

**IN THE CIRCUIT COURT SEVENTEENTH JUDICIAL CIRCUIT,
IN AND FOR BROWARD COUNTY, FLORIDA**

GENERAL JURISDICTION DIVISION

WILMINGTON SAVINGS FUND SOCIETY,
FSB, D/B/A CHRISTIANA TRUST, NOT
INDIVIDUALLY BUT AS TRUSTEE FOR
PRETIM MORTGAGE ACQUISITION TRUST,

CASE NO.: CACE20018154

Plaintiff,

vs.

CRYSTAL RONEY, *et. al.*,

Defendant,

_____/

**DEFENSE COUNSEL’S FOURTH/FIFTH WAVE OF VERIFIED MOTIONS FOR
JUDICIAL DISQUALIFICATION OF JUDGE ANDREA GUNDERSEN**

Defense Counsel for CRYSTAL RONEY, hereby file(s) this Fourth/Fifth Verified Motion for Judicial Disqualification pursuant to Fla. Stat. §38.10 and Fla. R. Jud. Admin 2.330, and states:

1. The Honorable Judge Andrea Gundersen is the only judge in Broward County that presides over the foreclosure division. She is charged with protecting constitutional rights to ensure no foreclosure defendant is deprived of their property without due process of law.
2. Judge Gundersen abused her power and knowingly misused her position to trample the constitutional rights of foreclosure defendants and protect systemic fraud on the court by Bank of America, N.A. (“BANA”) and Bank of New York Mellon (“BONYM”) and their counsel.
3. Judge Gundersen is a lawyer in an official government position who is knowingly misusing her position as the foreclosure division judge to advantage BANA, BONYM and their lawyers who are engaged in systemic fraud on the court.

4. In her first hearings on these fraud on the court cases, Judge Gundersen allowed counsel for BONYM and BANA, Mr. Adam Wick of Liebler, Gonzalez and Portuondo (“the LGP firm”), to misrepresent the law, the facts, and the extensive procedural history of fraudulent foreclosures involving forgery, perjury, destruction of evidence, backdating of records, in a systemic fraud on the court that violated the \$25 Billion National Mortgage Settlement and the Doctrine of Unclean Hands without any consequences.

5. In those first two hearings, Judge Gundersen allowed Mr. Wick to undo years of discovery orders from the Honorable Senior Judge Barry M. Stone, formerly the Chief Judge of the Fourth DCA, who previously presided over Broward’s foreclosure court. Judge Stone consolidated a handful of these BONYM fraud cases for discovery and forced BONYM and BANA to produce discovery that shows they fraudulently created evidence of standing.

6. Judge Gundersen fought with Defense counsel but took no issue with BONYM and BANA’s counsel misrepresenting the law, the facts and the procedural history about the case or the fraud. By the end of the second hearing, Judge Gundersen recused herself after Defense Counsel pointed out that she was not honoring the judicial canons or complying with Florida Supreme Court law. After she recused herself, Defense counsel moved to disqualify her from the rest of his cases.

7. Despite recusing herself and taking actions that protected fraud on the court, Judge Gundersen continued to fight Defense Counsel rather than grant disqualification from the rest of the factually similar foreclosures. Judge Gundersen denied the disqualification motion in the other case Judge Stone consolidated for fraud on the court discovery, saying the motion was “legally insufficient” to require her disqualification. To add insult to injury, Judge Gundersen drafted an order insisting, incorrectly, that one of the cases Judge Stone consolidated “**WAS NOT**” consolidated with the two cases she did recuse herself from. (emphasis in original).

8. Judge Gundersen commented on the truth of the motion to disqualify, which created a separate and independent basis to call for her disqualification. Even worse, Judge Gundersen's comments were factually inaccurate. The cases were all consolidated for discovery. Judge Gundersen accused Defense Counsel of lying rather than admit the case was also consolidated which would require her disqualification.

9. Currently, Defense Counsel in this action has filed four waves of motions to disqualify Judge Andrea Gundersen in his cases since she began to preside over all foreclosures in Broward County, Florida. Judge Gundersen improperly denied them all. The Defendant(s) adopt(s) and reaver(s) the prior motions to disqualify which are all filed in *BONYM v. Behr* in Broward Circuit Court Case Number CACE 11023871 as if fully set forth herein.

I. The Most Recent Grounds for Disqualification for Allowing Misconduct

10. Most recently, on March 4, 2021, Judge Gundersen allowed counsel for BONYM, Mr. Nathan Callahan, of the powerhouse Florida law firm, Akerman, to misrepresent that Florida law states, "FRAUD ON THE COURT IS NOT A DEFENSE TO FORECLOSURE" and banks enjoy a "LITIGATION PRIVILEGE" to commit fraud on the court in foreclosures.

11. Judge Gundersen granted Akerman's motion to strike all of Defense counsel's defenses and counterclaims, and even hit the client with attorney's fees, but took no action when Defense counsel advised that the case Akerman cited actually held a fraud on the court occurs when a party knowingly submits "forged" documents "with the intent to deceive" the court. *Andrews v. Palmas De Majorca Condo.*, 898 So. 2d 1066, 1070 (Fla. 5th DCA 2005).

