In the United States Court of Appeals for the Fifth Circuit

504-310-7700

600 S. Maestri Place
New Orleans, LA 70130-3408

Cause No. 22-50111

JUDICIAL APPELLATE
Overturn

MOTION TO DISMISS AND OVERTURN
Objection to order by Manifest Injustice
By extraordinary writ
Justices 10TH COURT OF APPEAL, THOMAS GRAY, REX DAVIS, 10TH COURT OF APPEAL; LEE HARRIS, JUDGE 66TH DISTRICT COURT

Word count 7,765 f or writ

KENT GRAHAM and COLETTE SAVAGE,
Plaintiffs-Appellants
v.
MARK SAVAGE; VIJAY MEHTA

Defendants-Appellees.
On Appeal from the United States District Court for the Western District of Texas, Austin Division, Cause No. 1:21-CV-151

Opposing parties: Judge Lee Harris of the 66th court; 10th Court of appeal Waco Justice Thomas Gray; Justice Rex Davis; Mark Savage- Brother to Colette Savage; Michael McDonald, Lender's attorney for cause. Vijay Mehta September 26,2022.

To the honorable judges of the fifth circuit

This is a request for a rehearing and writ for the independent premeditated jurisdiction seizure that occurred after the case 52939 began which caused injuries to the civil rights of pro se litigants and symbolizes that financial assault caused by judges, justices and magistrates specifically toward the pro se litigant. This becomes a civil rights launched issue which is contained in the right of free speech, the right to grievance and documents that grievance and the constitutional deprivation of property rights with denying a pre and post deprivation hearing to chill that speech. This includes the right to be heard in the proper jurisdiction and a court of law in an illegal jurisdiction swap, replacement and substitution. It also contains a legal right to process one's claim properly and by law. Legal Rescission filed under TILA excludes oral hearsay claims, conversions and tampering with any mortgage documents. No lending. No verification. Texas was restricted to the mortgage lending documents. We prove in this brief 1st , 4th 5th and 14th constitutional rights of these pro se litigants deprived , never heard, nor processed, nor litigated in state and federal court properly. Plaintiff's case, causes of action and evidence (exhibits 1-20) for legal Rescission (TILA) were never

heard in Texas state court and now in federal court which denied review by Magistrate Hightower illustrates a manifest injustice and prejudice. (52939) Hill County-unlawful admission and dismissal). TILA Rescission restricts the mortgage lending documents to Texas. Without inspection and investigation of proper jurisdiction due process fails and it is as if one was never there. The 52939 court proceeded ex-parte on behalf of defendants in under an oral ruthlessly pursued counterfeit securities scheme. (Appellate One S.F. states on pg 13 that the documented notes have no probate jurisdiction and if they did they would not be legal- A-150984 Appendix A ex 17.) Colette won her case in California probate which restricts Mark's claim in Texas to a mortgage claim he never funded. We have evidence all defendants, listed above in this case and the defendant retired justice, Al Scoggins, an officer of the court (who never answered the summons at the time) committed interstate securities fraud, by illegally converting, transferring, and assigning a void mortgage lending offer into an illegal probate securities without proof of any agreement that became an entrapped $900,000 debt hoax and $200,000 in court costs against Colette Savage plaintiff, 68 years old which also led to the illegal property seizure of Kent Graham , 72 year old, heir to Colette Savage , 905 N 11th street Temple Texas. WE prove Magistrate Hightower in cv 1:21 00151 negligently obtains all her facts on behalf of the defendants proving her non review of proper jurisdiction, refusing to comprehend the facts of

proper jurisdiction by Appellate Court One A 1309814 S.F which designates there is no probate debt to Colette Savage and makes that clear. (App A ex 17 pg 2-3 order). Colette won every probate case in California against Mark which establishes her legal right to inherit. This voids the California counterfeit probate securities scheme launched in a Texas court where no probate agreement exists. Magistrate Hightower refused to review all seven California probate orders which Plaintiff places in her brief which identifies no review by Hightower court. We prove no proper due process once again and that is a fifth amendment deprivation. Appendix A ex 1,2,3,4,14.

Magistrate Hightower proves she never reviewed proper jurisdiction nor the twisting and churning of a mortgage lending document that fails in its performance. We evince no legal securities authentication nor verification takes place in Austin Federal 1:21-CV-151. This case never included any legal securities. This case is based on securities fraud. No agreement. No securities. Rooker Feldman doctrine is not barred due to manifest injustice of securities fraud, writing securities and tampering with securities during litigation. There are no witnesses for any alternate securities not out of jurisdiction securities. All securities are also barred by TRUTH IN LENDING ACT RESCISSION filed timely by plaintiff App A ex 8 in 2015. prior to Texas litigation that proves the Texas court had no authority to

process, manipulate or state Colette signed securities she never signed. Mark lost his claim in California which is why he brought his defacto claim into Texas. Why else would he bring securities fraud stating that he has a legal security on California probate Trust. That is not frivolous but a crime and should be reported. That documentation verification, validation of any security has never occurred in any court. It is void for fraud which should have deemed a second look by federal court since the judges and judgments concern interstate securities fraud on California probate subject matter not the mortgage lending offer. There can be no Texas judgment on any California probate security because that security does not exist and would not be legal if it did exist. It was never proven nor produced.

