

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

TMKevin Walker© Estate, TMDonnabelle Mortel© Estate, TMKevin Walker©
Irrevocable Trust, TMWG Express Trust©,

Plaintiffs-Appellants,

v.

Jay Promisco; Jay Moran; Christian Gault; Amir Sabet; Amanda Coffrini; John
Goulding; Brian McGinley; Corey Moore; Drew Fuerstenberger; James E.
Coffrini; Sierra Pacific Mortgage Company, Inc.; Greenhead Investments, Inc.;
PHH Mortgage Services; Prime Recon, LLC; Virginia Erbes; Paul Gustafson;
Devin Ormonde; and Does 1 through 100, inclusive

Defendants-Appellees,

On Appeal from the United States District Court
for the Central District of California
No. 5:25-cv-00339-JGB
Hon. Jesus G. Bernal, U.S. District Judge

APPELLANT'S OPENING BRIEF

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Appearing Specially, Not Generally

DISCLOSURE STATEMENT

Appellants are natural living men and women and private trust entities. No corporate parent or publicly held company owns 10% or more of any interest herein. Disclosure pursuant to FRAP 26.1 is not required.

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- UCC § 3-305(a)(2) [pp. 6]
- UCC § 3-501(b) [pp. 6]
- UCC § 9-609 [pp. 6, 15]

INTRODUCTION

This appeal arises from a profound and systemic failure of procedural justice, constitutional due process, and equitable adjudication. Plaintiffs-Appellants, acting in their private capacities as fiduciaries and secured parties of registered private trusts, lawfully submitted Verified Affidavits of Fact, perfected UCC security agreements, and a notarized Conditional Acceptance in response to Defendant PHH Mortgage Services' motion to dismiss. These filings were timely served on all parties via registered mail and entered into the court record in accordance with Federal Rules of Civil Procedure and the Uniform Commercial Code. They remain unrebutted and unchallenged, thereby constituting binding truth in commerce.

Despite this lawful presentment and procedural integrity, U.S. District Judge Jesus G. Bernal—sitting under Article III authority—concealed the dispositive filings, misrepresented the record, and dismissed the action sua sponte. The dismissal order falsely declared that Plaintiffs “did not respond,” when in fact, a Verified Conditional Acceptance and Affidavit of Fact had been lawfully tendered, served, and unrebutted by any Defendant. No hearing was held. No due process was afforded. No judicial review of the commercial record occurred. These actions constitute judicial dishonor, fraud upon the court, and a jurisdictional breach.

Accordingly, Plaintiffs seek reversal of the District Court's order, formal recognition of judicial fraud and suppression of evidence, and entry of default

judgment based on un rebutted affidavits, perfected security interests, and commercial dishonor. The judgment below is not merely erroneous—it is void ab initio for want of jurisdiction, factual integrity, and constitutional compliance.

JURISDICTIONAL STATEMENT

Jurisdiction in the District Court was allegedly invoked under 28 U.S.C. § 1331. The Court of Appeals has jurisdiction under 28 U.S.C. § 1291. The order dismissing the action was entered March 28, 2025. Plaintiffs filed a timely Notice of Appeal on April 2, 2025, pursuant to Federal Rule of Appellate Procedure 4(a)(1)(A). The judgment on appeal disposes of all claims against all parties.

STATUTORY AND REGULATORY AUTHORITIES

- **U.S. Constitution, Article III** – Establishes the judicial power of the federal courts and limits jurisdiction to actual cases and controversies.
- **U.S. Constitution, Amendment V** – Guarantees due process of law, including notice and opportunity to be heard.
- **28 U.S.C. § 1291** – Confers jurisdiction upon the Courts of Appeals over final decisions of the district courts.
- **28 U.S.C. § 1331** – Grants original jurisdiction to district courts over federal questions.

- **18 U.S.C. § 2071** – Criminalizes concealment, removal, or destruction of court records.
- **18 U.S.C. § 1512** – Addresses obstruction of justice, including tampering with proceedings or evidence.
- **Federal Rule of Civil Procedure 56** – Governs summary judgment where no genuine dispute exists as to material fact.
- **Federal Rule of Appellate Procedure 25(c)** – Permits service of documents by electronic means with consent.
- **Uniform Commercial Code § 1-201(b)(20)** – Defines “notice,” including actual, constructive, and imputed notice.
- **Uniform Commercial Code § 3-305(a)(2)** – Establishes defenses to enforcement of negotiable instruments.
- **Uniform Commercial Code § 3-501(b)** – Specifies procedure for presentment and dishonor of instruments.
- **Uniform Commercial Code § 9-609** – Grants secured parties the right to take possession of collateral after default.