12. *Andrews* instructs fraud on the court is a defense to any case where forged documents are submitted to commit fraud. Yet, BONYM again misled the Court to strike all the affirmative defenses and counterclaims alleging systemic forgery, perjury, destruction of

evidence, backdating of records, and obstruction of justice claiming there is “litigation privilege” for banks to prosecute fraudulent foreclosures.

13. BONYM and Akerman cited a recent Third DCA case involving BONYM which states “based upon the record before us, the trial court’s denial of the motion to dismiss on litigation privilege grounds constitutes irreparable harm as a matter of law.” *Bank of New York Mellon as Trustee v. Melida Abadia*, 2020 WL 7635978 (Fla. 3d DCA Dec. 23, 2020).

14. Judge Gundersen also allowed Akerman to misrepresent the law that a defendant cannot challenge a forged endorsement under Fla. Stat. §673.3081. Akerman never disclosed any of the controlling authority that uniformly instructs Fla. Stat. §673.3081 creates a rebuttable presumption defendants may negate by presenting evidence the endorsement is a forgery. *Bennett v. Deutsche Bank Nat'l Tr. Co.*, 124 So.3d 320 (Fla. 4th DCA 2013); *Schwartz v. Bank of Am., N.A.*, 267 So. 3d 414 (Fla. 4th DCA 2019); *Rivera v. Wells Fargo Bank, N.A.*, 189 So.3d 323, 328 (Fla. 4th DCA 2016); *PMT NPL Fin. 2015-I v. Centurion Sys., LLC*, 257 So.3d 516, 519 (Fla. 5th DCA 2018); *Barsan v. Trinity Fin. Services, LLC*, 258 So. 3d 516 (Fla. 3d DCA 2018); *Rey v. U.S. Bank Nat'l Ass'n*, 244 So. 3d 409, 410 (Fla. 5th DCA 2018), reh'g denied (June 12, 2018).

15. Defense counsel advised Judge Gundersen that the Eleventh Circuit Court of Appeal instructs “***the effect of the §673.1081(1) presumption is to require the party challenging the signature to produce evidence supporting a finding that the signature was forged or unauthorized.*** See *Bennett v. Deutsche Bank Nat'l Trust Co.*, 124 So.3d 320, 322–23 (Fla.4th Dist.Ct.App.2013) (per curiam) (holding defendants had failed to offer evidence showing signatures on the allonges were unauthentic and affirming grant of summary judgment to plaintiff on foreclosure action).” *Madura v. Bac Home Loans Servicing, LP*, 593 Fed. Appx. 834, 845 (11th Cir. 2014)(emphasis added)

16. Defense counsel also advised Judge Gundersen that in 2016, the Honorable U.S. District Court Judge Kenneth M. Karas affirmed the Honorable Robert N. Drain, U.S. Bankruptcy Court Judge for the Southern District of New York, who found that “In the wake of the recent foreclosure crisis, and the dubiousness of the common robo-signing practices of various banks and other foreclosing entities... it may be time to reconsider whether “forged or unauthorized signatures” remain “very uncommon.” *In re Carssow-Franklin (Wells Fargo Bank, N.A. v. Carssow-Franklin)*, 213 F. Supp. 3d 577, --- fn. 11, [2016 WL 5660325, *6-10] (S.D.N.Y. 2016).

17. Defense counsel also advised Judge Gundersen that Section 16 of the annotations to Florida Statute §673.3051 is entitled “Burden of establishing genuine endorsement” which cites the seminal case on the issue of surrogate signed endorsements, *Ederer v. Fisher*, 183 So. 2d 39 (Fla. 2d DCA 1965). In *Ederer*, the Second DCA held that if an employee affixes a blank endorsement for a named officer on the endorsement, that endorsement is wholly inoperative and invalid. *Ederer v. Fischer*, 183 So. 2d 39 (Fla. 2d DCA 1966). The Second DCA noted that:

[T]he evidence adduced actually proved that Globe's endorsement was not made by its officer whose name appeared but was executed by an employee who had no authority to sign or authorize endorsements for the corporation. The effect of this testimony was to render wholly inoperative the endorsement on which Mason's status as a holder depended. *Id.* at 42.

18. Defense counsel also advised Judge Gundersen that the Hawaii Supreme Court has twice ruled against Bank of America and found the exact fraudulent rubberstamped endorsement and false mortgage assignment would be deceptive, unfair, and constitute wrongful foreclosure. *Bank of Am., N.A. v. Reyes-Toledo*, 139 Hawai'i 361, 390 P.3d 1248 (2017); *Bank of Am., N.A. v. Reyes-Toledo II*, 143 Hawai'i 249, 428 P.3d 761 (2018), as corrected (Oct. 15, 2018).

19. In abject disregard for the lack of candor from Akerman and BONYM, Judge Gundersen concluded the hearing by striking all of Defense counsel's affirmative defenses and

counterclaims alleging violations of Florida's Racketeering Influenced and Corrupt Organizations ("RICO") act due to systemic forgery, perjury and obstruction of justice.