We have parallel independent schemes of securities fraud running side by side in both 66th and 10th COA judgments which contain fraudulent debts /liability that do not exist and refer to out of jurisdiction fraud scheme in California probate. See California orders under App A ex 1,2,3,4,14 and Appellate Court 1 App ex 17that states any and all probate related matters were resolved in California probate under Judge Banke judgment in S.F. Appellate court. Judge Bank on pg 1- 2 states "COLETTE SOUGHT AN ORDER DETERMINING TO THE MAXIMUM EXTENT POSSIBLE THAT TWO NOTES WITH CALIFORNIA CHOICE OF LAW PROVISIONS (WHICH REFERRED TO AS CALIFORNIA NOTES) IN

FAVOR OF MARK IN CONNECTION WITH AN OSTENSIBLE $240,000 LOAN WERE VOID OR AT LEAST, SET ASIDE IN FULL) SO SHE WOULD HAVE UNDISPUTABLE EVIDENCE FOR USE IN TEXAS AND ELSEWHERE TO ESTABLISH THAT ANY UNDERLYING ORIGINAL OBLIGATION OWING TO MARK IS SATISFIED IN FULL AND IS UNAVAILABLE TO SUPPORT ANY TEXAS SECURITY OR FORECLOSURE OR ANOTHER ENFORCEMENT ACTIONS BY MARK IN TEXAS AND OTHERWISE"

Mark and his attorney commit perjury in the Northern California federal court and in every court they ever entered. Mark has no probate claim. No probate debt. No probate agreement and certainly cannot prove any legal security document with his sister.

WE prove Mark had no standing for any mortgage lending claim in Texas due to his non performance and is barred under probate and FDCPA to bring any probate security into the Texas Hill County court. Mark never had any claim or security in Texas. We prove he has a white collar premeditated securities fraud scheme which lacks the actual security document. See California probate orders never reviewed by the Hightower court admittingly on pg two of her summary. By only reviewing defendants claim which is a debt that never existed and was never proven by any court the Texas judgments are void for proof. They simply do not exist. App A ex

1,2,3,4,14. Judge Rundee confirms Mark and Colette had no contractual agreement for Mark making any probate claim against Colette nor the trust. "THERE IS NO CONTRACTUAL OR STATUTORY BASIS FOR SUCH FEES' requested from Mark. App A ex 4 order in Cal probate. Magistrate Hightower never quotes these orders and omits, avoids and suppresses them on pg 2 of her report where she states she relies only on the later Texas judgments. We have evidence of non review of probate orders. But those Texas judgments are barred due to the fact they cannot over rule nor appeal California probate orders, never proved a security exists and also is restricted by the subject matter of Mark's promissory Mortgage lending document offer that fails performance. However, those Texas judgments have no jurisdiction in Texas since they never refer to the mortgage lending offer by Mark Savage Lender. They only refer to California probate which has exclusive jurisdiction over all matters probate. They are never fact checked by California federal and by Texas federal in a separate suit for the independent action of foreclosing on Kent Graham's property and never reviewing California probate properly. (Bait and Switch jurisdiction- entrapment scheme) We prove Mark committed forum abuse by switching his mortgage documented promise to lend converting it without authorization to a California probate case during litigation in Texas and was neve sanctioned for that illegal out of jurisdiction conversion which commits securities fraud. App A APPELLATE

ONE ex 17 pg 16 under Judge Banke states "...REFILING IN ANOTHER FORUM WOULD BE LEGALLY BARRED BY THE STATUTES OF LIMITATIONS FOR EXAMPLE OR WOULD BE OTHERWISE IMPOSSIBLE OR IMPRACTICAL" (DisputeSuite.com supra 2 Cal 5th at pg 975) This bars Mark's claim in Texas and his manipulation and perjury under Rooker Feldman.

The Texas courts could never convert, tamper, or substitute by their own independent action Mark's mortgage home lending to Colette for any California debt, obligation nor convert that to any California probate consideration. It violates dozens of probate statutes. There were no probate obligations by California probate court orders: App A ex 1,2,3,4,14 (and Mark's voluntary dismissal of all Promissory Notes in probate App A ex 5) Magistrate Hightower overlooks these statements and all orders in California probate. Full Faith and Credit under California probate court is barred from prelitigation in Texas. Texas knew this so they designed oral securities that do not exist called Promissory Note dated August 22, 2014 and a Texas Note that only refers to California probate. Misleading, manipulative without any value and restricted by California probate orders, appellate order, TILA never processed and the mortgage lending notes themselves.

Not one security was legally tested, verified, validated for legal consideration by the Hightower court. Not one alleged nonexistent security was ***ever*** legally litigated tested, authenticated nor validated in Hillsboro, Texas trial court under

Judge Lee Harris case 52939 nor did it occur in the Appellate court Waco 10-17-00139- 10 16-0036 nor 10-16-0094. FDCPA violation **15 USC 1692h no debt was ever verified nor note .** However, it was found invalid by California probate orders App 3,4, 14 and Appellate Court One App ex 17:Judge Banke. Any probate claim against the Trust and Colette was settled therefore Mark bringing the same denied claim by forum shopping to Texas is invalidated by the California probate court and by statute. Pg 2,15,16. Judge Rundee order in Ca Probate: App A ex 4. THERE IS NO STATUTORY OR CONTRACTUAL BASIS FOR SUCH FEES Rundees order (Mark's requesting reimbursement from Colette nor the SAVAGE TRUST)

