

**In the United States District Court
for the District of Oregon – Eugene**

ANDREW CLARK
Plaintiff

Case: 6:20-cv-000253-AA

Motion for Relief from a Judgment or Order
Federal Rule of Civil Procedure 60-B3
Fraud, Misrepresentation, and Misconduct
by Opposing Parties

vs.
WELLS FARGO BANK; et al
Defendants

Motion for Relief
Supporting Declaration and Legal Points and
Authorities Concurrently Filed

May 24, 2021: I, Plaintiff pro se Andrew Clark move the court for relief from the March 31, 2021 Judgment as it was based upon fraud, misrepresentation, and misconduct by opposing parties.

The “Declaration of Fraud” includes specific criminal allegations against defendants. They are crimes which Federal Law Enforcement will enforce directly from the PACER/ECF records of this and prior related cases. Defendants should be supporting this motion so we can arrive at a civil compromise of their crimes and reduce the odds of a federal criminal investigation into their activity.

Many talk about justice system reform. This case encapsulates many of the systemic problems in both the criminal and civil courts. The Supreme Court provided the direction and the authority with Yates v. United States, 574 U.S. 528 (2015) as I have touched upon numerous times in my unheard, bypassed motions. I will send around a paper-in-process entitled “Ginsburg’s Umbrella” when ready. It provides a legal framework for a non-punitive or even rewarding way to solve the widespread corruption of public functions and the misuse of justice industry systems and software.

My civil rights have been horrifically and tragically violated yet I stand here once again willing to ‘turn the other cheek’ and allow what defendants perpetrated to be used constructively. Justice system reform starts right here in this court and one way or the other: we own it.

Signed,

/s

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Legal Points and Authorities

May 24, 2021. Courts have defined the type of activity that constitutes “fraud upon the court” for purposes of FRCP 60. The concurrently-filed Declaration of Andrew Clark in support of the Motion for Relief under FRCP 60-B3 describes defendant conduct far more egregious than what other courts found to be sufficient grounds for relief.

It is well settled that courts have inherent equity power to vacate judgments obtained by fraud. *Chambers v. NASCO, Inc.*, 501 U.S. 32, 44 (1991); see also *In re Levander*, 180 F.3d 1114, 1118-19 (9th Cir. 1999). Rule 60(b), which governs relief from a judgment or order, provides no time limit on courts' power to set aside judgments based on a finding of fraud on the court. 11 Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 2870 (2d ed. 1987).

A "fraud on the court" occurs where it can be demonstrated, clearly and convincingly, that a party has set in motion some unconscionable scheme calculated to interfere with the judicial system's ability impartially to adjudicate a matter by improperly influencing the trier or unfairly hampering the presentation of the opposing party's claim or defense. See, e.g., *Alexander v. Robertson*, 882 F.2d 421, 424 (9th Cir.1989); *Pfizer, Inc. v. International Rectifier Corp.*, 538 F.2d 180, 195 (8th Cir.1976); *England v. Doyle*, 281 F.2d 304, 309 (9th Cir.1960); *United Business Communications, Inc. v. Racal-Milgo, Inc.*, 591 F.Supp. 1172, 1186-87 (D.Kan.1984); *United States v. ITT Corp.*, 349 F.Supp. 22, 29 (D.Conn.1972), *aff'd mem.*, 410 U.S. 919, 93 S.Ct. 1363, 35 L.Ed.2d 582 (1973). The Ninth Circuit has also stated that fraud on the court is “an unconscionable plan or scheme which is designed to improperly influence the court in its decision.” *Abatti v. Commissioner*, 859 F.2d 115, 118 (9th Cir.1988) (internal quotation omitted).

Large amounts of highest-quality evidence I placed into the court was completely bypassed as demonstrated in the PACER/ECF system. The Ninth Circuit Court of Appeals in the case of Pumphrey v. K.W. Thompson Tool Co., 62 F.3d 1128, 1131 (9th Cir. 1995) held that a lawyer's failure to disclose evidence during discovery constituted fraud upon the court. In my case, defendants refused to confer upon evidence I presented to them. They refused to participate in discovery as reported to the court with my detailed unheard Motion for Judicial Conference per FRCP 16.

Whether or not my evidence proves the allegations (the evidence perfectly proves allegations) is not relevant to finding of fraud as it exposed the methods of Defendant's obstruction which seem endemic to the legal industry. "...the inquiry as to whether a judgment should be set aside for fraud upon the court under Rule 60(b) focuses not so much in terms of whether the alleged fraud prejudiced the opposing party but more in terms of whether the alleged fraud harms the integrity of the judicial process." Pumphrey v. K.W. Thompson Tool Co., 62 F.3d at 1133 (citing text).