20. Judge Gundersen's order cited the "litigation privilege" without taking any action under the Court's inherent contempt powers to punish BONYM and Akerman for submitting forged documents with the intent to deceive the court. See attached as Exhibit A.

21. Judge Gundersen even hit that defendant with attorney's fees for suing BONYM and their counsel for RICO violations citing the litigation privilege. However, Judge Gundersen denied BONYM's request for sanctions against Defense counsel under Fla. Stat. §57.105 noting that the trial court in *Abadia* agreed with Defense counsel should be allowed to prosecute BONYM for fraud upon the court before BONYM took its appeal.

22. Judge Gundersen must disqualify herself from these cases, as she initially did in *BONYM v. Von Houtman* and *BONYM v. Grusby*, rather than violate judicial canons and cause injury to the integrity of the judiciary. If Judge Gundersen refuses to recuse herself, the JQC, the Florida Bar, and appellate courts should remove her to protect the integrity of these proceedings.

II. Judge Gundersen Violated the Judicial Canons

23. During the March 4th hearing, Judge Gundersen also berated Defense counsel when another judge demanded Defense counsel attend a court ordered hearing in a different fraudulent foreclosure. Defense counsel advised he felt like the capital police officer being crushed by the mob protecting the U.S. Capital during the violent insurrection. Defense counsel was protecting the constitution from being crushed by Judge Gundersen refusing to consider fraud in foreclosures.

24. Judge Gundersen muted Defense counsel to prevent him from being heard. Defense counsel tried to explain why this was additional grounds to disqualify the Court. Judge Gundersen then interrupted Defense Counsel as he explained the facts of *Aquasol Condo. Ass'n, Inc. v. HSBC Bank USA, Nat'l Ass'n*, No. 3D17-352, 2018 WL 5733627 (Fla. 3d DCA Oct. 31, 2018).

25. In *Aquasol*, the Honorable Judge Michael Hanzman threatened to jail Defense counsel for cross-examining a witness about fraudulent evidence introduced at trial. Judge Hanzman refused to hear evidence of unclean hands. He didn't care if "David Stern or Howard Stern" prepared a fraudulent robo-signed mortgage assignment to submit as evidence at trial.

26. Judge Gundersen then insisted on taking a 15 minute break and ordered Defense counsel to prepare a written motion for disqualification during that break. Judge Gundersen refused to allow Defense counsel to explain that in *Aquasol*, the Third DCA commended Judge Hanzman and ruled that under Fla. R. Jud. Admin. Rule 2.330, there was no reason to delay the proceedings to allow Defense counsel to file a written motion for disqualification.

27. The Third DCA noted Rule 2.330 stated a party "may" state his reasons for disqualification "on the record" and follow the proceedings with a timely written motion for disqualification signed by the client.

28. Judge Gundersen eventually resumed the proceedings after a 45 minute break. She argued with Defense counsel when he asked for an opportunity to state his reasons on the record for her recusal. Judge Gundersen relented and allowed Defense counsel to argue the objective reasons to fear the Court would not be fair and impartial in deciding BONYM's motion.

29. Defense counsel argued that Judge Gundersen could not fairly and objectively adjudicate BONYM's motion to strike all defenses and counterclaims alleging fraud, demanding attorney's fees, and demanding sanctions against Defense Counsel under Fla. Stat. §57.105.

30. The Florida Standards for Imposing Lawyer Sanctions, Standard 5.2(a) instructs that because Judge Gundersen is doing this with the intent to cause serious injury to foreclosure defendants and has caused serious injury to the integrity of the legal process by her conduct, her misconduct warrants disqualification from this case, removal from the bench, and disbarment.

31. Defense counsel has filed wave after wave of motions to disqualify Judge Gundersen every time she presided over another hearing involving fraud in foreclosures in Defense Counsel's Broward cases. Judge Gundersen was impatient, biased, refused to allow Defense counsel an opportunity to be heard according to law, took no action when Plaintiff's counsel made material misrepresentations of law and fact, and made it clear she would allow the fraudulent foreclosures to proceed in violation of homeowners' constitutional rights.

32. Judge Gundersen refused to maintain and enforce high standards of conduct or personally observe those standards in violation of Judicial Canon 1. She did not respect or comply with the law or act in a manner that promotes the integrity and impartiality of the judiciary in violation of Judicial Canon 2. She denied defense counsel an opportunity to be heard according to law in violation of Judicial Canon 3(B)(7). She allowed lawyers to present fraudulent evidence and make material misrepresentations of fact and law in violation of the rules regulating The Florida Bar and took no action in violation of Judicial Canon 3(D)(2).

33. Judge Gundersen refused to keep an open mind in considering issues of fraud on the court brought before her as required by the definition of the impartial set forth in the judicial canons. Instead, she accepted every argument of BONYM and its counsel without question. At the same time, Judge Gundersen interrupted Defense counsel, muted him repeatedly, threatened him with contempt and sanctions, and entered orders clearly in violation of Florida law and the constitutional rights of all homeowners.