Mark has no standing in Texas because he had no consideration under California probate nor his mortgage lending offer that never loans! (App A ex 3,4. 5, 6.) Mark's oath in San Mateo probate 124417 California Mark's promise to Colette "NOR ARE ***ANY PROMISSORY NOTES*** RELEVANT TO THE PRAYER MADE IN THE PETITION FOR COMPENSATION AND REIMBURSEMENT FROM WILLIAM B AND BEATRICE SAVAGE TRUST." The burden of the damages and the injuries now switch to Texas where all facts and law are abused. Note the word ANY Promissory Notes: That voids 52939 order on partial MSJ August 26, 2016 and MSJ January 31, 2017 regarding the judgment on a Promissory Note referring to California probate for $383,000. These Texas

judgments are in contempt of Judge Miram-Rundee and Banke's orders on promissory notes and any California probate claim. Texas is in contempt of overruling 7-8 other California probate orders that preceded the Texas judgments. There are no Promissory Notes remaining in probate. The judges in Texas and subsequent judges are in contempt of Mark's promise to Colette regarding ANY PROMISSORY NOTES ARE NOT RELEVANT TO PROBATE. Therefore, Mark is legally barred from making ***any*** California probate claim in Texas or forum shopping in Texas to appeal California probate orders, settlements and distribution. There are no legal agreements between Mark and Colette. There are no legal agreements between Colette and Mark regarding Trust property nor any agreements period. Rooker- Feldman does not pertain to court fraud nor when due process is void in a manifest injustice. Mark's probate duplicative claim filed in probate in Texas actually makes William B and Beatrice Savage Trust liable not Colette.

Texas could not raise any California probate claim in Texas nor does any California probate claim exists under his mortgage lending Deed of Trust. Mark could not collect on behalf of the Trust nor divert distribution of Trust assets to himself. App B ex A,B,C. And the Texas courts certainly could not invent California probate securities to secure Trust assets or a beneficiaries Trust assets during litigation to misrepresent California probate debt claim already denied and

paid in probate. The creating of paper that does not exist is a Texas state fraud against Colette and her family. They are not defending the California Trust but attacking the Trust.

The Texas court did not have personal jurisdiction to construct counterfeit notes against Colette and stated she signed them. By all defendants brining a claim against Colette in Texas they were bringing a $240,000 debt claim that escalated to $900,000 against the William B and Beatrice Savage Trust in California. There is no probate contract nor mortgage lending contract. There is no standing for any consideration. Mark never had a claim! Mark is deceptively suing the Savage Trust again in the state of Texas. Every word of the Hightower background statement is an error and identifies serious prejudice and non review.

We prove inducement to involuntarily commit Colette Savage and Kent Graham to a fraudulent debt that is not possible, without any legal consideration, never validated and prohibited under the terms of Mark's mortgage lending document offer (Non merger clause Appendix B ex A & C final paragraph promises exclusion of previous-contemporaneous and subsequent agreements as well as all oral agreements) and the law enforces this clause. Texas courts breached Mark exclusionary clause in his mortgage documents to construct an illegal security. This is not reviewed by the Hightower court. The mortgage lending device never

authenticated could not be transferred, substituted or replaced for California probate debt substitution and does not fix all thefts that occur in Texas and California. (App A Ca probate court orders App A ex 1,2,3,4, 5 14).

The exclusion clause in the mortgage lending documents voids Mark's claim in any court. App A ex A,B,C. Mark is prohibited from converting his own lending document promise to a counterfeit oral consideration security that does not exist.

The fraudulent transfer of an out of jurisdiction probate claim settled by San Mateo California Probate Court department 26 (Judge Miram) imported deceptively into the Texas court as an extrinsic oral fraud without being attached to any note identifies a manifest injustice. (Appendix A ex 3,4,14) The settled probate claim remained a separate and independent oral scheme from the mortgage lending device/ scheme. Neither could be proven as a debt. **FDCPA15 USC 1692h (b) disputed debt claim.** TILA violations. **§TILA 1631. TILA §1632. Form of disclosure;**

Mark is barred from claiming, presenting and perjuring California probate Trust expenses in the state of Texas. App A ex 3,4,5,14.

Mark by law cannot raise a California settled trust claim or any probate claim in a Texas state court nor in 2016. Mark by jurisdiction law and preclusion law cannot recover or make any claim of California Trust property nor act against the Testator

in a Texas court nor challenge Testator's will in a Texas court since all matters probate stay in California and were settled in California by law, by statute and by order. All Trust property and matters are exclusive jurisdiction to California probate and this is under oath by Mark personally which is documented in 000151 under doc 19 ex 5. Nor could Mark raise any claim by converting gifts from Beatrice his mother as a loan from Mark to Colette. Mark is barred in Texas making any oral claims against the California probated trust.

Mark nor the Texas court cannot interfere, intervene in Colette's right to inherit. Probate already decided this case. Colette owes Mark no money, no debt nor is there any loan that was not paid in full. The $240,000 commercial loan or lending by Mark promisor never occurred. Appendix B ex A,B,C. Colette is not obligated to repay any $240,000 loan that never occurred nor any expenses, including lending expenses. Mark's mortgage lending Deed of Trust and Acknowledgement bars any California probate claim and any oral antecedent agreements since they do not exist and are also barred by FDCPA #801- #812. That bars all Texas judgments under FDCPA and proves illegal review by Texas courts. This is the reason the Texas courts suppressed, ignored and omitted FDCPA, TILA, DTPA and all probate orders. It also proves non review by Magistrate Hightower making erroneous statements about the case in what she relies on including background statements.