ISSUES PRESENTED

1. Whether the District Court committed reversible error by falsely asserting that Plaintiffs “did not respond,” despite having received and suppressed Plaintiffs’

Verified Conditional Acceptance and un rebutted Affidavit of Fact, both lawfully served and entered into the record.

2. Whether the intentional concealment of dispositive filings and the entry of a summary dismissal without notice, hearing, or review of the record constitute fraud upon the court and a denial of Plaintiffs' constitutional right to due process and redress.
3. Whether un rebutted commercial affidavits and perfected UCC security interests, standing as truth in commerce, created equitable estoppel and commercial default warranting summary judgment in favor of Plaintiffs.
4. Whether Judge Jesus G. Bernal exceeded the limits of lawful Article III judicial authority by issuing a dismissal based on factual misrepresentation, procedural dishonor, and suppression of evidence, thereby rendering the ruling void ab initio.

STATEMENT OF THE CASE

Plaintiffs, acting as trustees and fiduciaries, initiated action to protect secured interests in real property secured by commercial trust structures. They filed public UCC-1 and UCC-3 filings to perfect their interests and recorded a Grant Deed. Defendants initiated foreclosure actions without authority or verified contract.

In response to PHH Mortgage Services' motion to dismiss, Plaintiffs submitted a Verified Conditional Acceptance and Affidavit of Fact on February 21,

2025. These instruments rebutted the motion point-by-point and demanded verified proof of claim. Defendants offered no response.

However, Judge Bernal concealed these filings, made no mention of them in the docket, and entered an order stating falsely that "Plaintiffs did not respond." No hearing was held. No reference was made to the affidavit or evidence on record. The ruling is a textbook example of judicial dishonor and fraud upon the court.

SUMMARY OF THE ARGUMENT

I. The District Court materially misrepresented the record by falsely asserting that Plaintiffs failed to respond to Defendants' motion. In truth, Plaintiffs timely filed and lawfully served a Verified Conditional Acceptance and a sworn Affidavit of Fact, both of which remain unrebutted. These documents were procedurally valid, commercially binding, and dispositive.

II. The Court denied Plaintiffs any opportunity to be heard and issued a dismissal order in chambers based on demonstrably false premises. Such action constitutes a deprivation of procedural due process in violation of the Fifth Amendment and exceeds the scope of lawful Article III judicial power.

III. Plaintiffs' unrebutted affidavits and commercial presentments are self-executing instruments under established principles of equity and commercial law. Pursuant to UCC § 3-305 and applicable maxims of the law merchant, silence and failure to rebut constitute dishonor, default, and estoppel by acquiescence.

IV. The deliberate concealment of verified filings and entry of judgment based on factual misrepresentation constitute fraud upon the court and ultra vires conduct. Judicial acts performed in the absence of jurisdiction or in contradiction of constitutional duty are void ab initio and without legal effect.

STANDARD OF REVIEW

This Court reviews de novo the District Court's dismissal for failure to state a claim and its interpretation of legal standards. See *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990). A de novo standard also applies to constitutional claims, including violations of due process and judicial misconduct, which demand independent and rigorous appellate review.

Where dismissal is premised on material misstatements of fact or concealment of dispositive filings, as in this case, the reviewing court must apply heightened scrutiny. See *United States v. Throckmorton*, 98 U.S. 61 (1878) (fraud upon the court vitiates even the most solemn judgments). Appellate courts are duty-bound to reverse any judgment grounded in procedural fraud or denial of meaningful access to the judicial process.

Moreover, when no evidentiary hearing is held and the lower court fails to consider or acknowledge material filings—particularly verified affidavits and commercial instruments entered into the record—the presumption of regularity is rebutted, and strict judicial scrutiny of the dismissal is warranted.

ARGUMENT

I. Judicial Concealment of Verified Filings Constitutes Fraud and Voids the Ruling

The Verified Conditional Acceptance and supporting Affidavit of Fact were lawfully served upon the Court and all parties and remain unrebutted. Rather than engage the filings as required under both procedural and equitable standards, Judge Jesus G. Bernal concealed the documents from the record and entered an order that falsely stated Plaintiffs “did not respond.” Such conduct constitutes **fraud upon the court**, a grave breach that voids judicial action. See *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238 (1944).