MEMORANDUM OF LAW

34. The Fifth Amendment to the U.S. Constitution and Article 1, Section 9 of the Florida Constitution both state, "No person shall be deprived of life, liberty, or property without due process of law." Strict construction of the constitution means no person can be deprived of their home during a pandemic by a fraudulent foreclosure.

35. Judge Gundersen has taken actions which create objective reasons to fear the result of any further proceedings will be unconstitutional, inequitable and unjust. It is axiomatic that “[a] fair trial in a fair tribunal is a basic requirement of due process.” *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868, 876, 129 S. Ct. 2252, 2259, 173 L. Ed. 2d 1208 (2009). “A decision produced by fraud on the court is not in essence a decision at all, and never becomes final. Judgments ... obtained by fraud or collusion are void, and confer no vested title.” *League v. De Young*, 52 U.S. 185, 203, 13 L. Ed. 657 (1850).

36. The U.S. Supreme Court instructs that due process does not tolerate the use of false or fraudulent evidence because it “involve[s] a corruption of the truth-seeking function of the trial process.” *United States v. Agurs*, 427 U.S. 97, 107 (1976). “If a state, whether by the active conduct or the connivance of the prosecution, obtains a conviction through the use of perjured testimony, it violates civilized standards for the trial of guilt or innocence and thereby deprives an accused of liberty without due process of law.” *Hysler v. State of Fla.*, 315 U.S. 411, 413, 62 S. Ct. 688, 690, 86 L. Ed. 932 (1942). The same holds when the deprivation is of property without due process.

37. “A judge's fundamental responsibility is to protect the constitutional rights of others.” *In re Sloop*, 946 So. 2d 1046, 1058 (Fla. 2006).

38. “A judgeship is a position of trust, not a fiefdom. Litigants and attorneys should not be made to feel that the disparity of power between themselves and the judge jeopardizes their right to justice.” *In re Graham*, 620 So. 2d 1273, 1277 (Fla. 1993), *citing*, *In re Crowell*, 379 So.2d 107 (Fla.1980)(removing judge for abuse of contempt power and a pattern of hostile conduct that demonstrated a serious lack of judicial temperament).

39. “Truth is critical in the operation of our judicial system and we find affirmative misrepresentations by any attorney, but especially one who represents the State of Florida, to be disturbing.” *The Florida Bar v. Cox*, 794 So. 2d 1278, 1286 (Fla. 2001).

40. Due process guarantees the right to a neutral, detached judiciary in order “to convey to the individual a feeling that the government has dealt with him fairly, as well as to minimize the risk of mistaken deprivations of protected interests.” *Carey v. Piphus*, 425 U.S. 247, 262 (1978); *Taylor v. Hayes*, 418 U.S. 488, 501 (1974); *State v. Steele*, 348 So. 2d 398 (Fla. 3d DCA 1977).

41. Judicial Canon 1 requires that a judge establish maintain and enforce high standards of conduct and personally observe those standards so that the integrity and independence of the judiciary may be preserved.

42. Judicial Canon 2 requires that a judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

43. Judicial Canon 3(B)(7) requires a judge accord to every person or their lawyer the right to be heard according to law.

44. Judicial Canon 3(C)(1) requires a judge diligently discharge its responsibilities without bias.

45. Judicial Canon 3(D)(2) requires that “a judge who receives information or has actual knowledge that substantial likelihood exists that a lawyer has committed a violation of the Rules Regulating The Florida Bar shall take appropriate action.”

46. BONYM, BANA, other plaintiffs, and their counsel have a pattern and practice to mislead courts to engage in dishonest conduct that would be inappropriate, deceitful, unethical, and unbecoming for a judge.

47. A judge cannot ignore the law, especially so a rich and powerful party, can deprive a homeowner of their home, during a pandemic, using forged evidence or fraud on the court.

48. The Florida Supreme Court instructs, “the heart of all legal ethics is in the lawyer's duty of candor to a tribunal.” *Boca Burger, Inc. v. Forum*, 912 So. 2d 561, 573 (Fla. 2005), as revised on denial of reh'g (Sept. 29, 2005). The *Boca Burger* Court continued:

We do not accept the notion that outcomes should depend on who is the most powerful, most eloquent, best dressed, most devious and most persistent with the last word-or, for that matter, who is able to misdirect a judge. American civil justice is so designed that established rules of law will be applied and enforced to insure that justice be rightly done. Such a system is surely defective, however, if it is acceptable for lawyers to “suggest” a trial judge into applying a “rule” or a “discretion” that they know-or should know-is contrary to existing law. Even if it hurts the strategy and tactics of a party's counsel, even if it prepares the way for an adverse ruling, even though the adversary has himself failed to cite the correct law, the lawyer is required to disclose law favoring his adversary when the court is obviously under an erroneous impression as to the law's requirements. *Id.*

49. The Eleventh Circuit Court of Appeal instructs “[a]ll attorneys, as ‘officers of the court,’ owe duties of complete candor and primary loyalty to the court before which they practice. An attorney's duty to a client can never outweigh his or her responsibility to see that our system of justice functions smoothly.” *Malautea v. Suzuki Motor Co.*, 987 F.2d 1536, 1546 (11th Cir.1993).