There is no subject matter for any claim under Mark's mortgage lending documents! The Miram order proves Mark was paid for his illegal thefts, conversions and unlawful distributions in the thousands of dollars which proves his historical pattern of deception which explains why he was removed as fiduciary of the WB and Beatrice Savage Trust . The Texas court in contempt of California reinstated Mark. This is confirmed by probate court order Colette places in all records to all courts under App A ex 1,2. Mark was removed after a Court investigator was called into Probate. Fraud actions trigger the legal right to have a Rooker Feldman review and prove manifest injustice is a problem in all courts.

Mark and Jeffery Moss perjures his appellee brief that his claims are not probate related to Appellate court one Judge Banke. App A ex 17 pg 13. Mark converts his schemes by forum. Mark and his attorneys play the jurisdiction card by interchanging the subject matter of securities that do not exist and since no one is checking gets a free pass.

<u>We prove no debt, no agreement, no loan, no lien, no antecedent claim</u>

This explains why the Texas state courts had to make up oral securities that are undocumented such as a Promissory Note dated August 22, 2014 without evidence of support and a Texas Note that does not exist and appears in the Appellate opinion for the first time. App A ex A 14,15,16. The Texas Note is an independent

claim causing injury. One cannot construct an oral security nor collect on any oral security especially a Real Estate security. The Hightower court never validated any oral securities nor documented the mortgage lending offer that fails to lend. She never reviewed any evidence from plaintiff's. The Hightower court unlawfully dismisses a fraud case against the defendants who had no jurisdiction nor subject matter jurisdiction under fraudulent securities pertaining to probate. Mark reconstructed his mother's will for an alternate distribution.

The probate scheme is an illegal independent transfer for no reason except to cover Mark's title theft of six properties and the theft of his sister's California $583,000 Bank of Marin account as well as Kent Grahams home in Temple Texas. How could anyone think this is not a manifest injustice? Colette has a legal basis to file suit against any causes of action never tried in any court which includes federal actions such as TILA refused to be reviewed in state court and properly filed.

No Constructive fraudulent transfer analysis

We have prove Magistrate Hightower obviously did not conduct a constructive fraudulent transfer analysis since she does not even refer to proper jurisdiction for the mortgage documents or get the real title of the documents correctly. (there are so many illegal transfers) WE prove absolutely no review which identifies no due process once again! A manifest prejudice and a constitutional crisis against the pro

se litigants is obvious. Take Judicial Notice: Mark Savage is not Colette's husband. He is her brother acting fiduciary who stole her entire estate and her inheritance. We prove non review in the Hightower court. Therefore, dismissal cannot be moot for non-review in the Hightower court which we can prove through her erroneous statements. Nor can dismissal occur when Texas judges tamper with and contest a California Testators final wish under illegal securities. That is not frivolous but a fact!

Non review of Fair Debt Collection Practice Act an independent claim brought in federal court to admit Rooker Feldman

Our independent FDCPA federal violations claim pled in state of Texas court by plaintiff were never reviewed, litigated as a cause by the Texas state court but were transferred into the federal petition by Colette as well for independent review which she is entitled to. See Appendix B ex E. Non litigation of Fair Debt Collections Act in the state of Texas under Judge Lee Harris and the Appellate 10 court and the mechanics thereof identifies bringing this as an independent claim/action into Federal court. However, you can read under Judge Hightower's 20 page review that the magistrate refused to review Fair Debt Collection Practice Act as well as Deceptive Trade Practice Act which is a denial of plaintiff's remedy

including a dozen other statutes Hightower never admitted. And this identifies prejudice inside the workings of the federal court. This also proves dismissal cannot replace non review.

Thus, as understood by the Third Circuit in PEDP, a federal court has jurisdiction "as long as the 'federal plaintiff present[s] some independent claim,' even if that claim denies a legal conclusion reached by the state court." January 11, 2018/Third Circuit - In re Philadelphia Entertainment & Development Partners regarding Rooker Feldman.

Any oral "replacement" of a undocumented offer or alternate liability without authorization and converting that hearsay into a security illegality has absolutely no standing in any court throughout the United States. That is not frivolous. That is the law. There is no jurisdiction for witnesses, officers of the Texas court to construct securities fraud during litigation to cover Mark title thefts that occur in Texas knowing consideration was invalid. The Texas judgments are based on securities that do not exist and are testified to by perjurer Mark Savage, Michael McDonald and Jeffery Moss his attorney and enforced by the named Texas judges. It also violates several federal laws such FDCPA, TILA, EXPLOITATION TO SENIORS AND DISABLED PERSONS never reviewed by the Texas courts because they stated they could not review federal claims. WE requested the federal court under Magistrate Hightower to review all denied claims in Texas court which the Hightower court could not refuse since due process was avoided for plaintiff in

state court. There is no liability to Colette and her heirs under an unlawful security never reviewed, never signed nor offered and only exists orally. We prove prima facia forensic fraud. This is serious not frivolous and we have proof.

Judge Harris told Colette she could not raise **federal** claims in his 66th court though she pled them in her petition and in her legal briefs. Not one of her causes of action were given due process. Rules of court do not apply to pro se litigants and that is a fact. "some factor independent of the actions of the opposing party that precluded [her] from raising [her] federal claims admits Rooker Feldman." Rooker Feldman

Rooker Feldman can be raised when state court refuses one litigant to be heard.