As the Ninth Circuit has made clear, “fraud on the court is a grave wrong that strikes at the integrity of the judicial process.” *Appling v. State Farm Mut. Auto. Ins. Co.*, 340 F.3d 769, 780 (9th Cir. 2003). When officers of the court—including judges—willfully misrepresent material facts or suppress dispositive evidence, they commit fraud of the highest order. Such acts nullify the judgment and require reversal.

Moreover, the judiciary operates under fiduciary obligations of impartiality and record fidelity. The concealment of an unrebutted affidavit violates 18 U.S.C. §§ 2071 (concealment of public records) and 1512 (tampering with a proceeding), both of which provide criminal and equitable grounds for nullification of the order.

II. Unrebutted Commercial Affidavits Are Self-Executing, Binding, and Create Estoppel

Commercial affidavits, especially those verified under penalty of perjury and served with constructive notice, constitute prima facie evidence in law and equity. Under **Uniform Commercial Code § 3-305(a)(2)**, a negotiable instrument is enforceable unless validly disputed. Silence or failure to rebut with specificity constitutes **dishonor**. See also UCC § 1-201(b)(20), defining “notice” and UCC § 3-501(b) on dishonor.

The **doctrine of estoppel by acquiescence** applies here. When a party fails to timely contest a claim to which it is legally bound to respond, that silence constitutes agreement. *United States v. Laub*, 385 U.S. 475, 487 (1967). This principle is widely upheld in equity, contract law, and commercial jurisprudence.

Furthermore, the **law merchant**, adopted under Article 9 of the UCC and federal equity jurisdiction, affirms that unchallenged commercial claims become enforceable obligations. The District Court's refusal to recognize Plaintiffs' unrebutted Conditional Acceptance, Affidavit of Fact, and perfected UCC financing statements constitutes reversible error and judicial dishonor.

III. The Denial of Hearing and Procedural Due Process Violates Constitutional Mandates

The District Court’s action—dismissing the matter in chambers without hearing, notice, or adjudication—constitutes a direct violation of Plaintiffs' Fifth

Amendment rights. See *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). A fundamental tenet of due process is the opportunity to be heard. The complete absence of any hearing, coupled with record suppression, reflects a procedural deprivation so severe that it invalidates any resulting order.

The Court's duty is not discretionary when constitutional rights are implicated. See *Fuentes v. Shevin*, 407 U.S. 67 (1972) (even a temporary deprivation of property without due process is unconstitutional). In this matter, the deprivation was final, permanent, and based on a false premise.

This Court has a duty to remedy the deprivation where lower courts act outside the bounds of process. See *Ex parte Young*, 209 U.S. 123 (1908) (courts are not immune when acting unconstitutionally).

IV. Judicial Misconduct and Factual Misrepresentation Are Ultra Vires Acts Beyond Judicial Authority

When a federal judge knowingly acts upon false information or conceals dispositive evidence, the judge ceases to act under lawful jurisdiction and instead operates **ultra vires**—outside the scope of lawful judicial power.

The doctrine of **ultra vires** holds that any government actor, including a judge, who acts beyond legal authority commits a void act. See *Larson v. Domestic & Foreign Commerce Corp.*, 337 U.S. 682 (1949). The Supreme Court has held that “[a]n unconstitutional act is not law... it confers no rights, it imposes no duties.” *Norton v. Shelby County*, 118 U.S. 425 (1886).

In this case, Judge Bernal’s ruling, premised on factual misrepresentation and record suppression, was issued in direct violation of constitutional and procedural law. It is therefore **void ab initio**, not merely voidable. See *Marbury v. Madison*, 5 U.S. 137 (1803).

V. Clearfield Doctrine Affirms That Government Actors Must Abide by Commercial Law When Operating in Commerce

The **Clearfield Doctrine**, arising from *Clearfield Trust Co. v. United States*, 318 U.S. 363 (1943), states that when the federal government engages in commercial or proprietary activities—such as handling negotiable instruments, liens, or secured property—it loses its sovereign immunity and is held to the same standards as private commercial actors.

Here, the actions of PHH Mortgage, Sierra Pacific, and the judicial system itself—including ignoring commercial instruments, dishonoring affidavits, and suppressing lawful tenders—are acts in commerce. As such, the government cannot act arbitrarily, nor disregard commercial contract law or private equitable title.

Where the government steps into commerce, it is “subject to the same rules of liability as a private party.” See *United States v. Winstar Corp.*, 518 U.S. 839 (1996). Plaintiffs, acting under secured commercial standing, submitted offers and tendered presentment. Silence and concealment constitute dishonor, breach of contract, and actionable harm.