In this case the vast societal importance of the obstructed evidence and the devious, very generic methods of obstruction rise far above thresholds established in other cases. The fraud is greatly inflamed by my status as federal witness/informant as two different federal investigations were in process when the deadly tampering and concealment started and I had already reported early signs of retaliation along with evidence to our local FBI office here in Eugene, OR, in person and sworn to.

Defendants should be supporting this motion. It is probably the last opportunity they will have to "undo" the crime that was committed within the court in this case. Also, I suspect that while defendants may be delighted with the "court results," most know they are not right or righteous.

Signed,

/s

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Plaintiff

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vs.

Declaration of Fraud, Misrepresentation,
and Misconduct of Opposing Parties

WELLS FARGO BANK; et al
Defendants

May 24, 2021: Under penalty of perjury I swear the information in this Declaration is truthful and well-evidenced within the PACER/EFC system of this and prior related cases. *Any person with basic knowledge interpreting a case docket can confirm this to be the truth. For convenience, the docket history of subject case is attached.*

Background- My complaint is a lowest-level worker’s simple account of defendant’s conduct, which exactly comports to violations of racketeering laws. These are among aspects that make my case different than all others: 1) my lawsuit was filed as a detailed “factual pleading” of physical, financial, and emotional harm. 2) police and court technology allowed me to present a reasonably complete body of tangible evidence of allegations. 3) It was all backed up by repeated in person “evidence parking” at local Federal Bureau-Investigation. 4) It was all repeatedly concealed from the courts.

Mine is a Racketeering lawsuit as well as a filing under the Clayton Antitrust Act. Defendants demonstrated to the court that my allegations against them are true. In this court, defendant’s acted exactly as can be expected of a racketeering enterprise or a dangerous cartel. They filed pleadings with intent and result of concealing the evidence against them while punishing and silencing me, their victim. Defendants used the same methods in the past to gain dismissals by elaborately denying the possibility that a well-evidenced factual basis exists against them. The PACER/EFC system indelibly recorded the methods that were used to conceal the actual facts/evidence and obstruct justice.

The Court Records are Prima Facie Proof of Fraud, Misrepresentation, and Misconduct

The PACER/ECF record shows the Court lacks “discovered or adjudicated facts” upon which to base the c. 40 pages of exceptionally prejudicial misrepresentations favorable exclusively to defendants. The PACER/ECF records show defendants refused to confer on the facts/evidence and refused to participate in the “discovery” process. There were two telephone hearings of defendant’s dismissal/ sanction motions. *That situation goes past flagrant, massive fraud and deep into the world of major federal felonies committed by corporations and their attorney-agents within the courts.*

Specific Criminal Allegations Against Defendant's Conduct Within This Court

Federal Law Enforcement Agents need only the Court's records to prove criminal intent and action by the defendants. These charges are separate but additive to the unadjudicated criminal allegations against defendants in my civil complaint and filed with Federal Bureau-Investigation.

18 U.S.C § 241 - Conspiracy against rights - if two or more persons conspire to injure, oppress, threaten, or intimidate any person in any State, Territory, Commonwealth, Possession, or District in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same...they shall be fined under this title or imprisoned not more than ten years, or both.

The PACER/ECF record shows that defendants endangered the public by denying my First Amendment obligation to speak rightfully with evidence of personal harm that could befall any citizen if the cause is left uncorrected. They deviously, maliciously violated the court's obligation to provide a rightful hearing of facts and evidence and instead used the court as my pillory and gibbet basket.

The record shows that Defendants somehow were able to obtain a "gag order" against me without any hearing in April 2020. Literally: a highly prejudicial gag order just showed up in my mailbox soon after I filed my lawsuit. Then, defendants were allowed to submit unauthenticated external business correspondence as purported proof that I violated their extrajudicial gag order. They received a telephone hearing on June 2, 2020 seeking to find me in contempt of court and gain dismissal and sanctions while they were refusing to participate in the discovery process (which was reported to the court via an unheard Motion for Judicial Conference per FRCP 16).

18 U.S.C. § 1519. Destruction, alteration, or falsification of records in Federal investigation: Whoever knowingly alters, destroys, mutilates, conceals, covers up, falsifies, or makes a false entry in any record, document, or tangible object with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States ... or in relation to or contemplation of any such matter or case, shall be fined under this title, imprisoned not more than 20 years, or both. Yates v. United States, 574 U.S. 528 (2015), was a United States Supreme Court case in which the Court determined that the term "tangible object" as used in this section means an object used to record or preserve information.