Shortly after the *Exxon* case, the Sixth Circuit found that a plaintiff's injuries that were suffered from a debt collector's use and reliance on a false affidavit in garnishing a bank account (related to exempt versus non-exempt funds) were injuries suffered by the plaintiff independent of the state court judgment. See *Todd v. Weltman, Weinberg & Reis Co., L.P.A.*, 434 F.3d 432 (6th Cir. 2006). The court in Todd relied on the fraudulent nature of the affidavit to find that *Rooker-Feldman* did not bar jurisdiction.

In the Savage case under the unlawful jurisdiction of Marin County Sweet Court Mark and his attorney Jeffery Moss falsified his affidavit under a perjured Sister

State Judgment in California to illegally seize Colette's $583,000 Bank account; as an independent illegal action another serious violation of Fair Debt Collection Practice Act. That was just one more independent action that occurred after the illegal judgment that occurred by the 66th and 10th COA. **Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. §§ 1692 e** *Kropelnicki v. Siegel*, 290 F.3d 118 (2002)

That action was never reviewed by any federal court. FDCPA, DTPA and TILA all pled in state court and never heard brought as an action to federal court. WE bring those independent federal actions now under Rooker Feldman. Magistrate Hightower refused a legal review characterizing a manifest injustice.

Some of these independent claims could not have been raised in the state proceedings because the injury did not occur until the announcement of the unfavorable state judgment. That invites Rooker Feldman.

Besides the independent actions we file in state and federal court never reviewed in either we meet all four prongs of Rooker Feldman.

The Rooker-Feldman doctrine applies when four requirements are met: **(1) the federal plaintiff lost in state court**, (2**) the plaintiff complains of injuries caused by the state court judgment,** (3) **that judgment issued before the federal suit was filed, and** (4) **the plaintiff invites the district court to review and reject the state court judgment. We met all four prongs and prove fraud inside the court.**

The Harris court applied another debt from a settled probate case in California and that independent case proves no debt exists but was only used to coverup the illegality of the mortgage lending offer and covered up Mark's settlement under his selling his probate claim and his failed mortgage notes for $10,001 at the foreclosure auction proving Mark violates all settlements, orders, oaths and laws.

" *Kenner v. C.I.R.,* 387 F.3d 689 (1968); **7 Moore's Federal Practice**, **2d ed., p. 512, 60.23**. he 7th Circuit further stated "*a decision produced by fraud upon the court is not in essence a decision at all, and never becomes final*."

Magistrate Hightower misrepresents plaintiff's case

There is no evidentiary support for Magistrate Hightower's statement, testimony and opinion herein:

Magistrate Hightower states: "**This lawsuit seeks to overturn Texas state court rulings regarding a *family trust,* a promissory note, a deed of trust, and the foreclosure of certain property in Hubbard, Texas."**

Magistrate Hightower copies the "***background of the case"*** from the defendants which relies on Mark & Jeffery Moss's falsified and perjured affidavit. WE have absolute proof Mark stole, committed theft and sold Colette's six stolen

properties back to Colette for $10,001in a staged enforced unlawful foreclosure sale proceeding without a loan nor a debt, therefore, the manifest injustice and prejudice of the Hightower court relying on defendants falsified affidavits refers to ALTERATION of the mortgage lending offer instead of the material evidence of the lending documents and new Deed of Trust she ***never*** mentions proves her non review. The alteration is barred under dozens of states and federal statutes. Appendix B ex A,B,C,D.E. Alteration is non performance.

Each fact Magistrate Hightower presents is barred by law. The Texas court could not overturn any family Trust.

This case is restricted to Mark's promisor mortgage lending document offer. That is not frivolous. It was counterfeit when recorded as a $240,000 loan in Hill County with no other loans attached. Nothing can change that event not even altering the document with the assistance of the Texas judiciary. TILA BARRED that action for fraud and non disclosure. However Judge Lee Harris and the Appellate court Waco 10-16-0036 aided and abetted Mark in selling the stolen properties back to Colette in an illegally held public foreclosure sale when federal Rescission was in place to bar the sale and consideration was never validated. FDCPA 15 USC 1692h a.b.c.d.e

That illegal activity and criminal action cannot be disputed by any court especially the Hightower court for non review of the evidence. There is no mention of theft in the Hightower report. This proves non review by the Hightower/ Pittman court of the sale, the theft, the non existent Promissory Note and the sold Deed of Trust that could not be sold again thereafter. This explains Hightower never granting plaintiff an evidentiary hearing nor allowing for discovery. It also explains why she never refers to the only material evidence in the case; the Mortgage lending documents. Appendix B ex A,B,C. The Hightower never mentions the mandated mortgage loan of $240,000. We prove no due process occurs again in another court and request a reversal of the dismissal with a change of venue. Plaintiff's case is rich in facts and cannot be dismissed without a miscarriage of justice. Hightower's background proves indisputable prejudice and non review.