50. The Florida Supreme Court has found disbarment is appropriate for lawyers who, like BONYM and BANA’s counsel, violate The Florida Bar Rules in orchestrating systemic and pervasive fraud on the court. *The Florida Bar v. Hmielewski*, 702 So. 2d 218, 220 (Fla. 1997).

51. No judge should intentionally delay, avoid, or obfuscate these serious allegations of forgery and fraud which should be adjudicated immediately. The Florida Supreme Court instructs:

Rich or poor, claimant or defendant, the parties in a court case are each entitled to an impartial judge. A former Chief Justice of this Court has summarized the obligation of the judiciary to be:

. . . (T)he judiciary has ever been the poor man's shield against oppression, the rich man's defense against the mob, and though the reformer may wince under the law's restraints, it is his only recourse for justice if he permits blind passion to enmesh him in its clutches. It will save the minority from the tyranny of the majority and protect

both from the ruthless hand of the demagogue. It is the saving quality that will make this government one of laws and not a government of men. *In re Inquiry Concerning a Judge, J. Q. C. No. 77-16*, 357 So. 2d 172, 181–82 (Fla. 1978).

52. As this pandemic rages and homeowners are still being forced from their homes by fraudulent foreclosures, it is intolerable for a judge to refuse to honor their oath of office or adjudicate these fraud upon the court allegations on the merits, fairly, with strict adherence to the law, the code of professional conduct, and the code of judicial conduct.

53. The rules regarding judicial disqualification “were established to ensure public confidence in the integrity of the judicial system” *Livingston* at 1086; *Goines v. State*, 708 So. 2d 656, 661 (Fla. 4th DCA 1998)(noting that the public acceptance of judicial decision-making turns on popular trust in judges as neutral magistrates; judicial system fails to present plausible basis for respect when judge’s impartiality can reasonably be questioned).

54. The U.S. Supreme Court has recognized the basic constitutional precept of a neutral, detached judiciary:

The Due Process Clause entitles a person to an impartial and disinterested tribunal in both civil and criminal cases. This requirement of neutrality in adjudicative proceedings safeguards the two central concerns of procedural due process, the prevention of unjustified or mistaken deprivations and the promotion of participation and dialogue by affected individuals in the decision making process. See *Carey v. Piphus*, 435 U.S. 247, 259-262, 266-267, 98 S.Ct. 1042, 1043, 1050-1052, 1053, 1054, 55 L.Ed.2d 252, (1978). It preserves both the appearance and reality of fairness, “generating the feeling, so important to a popular government, that justice has been done,” *Joint Anti-Fascist Committee v. McGrath*, 341 U.S. 123, 172, 71 S.Ct. 624, 649, 95 L.Ed. 817 (1951)(Frankfurter, J., concurring), by ensuring that no person will be deprived of his interests in the absence of a proceeding in which he may present his case with assurance that the arbiter is not predisposed to find against him. *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 242 (1980).

55. Judges are also attorneys, sworn to uphold the constitution, and entrusted with awesome powers to shape the lives of the citizenry. They are held to a higher standard once they ascend to the bench. The Florida Standards for Imposing Lawyer Sanctions, Standard 5.2(a) states:

Disbarment is appropriate when a lawyer in an official or governmental position

knowingly misuses the position with the intent to obtain a significant benefit or advantage for the lawyer or another, or ***with the intent to cause serious or potentially serious injury to a party or to the integrity of the legal process.*** (emphasis added).

56. Respectfully, no judge can knowingly, consistently, or deceptively deny the protections of the U.S. and Florida constitution to homeowners in foreclosures without consequence to the public's perception of the integrity of the legal process.

57. The Florida Supreme Court and the Florida Standards for Imposing Lawyer Sanctions impose serious consequences for such serious judicial misconduct. A Judge's sworn obligation is to protect constitutional rights, which includes those of homeowners to ensure they are not deprived of their homes during a pandemic without due process of law. A fraudulent foreclosure is not due process.

58. "The judicial system can only function if the public is able to place its trust in judicial officers.... [where a judge's] conduct demonstrates a pattern of deceit and deception. That pattern... casts serious doubt on [the judge's] ability to be perceived as truthful by those who may appear before [the judge] in [their] courtroom. Such conduct diminishes the public's confidence in the integrity of the judicial system [and] removal from judicial office is the appropriate sanction." *In re Ford-Kaus*, 730 So. 2d 269, 277 (Fla. 1999).

59. "There are, of course, limits that every judicial officer must observe. Judges are required to follow the law and apply it fairly and objectively to all who appear before them. No judge is permitted to substitute his concept of what the law ought to be for what the law actually is. He may exercise his judicial discretion conservatively or liberally, and he may temper justice with mercy, but he may not deny justice to any person. He may not withhold justice from one litigant in favor of another for whatever reason. Every judge is answerable for excesses or abuse of his awesome power. There is no place in our system for justice by whim or capricious notion.