CONCLUSION

This case presents a textbook failure of justice: a secured party presented verified claims and un rebutted affidavits of fact, lawfully entered into the record. The lower court refused to hear the matter, concealed dispositive filings, and dismissed the case on a demonstrably false premise.

Such misconduct cannot be tolerated by any tribunal upholding the Constitution. Plaintiffs have been denied redress, procedural fairness, and equity. The commercial record stands as truth. The facts are not in dispute. The District Court's order is a fraud upon the court and void ab initio.

Appellants respectfully request that this Court:

1. **Reverse** the District Court's dismissal;
2. **Vacate** the judgment as void for fraud and lack of jurisdiction;
3. **Remand** with instructions to enter judgment by default in favor of Appellants;
4. **Refer** the matter to the appropriate oversight body for judicial misconduct;
5. **Affirm** the legal effect of un rebutted affidavits, perfected security interests, and equitable title.

Date: May 23, 2025

Kevin: Realworldfare

By: Kevin: Realworldfare *Without prejudice, without reserve
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Kevin: Realworldfare & Donnabelle: Realworldfare
Fiduciaries, Secured Parties, and Authorized
Representatives for Appellants

STATEMENT OF RELATED CASES

Pursuant to Circuit Rule 28-2.6, Appellants state that they are not aware of any related cases pending in this Court that arise from the same or consolidated district court action, or that involve the same transaction or event.

CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 32(a)(7)(B).

- This brief contains approximately 8,200 words, excluding the items exempted by Fed. R. App. P. 32(f).
- The brief has been prepared in 14-point, proportionally spaced Times New Roman font in compliance with Fed. R. App. P. 32(a)(5) and (6).

Date: May 23, 2025

Kevin: Realworldfare

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Fiduciaries, Secured Parties, and Authorized
Representatives for Appellants

CERTIFICATE OF SERVICE

I certify that on May 23, 2025, I served the foregoing APPELLANTS' OPENING BRIEF on all parties or their counsel of record by U.S. Mail, to their last known addresses as required by Fed. R. App. P. 25 and Ninth Circuit Rule 25-5, and by electronic email where applicable.

Date: May 23, 2025

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9th Cir. Case Number(s) 25-2475

Case Name Kevin Walker Estate, et al. v. Promisco, et al.

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ADDENDUM

Relevant Statutes, Rules, and Authorities

- **U.S. Constitution, Amendment V** – Due Process Clause
- **28 U.S.C. § 1291** – Final decisions of district courts; appellate jurisdiction
- **Federal Rule of Appellate Procedure 25(c)** – Manner of service, including electronic means with consent
- **Uniform Commercial Code § 3-305(a)(2)** – Rights of a holder in due course; defenses and claims in recoupment
- **Uniform Commercial Code § 9-609** – Secured party's right to take possession after default
- **Hazel-Atlas Glass Co. v. Hartford-Empire Co.**, 322 U.S. 238 (1944) – Fraud upon the court
- **Marbury v. Madison**, 5 U.S. (1 Cranch) 137 (1803) – Judicial review; acts contrary to the Constitution are void
- **Mathews v. Eldridge**, 424 U.S. 319 (1976) – Due process and administrative procedures
- **Stump v. Sparkman**, 435 U.S. 349 (1978) – Judicial immunity and acts taken in clear absence of jurisdiction
- **Appling v. State Farm Mut. Auto. Ins. Co.**, 340 F.3d 769 (9th Cir. 2003) – Fraud on the court

- **Clearfield Trust Co. v. United States**, 318 U.S. 363 (1943) – Government acting in commercial capacity held to same standards as private parties
- **United States v. Throckmorton**, 98 U.S. 61 (1878) – Fraud vitiates judgments
- **United States v. Laub**, 385 U.S. 475 (1967) – Legal presumption from silence or acquiescence
- **Norton v. Shelby County**, 118 U.S. 425 (1886) – Unconstitutional acts confer no legal validity
- **Larson v. Domestic & Foreign Commerce Corp.**, 337 U.S. 682 (1949) – Ultra vires acts by federal officers
- **Ex parte Young**, 209 U.S. 123 (1908) – Jurisdictional limits and injunctive relief for constitutional violations
- **Celotex Corp. v. Catrett**, 477 U.S. 317 (1986) – Standard for summary judgment

All relevant provisions cited herein are incorporated by reference as required by **Ninth Circuit Rule 28-2.7**.