The Savage California family trust is precluded under the mortgage lending case under the notes themselves final clause52939. Fifth amendment proves this is a securities fraud crime. The California family irrevocable trust at all times remains sovereign and independent in California which is untouchable and cannot be altered in the lower Texas state courts. There was no jurisdiction, nor connection to bring a California Trust into a Texas court especially to alter that Trust for Mark independently under independent separate court frauds. That voids the entire background statement under Magistrate Hightower's prejudicial facts. Colette

never sought to overturn any court rulings regarding a California family Trust already established in California by order under full faith and credit. Texas court had no jurisdiction nor relevance to admit a settled trust and reprobate that trust circumventing distribution under Mark's title theft as a decoy to suppress that premeditated title theft. We requested the federal court to affirm all seven California probate orders that Magistrate Hightower refused. Magistrate Hightower never mentions California court orders block, bar and obstruct Texas jurisdiction over Testators California will and all matters probate. This explains why we were denied an evidentiary hearing in the Hightower case. See Appellate one doc 17 pg 16. Vol 58615 doc 1 Doc ex listed 11,12,13,14, 21 doc 1 ex 19. There is simply no excuse Magistrate getting this many facts wrong which is evidence of judicial prejudice. No review or prejudicial review by Hightower argues she has jurisdiction to dismiss. She should have made respondents appear and explain how a California probate case is relevant to Mark's mortgage lending document offer. And where are the legal securities in the judgments we demanded proof and were denied.

The Rooker-Feldman doctrine applies when four requirements are met: **(1) the federal plaintiff lost in state court**, (2**) the plaintiff complains of injuries caused by the state court judgment,** (3) **that judgment issued before the federal suit was filed, and** (4) **the plaintiff invites the district court to review and reject the state court judgment. We met all four prongs and prove fraud inside the court.**

The California settled Trust was introduced as an independent action, decoy, and hearsay device separate from Mark's failed mortgage lending documents with the coaching and assistance of the Texas trial court under Judge Lee Harris and the Appellate 10 Waco court. You just have to read the appellate 10 opinion that confirms this jurisdiction defect replacing the mortgage lending document offer with a California Trust security scheme titled Promissory Note then the Appellate opinion reassigned that Promissory Note as a Texas Note. Our demand for documents failed in the Hightower court. We prove suppression in federal court.

The Savage family Trust could not be overturned in the state of Texas because it had already been settled in California. Appendix A,B,C. Obviously the California family TRUST remains irrelevant to Mark's breached mortgage lending home equity offer. And it is a separate independent action from the undisclosed recording of the loan as if a $240,000 loan occurred in Hill County Recorder's office by Mark and McDonald proving title theft under a loan granted which we prove never occurred. There is no mention of probate, a California trust or Testator's will in the lending Deed of Trust recorded as a loan in 2014.Appendix B ex A. This explains why Magistrate Hightower refused discovery under plaintiff's claim. The fact the Hightower court never reviewed the August 22, 2014 Deed of Trust and Acknowledgement dismisses the Hightower courts report as frivolous since this

fact is not corrected remains a statement defect and proves the federal courts are also prejudice against the pro se litigant. We prove a manifest injustice and injury by Magistrate Hightower non investigation. The background statement is in error. Magistrate Hightower does not even get the most simple facts correct. The respondents should have been made to disclose how a California probated trust is relevant to the theft of six properties and the theft of a $583,000 Bank of Marin Account and how that is relevant to the failure to lend under Mark and McDonald mortgage lending documents; Magistrate refused proper review of jurisdiction and the proof of a debt. Sec. 392.302. HARASSMENT; ABUSE IN DEBT COLLECTION. We prove more debt collection abuse under the federal court. Magistrate Hightower cannot introduce new facts into this case.

Foreclosure could not occur under stolen documents and failed mortgage promise by lender. Mark, the Texas trial court, nor the appellate court could no longer collect from any illegal antecedent oral agreements because they are collaterally stopped by several California court orders and explained under Judge Banke Court One opinion that it would be illegal. Pg 15 16. App A ex 3,4,14. 51865 doc 1,11.12.13.14.19,21.

Therefore Magistrate Hightower's report is insensitive and void to the truth since that August 22, 2014 Deed of Trust was sold. Mark could not collect a second time on his sold Deed of Trust BECAUSE he was committing multiple interstate

securities fraud against his sister under an illegal security never validated or authenticated because it remains oral. That is indictable and a felony. Plaintiff's case cites a new Deed of Trust omitted, suppressed by all defendants and Magistrate Hightower which is in most of Colette's pleadings. Magistrate Hightower never mentions the new Deed of Trust after foreclosure. That extinguishes her report. Instead she relies again ONLY on Jeffery Moss's perjured and conflicting affidavit. (under Appendix B ex C and D). We ask the dismissal be reversed and change of venue. It proves once again Mark has no standing for any extrinsic FRAUD CLAIM in any court and identifies Magistrate Hightower and Judge Pittman protecting and advocating for Texas state judges never holding them accountable. (Appendix B ex C and D) Therefore, there is no debt nor liability that can be attached by the Hightower court. Magistrate Hightower failure to consider the claims will result in a fundamental miscarriage of justice." *Coleman v. Thompson,* 501 U.S. 722, 749, 111 S.Ct. 2546, 115 L.Ed.2d 640 (1991)

It is well-settled that "if a circuit court fails to establish a factual basis that the defendant admits constitutes the offense pleaded to, manifest injustice has occurred,". *State v. Thomas,* 2000 WI 13, ¶17, 232 Wis. 2d 714, 605 N.W.2d 836.

Jurisdiction error or fraud proves miscarriage of justice in federal court

Magistrate Hightower: "In 1993, *Texas* residents William and Beatrice Savage established a family trust ("Trust") providing that their assets would pass to the Trust at the time of their deaths." Page 2 of the Hightower report.