Regardless of the philosophy to which a justice or judge subscribes, he is not permitted to conduct himself in a manner which is unbecoming to a member of the judiciary and which demonstrates an unfitness to hold office.” *In re Inquiry Concerning a Judge, J. Q. C. No. 77-16*, 357 So. 2d 172, 179 (Fla. 1978).

60. Defendant(s) makes this Motion to disqualify pursuant to Fla. R. Jud. Admin. P. 2.160, Fla. Stat. § 38.01, to protect their Due Process rights guaranteed by the United States Constitution and the Florida Constitution. Canon 3E of the Florida Code of Judicial Conduct and Rule 2.160 of the Florida Rules of Judicial Administration mandate that a judge disqualify himself or herself in a proceeding “in which the judge's impartiality might reasonably be questioned,” including but not limited to instances where the judge has a personal bias or prejudice concerning a party. Canon 3E(1), Rule 2.140(d)(1) & (2). The Court’s bias against this foreclosure defendant and defense counsel requires disqualification. The United States Supreme Court has also recognized the basic constitutional precept of a neutral, detached judiciary:

The Due Process Clause entitles a person to an impartial and disinterested tribunal in both civil and criminal cases. This requirement of neutrality in adjudicative proceedings safeguards the two central concerns of procedural due process, the prevention of unjustified or mistaken deprivations and the promotion of participation and dialogue by affected individuals in the decision making process. See *Carey v. Phiphus*, 435 U.S. 247, 259-262, 266-267, 98 S.Ct. 1042, 1043, 1050-1052, 1053, 1054, 55 L.Ed.2d 252, (1978). It preserves both the appearance and reality of fairness, “generating the feeling, so important to a popular government, that justice has been done,” *Joint Anti-Fascist Committee v. McGrath*, 341 U.S. 123, 172, 71 S.Ct. 624, 649, 95 L.Ed. 817 (1951)(Frankfurter, J., concurring), by ensuring that no person will be deprived of his interests in the absence of a proceeding in which he may present his case with assurance that the arbiter is not predisposed to find against him. *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 242 (1980).

61. Florida courts have repeatedly held that where a movant meets these requirements and demonstrates, on the face of the motion, a basis for relief, a judge who is presented with a motion for disqualification “shall not pass on the truth of the facts alleged nor adjudicate the

question of disqualification.” *Suarez v. Dugger*, 527 So. 2d 191 (Fla. 1988) (emphasis added). See *Livingston v. State*, 441 So. 2d 1083 (Fla. 1983); *Bundy v. Rudd*, 366 So. 2d 440 (Fla. 1978); *Digeronimo v. Reasbeck*, 528 So. 2d 556 (Fla. 4th DCA 1988); *Ryon v. Reasbeck*, 525 So. 2d 1025 (Fla. 4th DCA 1988); *Fruhe v. Reasbeck*, 525 So. 2d 471 (Fla. 4th DCA 1988); *Lake v. Edwards*, 501 So. 2d 759 (Fla. 5th DCA 1987); *Davis v. Nutaro*, 510 So. 2d 304 (Fla. 4th DCA 1986); *ATS Melbourne, Inc. v. Jackson*, 473 So. 2d 280 (Fla. 5th DCA 1985); *Gieseke v. Moriarty*, 471 So.2d 80 (Fla. 4th DCA 1985); *Management Corp. v. Grossman*, 396 So. 2d 1169 (Fla. 3d DCA 1981). See also *Chastine v. Broome*, 629 So. 2d 293 (Fla. 4th DCA 1993). Judge Gundersen has repeatedly commented on the truth of the facts alleged in prior motions for disqualification.

62. The Florida Supreme Court has repeatedly instructed that Judges need “to avoid any appearance of vindictiveness if the defendant chooses to exercise certain rights, such as his right to go to trial or to appeal.” *Pierce v. State*, 873 So.2d 618 (Fla. 2d DCA 2004); quoting *Wilson v. State*, 845 So.2d 142, 151 (Fla. 2003); See, *State v. Warner*, 762 So.2d 507, 513 (Fla. 2000); *North Carolina v. Pearce*, 395 U.S. 711, 89 S.Ct. 2072, 23 L.Ed.2d 656 (1969). Here, this Court should grant the instant motion for disqualification “to minimize the potential coercive effect on the defendant, to retain the function of the judge as a neutral arbiter, and to preserve the public perception of the judge as an impartial dispenser of justice.” *Pierce*, at 620. A party who steps into the ring against its opponent should not believe that it will be felled by the referee. See *Nateman v. Greenbaum*, 582 So. 2d 643, 648-49 (Fla. 3d DCA 1991) (Baskin, J., dissenting, joined by Barkdull, J., in denial of motion for rehearing *en banc*).

63. This Court continues to create a reasonable fear that this foreclosure defendant is not on a level playing field. No Court should accept the unsworn denials of an attorney accused of fraudulent criminal conduct, including felonies of forgery and perjury, and condemn opposing

counsel for arguing that attorney is lying to the court and acting as an accomplice to his client engaged in felonies of forgery and perjury.

