiff's claim that Riley participated in a conspiracy to deprive him of his constitutional rights is vague and entirely conclusory."

Again this Appellant disagrees. Like Morris and Bezinque before him the claims this Appellant made in both his Amended Complaint and in his pleadings before the circuit court were anything but vague and conclusory. This Appellant described in great detail how Mr. Riley gave both false testimony and false Affirmations in an ongoing collusion and conspiracy with the state. By Court record and his very Affidavit to the Circuit Court, Mr. Riley was intent on continuing to present a false narrative intended to harm this Appellant, deprive him of due process and inflict as much constitutional injury as possible to this Appellant.

Far from being vague and conclusory, this Appellant's Amended Complaint describes in great detail how Edward W. Riley, Esq., with false testimony attempted to defraud this Appellant with a clear motive to intentionally harm him for the benefit and to the pleasure of the Dollinger Court.

- This Appellant complaints are supported with facts and they have facial plausibility.
- The accusations are specific and detailed and are neither vague nor conclusory.
- Edward W. Riley was a willful participant in joint activity with the state, Judge Dollinger.
- There is agreement of purpose and action between Edward W. Riley and Judge Dollinger.
- Edward W. Riley continuously and shamelessly submitted false testimony, including to the circuit court, in a concerted and overt act meant to inflict an unconstitutional injury on this Appellant.
- To inflict a constitutional injury, Edward W. Riley deliberately and with malice submitted false testimony to the New York State Supreme Court the U.S. Circuit Court, a 'overt act' with the goal to deprive this Appellant of constitutional rights and with the deliberate intention to harm him in furtherance of that goal.

All of the criteria are met for conspiracy under 42 U.S.C., 1983 and under that statute, Edward W. Riley shall be liable to the injured party for the deprivation of this Appellant's rights, privileges and immunities guaranteed by the United States Constitution.

One last time, to be crystal clear, this Appellant is not asking for and has no interest in this Court reviewing or rejecting any state Court judgments, we have already arrived at a successful settlement agreement. This Appellant is only interested in the Court taking up the very serious violation of protected due process constitutional rights issues that occurred in the New York State Supreme Court and inflicted considerable constitutional injury on this Appellant.

The circuit court erred in granting Edward W Riley's Motion to Dismiss based on Rule 12(b)(6),and 12(b)(1), and this Appellant respectfully requests that it be overturned and this Appellant be given the full measure of relief requested and any other relief as seems just and proper to the Court.

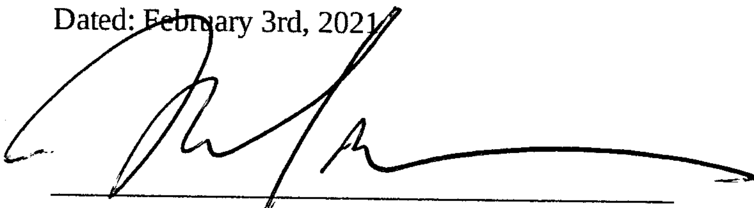
CONCLUSION

"The guarantee of due process of law, as embodied in the Fifth and Fourteenth Amendments to the Constitution, and as interpreted by the courts, provides for fair treatment for all who are affected by government action. It implies that a person will receive fairness of treatment, a procedure designed to achieve a just and equitable result. The guarantee of due process serves to check or control the misuses of abuse of power, and ensure that other rights and privileges protected by the Constitution and laws are given full force and effect. By confining the agents of government to their properly delegated authority under the Constitution and laws, due process of law provides a fundamental cornerstone for a free and lawful society." Henry J. Friendly, *Some Kind of Hearing*, 123 U. Pa. L. Rev. 1267 (1975)

The circuit court erred in granting the named Appellees Motions to Dismiss based on Rule 12(b)(6), and 12(b)(1), and this Appellant respectfully requests that they all be overturned and this Appellant be given the full measure of requested relief and any other relief as seems just and proper to the Court.

I Michael D. Markham, declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Dated: February 3rd, 2021



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UNITED STATES COURT OF APPEALS for the SECOND CIRCUIT

Michael D. Markham,

Plaintiff - Appellant,

v.

CERTIFICATE OF SERVICE

COA Docket Number: 20-2236
DC Docket #: **19 - CV - 6930**

Mark Chauvin Bezinque,
Lisa B. Morris,
Edward W. Riley, &
Kenneth R. Fisher.

Defendants - Appellees.

I Michael D Markham, hereby certify under penalty of perjury that on February 3rd, 2021, I served a copy of **Reply Brief and Reply Appendix of Appellant Michael Markham,** and **Proof of Service** by United States Priority Mail delivery with signature confirmation to the Clerk of United States Court of Appeals for the Second Circuit and by mailing the same by USPS Priority First Class Mail in a sealed envelope, with postage-paid thereon, in an official depository of the U.S. Postal Service addressed to those persons whose names are set forth on these two numbered pages.

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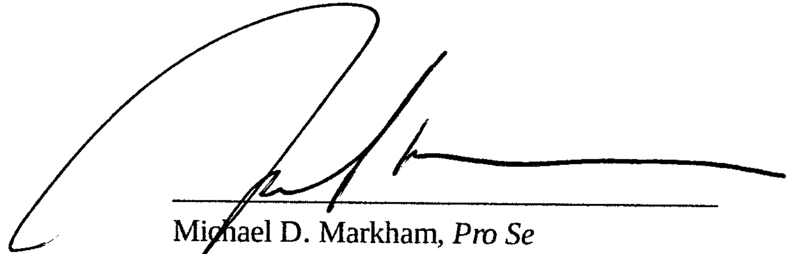
Dated: February 3rd, 2021



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