Public and the Fifth Circuit judiciary please take notice: Magistrate Hightower never read Plaintiff's pleadings. William B and Beatrice Savage in their 62 year marriage never lived in Texas which voids her report for non review which misleads the fact finder that Beatrice death occurred in Texas which would then keep the probate claim in the state of Texas. That is a serious material error on jurisdiction that is reversible.

Fraudulent Notes, securities inside the Texas state court judgment that occurs illegally under Harris January 2017 and the Appellate court 10 in October 2018 do not exist were never reviewed nor signed by Colette nor Mark. They are state court manufactured frauds and this cannot be disputed since they were never produced. Rooker Feldman admits state court frauds! The securities have no personal nor legal subject matter jurisdiction. A federal manifest injustice of interstate counterfeit securities admits this case for a federal review.

There are no securities to disinherit Colette or that Colette signed to disinherit herself proves the magistrate non review and a vexatious Texas court allows for a

federal review. Nor the Hightower court refer to any any California probate orders Appendix A ex 1,2,3,4,14 which proves no Promissory Note exists and extinguished by Mark. There is no default on any payment because a payment of $7,063 was an independent personal debt to Mark and has nothing to do with the COMMERCIAL $240,000 loan that never occurred nor is there any amendment to the mortgage lending document. A personal loan of $7,063 was never listed in the Deed of Trust Appendix B ex A, Acknowledgment (Appendix B ex B) nor Real Estate Lien Note that never liened any properties. (No properties on Real Estate Lien Note after sold at foreclosure Appendix B ex C) Therefore, this voids the magistrates statement regarding payments copied from the Appellate 10 opinion. There is no payment due on a loan of $240,000 that never occurred. Colette's homes and her bank account were seized for no reason! FDPA violation of combining debts especially when disputed is barred. **15 USC 1692g illegal debt collecting 15 USC 1692j illegal actions by debt collection**

A fraud exception often removes a case that was, at its inception, a matter of state law and makes it one of federal law. We met all four prongs of Rooker Feldman federal review and review based on state court frauds. We prove pro se prejudice is realized in the Hightower court. Fraud does not bar a Rooker Feldman review. It invites one.

That jurisdiction defect statement by a federal magistrate proves prejudice, serious bias and partiality by the Hightower/ Pittman federal court as well as malice.

Therefore, the Magistrate's report is flawed since it cites Texas under the independent probate scheme that cannot by law be inextricably intertwined with any Texas court judgment because probate remained California jurisdiction by order. WE prove unlawful enforcement by the federal court of lower state court frauds and hoaxes under unlawful jurisdiction which identifies senior exploitation and financial harassment by a Texas court of law. Any allegations that mortgage lending documents failed to lend intertwined, were replaced with a theory of a security that does not exist exemplifies fraud in the court based only on oral assumptions. No proof! Magistrate Hightower misrepresents the state that probate occurs in. (Appendix A ex 1,2,3,4,14) The state of Texas judiciary does not have the legal power, authority, nor jurisdiction to suspend or rescind Mark's counterfeit mortgage document offer and illegally replace it with non existent oral securities . We ask, request and pray for reversal. We request this ongoing harassment and exploitation cease.

CCP 366.2 California probate

First, is the overall one-year statute of limitations under **CCP 366.2**. This harsh rule states that any claims against a decedent must be brought within a year of the decedent's death or they are

forever barred. This is true even though the statute of limitations would have been longer had the person survived.

Mark's probate creditors claim actually ended on August 12 2015. He could not collect or assert any creditors claim in any court. There are no California probate death claims that could be brought in Texas. His claim was denied by statute.

A fraud exception often removes a case that was, at its inception, a matter of state law and makes it one of federal law." There is no evidence of any Promissory Note referring to any California reimbursement claim nor any Texas Note.

Petitioners have preserved all evidentiary claims for review by this Court. These petitioners prove that the failure to consider the claims in federal court will result in a fundamental miscarriage of justice.

The statute of limitations does not apply to a suit in equity to vacate a void judgmen*t.* (*Cadenasso v. Bank of Italy*, p. 569; *Estate of Pusey*, 180 Cal. 368, 374 [181 P. 648].) This rule holds as to **all *void judgments***. In the other two cases cited, *People v. Massengale* and *In re Sandel*, **the courts confirmed the judicial power and responsibility to correct *void judgments***.

8 U.S. CODE § 1324C. PENALTIES FOR DOCUMENT FRAUD. vol 51865 ; **Colette mentions over 100 times a Texas Note and a Promissory Note do not exist in this mortgage fraud case.**

Both notes do not exist nor secured any properties nor do the signatures on any notes refer to a contractual obligations since the Promisor failed to deliver or perform even the documents alleged. The basic rule is that an offer of performance is of no effect if the person making it is not able to perform. in Saldate v. Wilshire Credit Corp., 2010 vol 51865 pg 25.

A Texas Note is an independent fraudulent action that came up in and by the Appellate opinion for the first time as an independent action. Colette could not have foreseen that injury. A Texas Note is not in the 52939 5,000 page record. It was not in the 1st summary judgment nor the 2nd summary judgment. Magistrate Hightower would know this if she read Plaintiff's briefs. WE ask dismissal should be reversed. We prove pro se prejudice is consistent throughout this case. These securities are not permitted under FDCPA nor the mortgage notes.