64. “Justice must satisfy the *appearance* of justice.” *Bethesda Memorial Hosp., Inc. v. Cassone*, 807 So. 2d 142, 143 (Fla. 4th DCA 2002) (emphasis supplied) (citations omitted). This principle must be scrupulously guarded even though “this stringent rule may sometimes bar trial by judges who have no actual bias and who would do their very best to weigh the scales of justice equally between contending parties.” *Id.* at 143 (citations omitted).

65. In other words, “it is not a question of how the judge feels; it is a question of what feeling resides in the affiant’s mind and the basis for such feeling. . . . The question of disqualification focuses on those matters from which a litigant may reasonably question a judge’s impartiality rather than the judge’s perception of his ability to act fairly and impartially.” *Wargo v. Wargo*, 669 So. 2d 1123, 1124 (Fla. 4th DCA 1996) (quoting *Livingston v. State*, 441 So. 2d 1083, 1086 (Fla. 1983)).

66. So, the only question to be considered by the judge on a motion to disqualify is whether the litigant has successfully demonstrated “a reasonable, well-grounded fear that they will not receive a fair and impartial trial or that the judge has pre-judged the case.” *Strasser v. Yalamanchi*, 783 So. 2d 1087, 1091 (Fla. 4th DCA 2001). Rule 2.160 of the Rules of Judicial Administration similarly provides “[i]f the motion is legally sufficient, the judge shall immediately enter an order granting disqualification and proceed no further in the action.” Rule 2.160(f).

CONCLUSION

67. The cumulative effect of this Court’s conduct documented over waves of motions to disqualify are all “sufficient to warrant fear on Defendants’ part that they would not receive a fair hearing by the assigned judge.” *Suarez v. Dugger*, 527 So.2d 191, 192 (Fla. 1988). The proper

focus of this inquiry is on “matters from which a litigant may reasonably question a judge's impartiality rather than the judge's perception of his [or her] ability to act fairly and impartially.” *Chastine v. Broome*, 629 So. 2d 293, 294 (Fla. 4th DCA 1993); *See also Swida v. Raventos*, 872 So. 2d 413 (Fla. 4th DCA 2004).

68. Other courts across the nation, such as the Maine Supreme Court, have decried widespread fraud in foreclosures holding:

... this case is a disturbing example of a reprehensible practice. That such fraudulent evidentiary filings are being submitted to courts is both violate of the rules of court and ethically indefensible. The conduct ... displays a serious and alarming lack of respect of the nation's judiciaries.

Fed. Nat'l Mortg. Ass'n v. Bradbury, 32 A.3d 1014, 1016 (Me. 2011). *See also Kemp v. Countrywide Home Loans, Inc.*, 440 B.R. 624 (Bankr. D. N.J. 2010) (refusing to recognize fraudulent Countrywide endorsement); *In re Hill*, 437 Bankr. 503 (W.D. Pa. 2010) (issuing a “public censure” against Countrywide and counsel for fabricating evidence); *In re CarssowFranklin*, 213 F. Supp. 3d 577, 591 (S.D.N.Y. 2016) (“it may be time to reconsider whether “forged or unauthorized signatures” remain “very uncommon”); *U.S. ex. rel. Bruce Jacobs v. Bank of Am. Corp.*, 1:15-CV-24585-UU, 2017 WL 2361943, at *10 (S.D. Fla. Mar. 21, 2017), on reconsideration, 1:15-CV-24585-UU, 2017 WL 2361944 (S.D. Fla. Apr. 27, 2017)(using forged endorsements and false MERS assignments violates the \$25 Billion National Mortgage Settlement and the federal false claims act).

69. The Honorable U. S. Bankruptcy Judge Christopher M. Klein of the Eastern District of California sanctioned BANA \$45 million for foreclosure misconduct involving BANA's Senior Management. *Sundquist v. Bank of America*, 566 B.R. 563 (Bankr. E.D. Cal. 2017). Judge Klein wrote an opinion that “tells a story that smacks of cynical disregard for the law.” *Id.* at 611. Judge Klein questioned “why should Bank of America be permitted to evade the appropriate measure of

punitive damages for its conduct? Not being brought to book for bad behavior offensive to societal norms merely incentivizes future bad behavior.” *Id.* at 615-616.

70. As the Honorable Chief Justice Barbara Pariente of the Florida Supreme Court noted, wealthy forces pose serious challenges to a functioning democracy. *Preserving a Fair and Impartial Judiciary: The Cornerstone of Our Democracy*, C.J. Barbara Pariente and F. James Robinson, *The Florida Bar Journal*, Vol. 90, No. 5. pg. 18., May 2016. Judge Pariente wrote:

The judiciary exists to protect constitutional rights guaranteed in state and federal constitutions, rather than to answer to the changing winds of the political climate of the day. Judges must decide cases based on the rule of law and the facts. They are accountable to the law and the Constitution and not to what is popular or politically correct. ‘A judge is bound to decide each case fairly in accord with the relevant facts and the applicable law, even when the decision is not,’ as former Chief Justice of the U.S. Supreme Court William Rehnquist famously stated, ‘what the home crowd wants.’