The PACER/ECF record of prior related cases and appeals demonstrate that I repeatedly entered the evidence material into the court's system where it was concealed and obstructed by defendants. That represents a criminal violation of 18 USC 1519, the "Sarbanes-Oxley Anti-Shredding Law" which was enacted by Congress to hold executives culpable for concealment activity of workers.

I assert that Judge Ann Aiken is NOT immune to criminal charges under 18 USC 1519 because she is the **person** responsible for the system. American Bar Association Judicial Canon 3, Rule B-1 specifies

that a judge should supervise their staff and the use of court systems to ensure a result that comports to the law. The court information systems are “tangible objects” per the law. The hearing records (transcripts are in process) demonstrate Citizen Ann Aiken was repeatedly informed that evidence was being concealed within the system via the use of obstructive dismissal pleadings.

The Exact Provenance of the Opinions and Orders Must Be Determined. Oregon State Bar’s Document 124 Must be Carefully Investigated Because it “Smells Like Docket Fraud”

I assert the “opinions and orders” were written by attorney-defendants and input into the court record with assistance from a court staff member or other person with system access. It is typical for the court to ask a prevailing party to write the ‘opinions and orders’ after adjudication, based upon decisions made in the Courtroom. A legitimate process exists to accept such input and convert it to Court’s rulings. The court’s record shows attorney-defendants are skilled at ‘hijacking’ official processes to provide the color of the law to their illegal results in and out of the Courtroom.

That is why Docket 124 must be investigated to rule out the likelihood that Oregon Bar Association filed the final court results *along with* the ‘notice’ shown in PACER/ECF

Nik Chourney (OSB attorney) filed document 124 on March 1, 2021 when the court had been in stay since June 2020. It is suspiciously timed as it relates to the March 31, 2021 case disposition. The court’s systems appear from the outside to have few edits and I see indications that passwords are not well-controlled. **Regardless of provenance:** the Court “opinions and orders” lack any form of transparency. They are a collection of defendant’s lies and represent fraudulent use of the court’s word processing system to issue machine-signed unadjudicated rulings.

Justice System Reform Starts Right Here and... We Own It

The PACER/ECF record shows this Court is ‘owned and operated’ by external attorneys and the court staff who know that Judge Ann Aiken will trust whatever they do (or not do). That situation is the same in all the court events related to this. Our local circuit court makes easily-obtained audio recordings of hearings part of the public record. For convenience, they are online.

My civil complaint in *this Court* relates to defendant’s use of false arrest and its concealment. “criminal” hearings are on **www.RisePatriot.com** along with the unheard police a/v and other evidence. The related family court audio is on **www.WellsFargoWitz.com**. In all cases, judges are

heard dispensing decisions that are unsupported by the facts, the hearings, or the law. The courts have been reduced to expensive dog and pony shows because they all use a 'court system' and the results are essentially pre-loaded by the court staff and attorneys. Some poignant audio is posted here:

<http://www.risepatriot.com/JudgeVogt.html> Note: all internet URL are case-sensitive after the .com/

Two audio recordings near the center of that page are a tiny portion of my factual basis and evidence. "The Most Dangerous Man in Oregon" is a few minute excerpt from the full version to its right. Hear our Chief Judge proclaiming FAITH in her staff and systems while ignoring the law. Hear her using "danger scores" to justify her activity. Hear the judge piously explain she is required to act upon the information in her system. She had only prejudicial information placed there by the company-corrupted prosecutor Defendant Erik Hasselman, who Defendant Alex Gardner did not supervise because because he was elsewhere transitioning to a new career as a police officer.

My case documents a malicious, devious legal industry that pampers its participants and shields them scrutiny as it too often criminalizes the citizens while it pampers workers and shields them from any form of scrutiny. It shows how workers throughout the justice system learned to use seemingly innocuous low-level systems to achieve the most ghastly illegal results under color of the law. My case shows the total public corruption caused by fealty among attorneys in this fairly isolated legal community. It demonstrates how systems such as PACER/ECF or Oregon's OJD/OJCIN are fraudulently used by industry attorneys and unseen court staff to provide the convincing color of the law to their illegal results. And eventually a new 'judge' is likely to be drawn from that group or another like it.

This Declaration is in support of a Motion for Relief pursuant to FRCP 60-B3 filed concurrently.

Signed and Sworn Under Penalty of Perjury to be the Truth that is based upon the attached Docket history and its underlying documents filed by all parties.

/s

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