There is no separate independent debt under any Texas Note. Res Judicata and Collateral estoppel remained in California under any Trust claim. Texas pleading res judicata and collateral estoppel on a California claim identifies counterfeit jurisdiction. Rooker Feldman is not a bar to a falsified out of jurisdiction claim.

<u>There is no maturity date on any Texas Note</u>

Magistrate Hightower pg 3 of her report: "The Texas Note matured on January 1, 2015"

There is no Texas Note so how could a Texas Note mature on January 1, 2015.

Third Circuit's opinion in *Great Western Mining & Minerals v. Fox Rothchild*, 615 F.3d 159, 161 (3rd Cir. 2010), which held that a conspiracy between the parties and the judiciary was not precluded by the *Rooker-Feldman* doctrine.

If, on the other hand, a [federal] plaintiff asserts [as a legal wrong] an allegedly illegal act or omission by an adverse party, *Rooker-Feldman* does not bar jurisdiction." [citing *Riehm v. Engelking*, 538 F.3d 952, 965 (8th Cir. 2008), which quoted the Ninth Circuit's language in *Noel v. Hall*, 341 F.3d 1148, 1164 (2003) (cited favorably in *Exxon*, 544 U.S. at 293)].

Nesses v. Shepard, 68 F.3d 1003, 1004 (7th Cir. 1995) where Chief Judge Posner held the *Rooker–Feldman* doctrine did not bar claim that there had been conspiracy in connection with manner in which decision was made.

Under Fair Debt Collection Practice Act 810: , "such debt collector may not apply such payment to any debt which is disputed by the consumer and, where applicable, shall apply such payment in accordance with the consumer's directions." 15 USC 1692i

When a judgment is rendered in one state and a subsequent suit is filed in another, the second state is obliged, under the Full Faith and Credit Clause and the Full Faith and Credit statute, to give the judgment of the first state at least as much preclusive effect as it would receive in the first state.

Judge Luther M. Swygert, writing for himself and Judges Harlington Wood, Jr., and William G. East, found that immunity is available only when a judge has jurisdiction over the subject-matter of a case and that it is not available when he acts in "clear absence of all jurisdiction."

Magistrate Hightower suppressed production of all documents.

“In the absence of cause and prejudice, a petitioner may demonstrate that the failure to consider the claims will result in a fundamental miscarriage of justice ." *Murray,* 477 U.S. at 496, 106 S.Ct. 2639.

Texas is not a de-facto appellate court to California to collaterally attack California probate state judgments to breach a testators final will especially when we prove Title 18 1001 DOCUMENT FRAUD! We prove fraud in the court.

“ Judgment is a void judgment if court that rendered judgment lacked jurisdiction of the subject matter, or of the parties, or acted in a manner inconsistent with due process, Fed. Rules Civ. Proc., Rule 60(b)(4), 28 U.S.C.A.; U.S.C.A. Const. Amend. 5 - Klugh v. U.S., 620 F.Supp., 892 (D.S.C. 1985).

“Judges are not entitled to absolute judicial immunity for non-judicial acts, ie, acts taken that are not in the judge's judicial capacity.” - in Rivera v. Bates, 2014

Colette pled NRS 598.0973 in trial court which was never reviewed. Civil penalty for engaging in deceptive trade practice directed toward elderly person or person with disability. Never resolved by the lower court. Deceptive debt collection practice never reviewed :Clomon v. Jackson, 988 F.2d 1314, 1320 (2d Cir. 1993). Rooker Feldman exception: *Kropelnicki v. Siegel*, 290 F.3d 118 (2002)

514. FICTITIOUS OBLIGATIONS

(a) Whoever, with the intent to defraud- (1) draws, prints, processes, produces, publishes, or otherwise makes, or attempts or causes the same, within the United States;

(2) passes, utters, presents, offers, brokers, issues, sells, or attempts or causes the same, or with like intent possesses, within the United States;

TILA an independent claim that the Texas Trial Court and the Appellate Court 10 refused to litigate, honor and uphold

We turned to the federal courts for relief and to grant remedy on federal statutes never litigated in state court but pled such as Rescission under TILA, FAIR DEBT COLLECTION ACT and Deceptive Trade Act. We won our case the first five minutes in the 66th court pleading RESCISSION under TRUTH IN LENDING ACT. This was never heard.

Magistrate Hightower never mentions federal legally and timely filed Rescission under TILA an independent claim never reviewed by Texas courts. The non review is one more violation of Colette's rights. Rescission filed in Magistrate Hightower in all pleadings under doc 1 and 19 ex 21. "or that a miscarriage of justice will result from enforcing the procedural default in the petitioner's case. *See* *Sykes*, 433 U.S. at 87, 97 S.Ct. 2497

We request reversal. Thank you. I work 65 hours a week and have no time to do an appendix. Please forgive me. An appendix takes me hours.

Thank you,

Colette Savage and Kent Graham 9/26/2022 in god we trust.

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Take note that some defendants have two attorneys and one of the attorneys for Judge Lee Harris and Thomas Gray works for the Attorney General whom we lodged a Complaint in 2015 and several times. Doc 20/ Doc 21. WE believe to be a serious infringement on our rights and a conflict of interest since we are reporting fraud.

Compliance with word count

We certify that the accompanying brief, which was prepared using Times New Roman 14-point typeface, contains **7,765 words**, excluding the parts of the document exempted using Microsoft word and word counter

If viewed only as rehearing we ask permission to extend word count since the **case spans over several years of controversy.**

21 d Writs allows for 7,800 words