Every judge who takes the oath of office swears to ‘protect and defend the Constitution of the United States.’ Every judge who takes the bench also understands the fundamental tenet that judges must not be influenced by popular or personal opinion, partisan or special interest demands, or threats of losing their job if they issue an unpopular but legally correct ruling.

As former Iowa Supreme Court Chief Justice Marsha Ternus has said, ‘If the law doesn’t protect everybody — if the law depends on who is standing in front of the judge — then we don’t have neutral decision-making, we don’t have fair and impartial judges, and we cannot say that we are a society governed by the rule of law.’ Applying the same rules, in the same manner, to everyone protects the rights of all citizens and not just the rights of the most vocal, the most organized, the most popular, or the most powerful. It is the bedrock principle of a fair and impartial justice system.” *Id.*

71. Judge Gundersen has misused her position of trust as a Circuit Court judge and knowingly granted immunity to commit fraud on the court in foreclosures to a party to the \$25 Billion National Mortgage Settlement. Rather than protect the constitutional rights of Defense counsel, Judge Gundersen fought to deny him an opportunity to be heard.

72. Judge Gundersen has denied wave after wave of motions for disqualification, after granting recusal in two of these fraudulent foreclosures. She has undermined the integrity of the judiciary by continuing to preside over these fraudulent BONYM foreclosures.

73. Because this motion is legally sufficient, disqualification should be granted to promote the interests of justice. Movants ask that this Court enter an order of disqualification as to Circuit Judge Andrea Gundersen, notifying the Chief Judge that the case should be reassigned to another judge. See Fla. R. Jud. Admin. 2.160(f), and any relief deemed mete and just.

CERTIFICATION OF GOOD FAITH

Defendant's Counsel hereby certifies, as counsel of record in this cause, this motion for disqualification is made in good faith for the purposes described in Fla. R. Jud. P. 2.160.

/s/ Bruce Jacobs

Bruce Jacobs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing was filed with the Florida Courts e-filing Portal, and served on all those on the Service List, either via Notices of Electronic Filing generated by the e-Portal system or another authorized manner on March 15, 2021.

Respectfully submitted,

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BRUCE JACOBS

EXHIBIT A

**IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA**

CASE NO. CACE16006285 DIVISION 11 JUDGE Andrea Gundersen

Bank of New York Mellon

Plaintiff(s) / Petitioner(s)

v.

24D Team LLC, et al

Defendant(s) / Respondent(s)

**ORDER ON PLAINTIFF BONYM'S MOTION TO DISMISS COUNTERCLAIMS
AND STRIKE AFFIRMATIVE DEFENSES AND MOTION FOR SANCTIONS
PURSUANT TO FLORIDA STATUTES, SECTIONS 57.105(1)(B) AND (2)**

THIS MATTER came before the Court for hearing on March 4, 2021 on the above-referenced motions. The Court has reviewed the Court file and the motions, heard argument from counsel, and is otherwise fully advised in the premises. Based on the arguments made in the motions and on record during the hearing, the Court **Orders** and **Adjudges** as follows:

1. The Motion to Dismiss Counterclaims and Strike Affirmative Defenses is hereby GRANTED. Counterclaim Count I (Violations of RICO Under Florida Statute § 895 and Florida Statute § 772.104) is dismissed, with prejudice, under the litigation privilege and lack of standing based on indirect injury.
2. Pursuant to Florida Statutes, Section 772.104(3), the Court finds defendant 24D Team LLC raised this counterclaim without substantial fact or legal support and BONYM is entitled to recover reasonable attorney's fees and court costs.
3. The Court reserves jurisdiction for a hearing to determine the amount of fees and costs.
4. Counterclaim Count II (Equitable Subrogation) is dismissed, with prejudice, as the defaulted borrower admits the loan has not been paid off.
5. All eleven of defendant 24D Team LLC's affirmative defenses are stricken, with prejudice.

6. BONYM's Motion for Sanctions under Florida Statutes, Sections 57.105(1)(b) and (2) is DENIED.

DONE and **ORDERED** in Chambers, at Broward County, Florida on 03-08-2021.


CACE16006285 03-08-2021 5:06 PM

CACE16006285 03-08-2021 5:06 PM

Hon. Andrea Gundersen

CIRCUIT JUDGE

Electronically Signed by Andrea Gundersen

Copies Furnished To:

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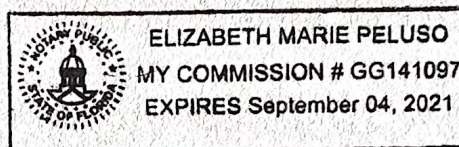
STATE OF FLORIDA)
)
COUNTY OF BROWARD)

BEFORE ME, the undersigned authority, personally appeared Crystal Roney who, being first duly sworn, on oath deposes and says that he has reviewed the Defendant's Fourth/Fifth Verified Motion for Judicial Disqualification and verifies the allegations are true and correct.

SWORN TO AND SUBSCRIBED before me this 15th day of March 2021.

Elizabeth Marie Peluso
NOTARY PUBLIC

My Commission Expires:



- ☒ Personally known to me, or
Produced I.D.: _____
☐ Did take Oath
☐ Did not take Oath