UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ROWE ENTERTAINMENT, ET AL.,	:	**98 Civ. 8272 (RPP)**
Plaintiffs,	:	
-against-	:	**NOTICE OF MOTION**
THE WILLIAM MORRIS, ET AL.,	:	
Defendants.	:	***Oral Argument Requested***

PLEASE TAKE NOTICE that upon the annexed affirmation of Leonard Rowe, affirmed on March 2, 2012, and the accompanying Memorandum of Law in support of this motion, and all pleadings had herein, plaintiff Leonard Rowe, *pro se,* will move this Court, before the Hon. Robert P. Patterson, United States District Court Judge, for an order pursuant to Rule 60, *inter alia,* of the Federal Rules of Civil Procedure granting, in the face of **fraud upon the court, destruction of vital evidence, and in the interest of justice: (a)** relief from the judgment in this action by vacating and setting aside the judgment; **(b)** restoring the case to active status; **(c)** referring the newly discovered evidence to: the Criminal Division of U.S. Attorney's Office, the FBI, the Committee on Grievances of the Board of Judges of the Southern District of New York and the New York State Appellate Division, First Department, Departmental Disciplinary Committee (the "DDC"); and **(d)** and such further relief as the Honorable Court deems proper.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: Johns Creek, GA
March 2, 2012

Leonard Rowe
5805 State Bridge Road, Suite 350
Johns Creek, Georgia 30097
email: ***roweentertain@aol.com***

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ROWE ENTERTAINMENT, ET AL.,	:	98 Civ. 8272 (RPP)
Plaintiffs,	:	AFFIRMATION OF SERVICE
-against-	:	
THE WILLIAM MORRIS, ET AL.,	:	
Defendants.	:	

AFFIRMATION OF SERVICE

I, Leonard Rowe, declare under penalty of perjury that I have served a copy of the attached:

1. **NOTICE OF MOTION;**
2. **MEMORANDUM OF LAW; and**
3. **AFFIRMATION OF LEONARD ROWE**

upon the following parties on the attached Service List as indicated, this day, March 2, 2012:

Dated: Jones Creek, GA
March 2, 2012

Leonard Rowe
5805 State Bridge Road, Suite 350
Johns Creek, Georgia 30097
email: ***roweentertain@aol.com***

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L. R.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ROWE ENTERTAINMENT, ET AL.,	:	98 Civ. 8272 (RPP)
Plaintiffs,	:	NOTICE OF APPEARANCE
-against-	:	
THE WILLIAM MORRIS, ET AL.,	:	
Defendants.	:	

NOTICE OF APPEARANCE

Please take notice that I, Leonard Rowe, a plaintiff in this action, hereby appear *pro se* and that all future correspondence and papers in connection with this action are to be directed to me at the address indicated below.

Dated: Jones Creek, GA
March 2, 2012

Leonard Rowe
5805 State Bridge Road, Suite 350
Johns Creek, Georgia 30097
email: ***roweentertain@aol.com***

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ROWE ENTERTAINMENT, ET AL., Plaintiffs, -against- THE WILLIAM MORRIS, ET AL., Defendants.	98 Civ. 8272 (RPP)

AFFIRMATION OF PLAINTIFF LEONARD ROWE
IN SUPPORT OF MOTION

I, Leonard Rowe, affirm under penalty of perjury that:

1. I, Leonard Rowe, am an individually named plaintiff in the above entitled action, and respectfully move this Court to issue an order: **(a)** vacating and setting aside the judgment; **(b)** restoring the case to active status; **(c)** referring the newly discovered evidence to: the Criminal Division of U.S. Attorney's Office, the FBI, the Committee on Grievances of the Board of Judges of the Southern District of New York and the New York State Appellate Division, First Department, Departmental Disciplinary Committee (the "DDC"); and **(d)** such further relief as the Honorable Court deems just and proper.

FRAUD UPON THE COURT

2. In the interest of justice, this Honorable Court must act swiftly and powerfully against the "officers of the court" who have perpetrated an illegal fraud against this federal court, and who have disgraced the rule of law in this great

nation, and- by their own actions- have advanced the improper redlining of Concert promoters because of the color of their skin.

3. When this case was initially brought before this court, I was not aware of the depth and extent of the corruption and collusion that my own attorneys were a party to in this case.

4. Specifically, I was only informed on Tuesday, February 7, 2012, that my own attorneys had committed a series of crimes and gross attorney ethical violations in this case.

5. Attorney Martin Roth Gold and members of his law firm had ongoing meetings with defendants' counsel, without our knowledge, and conspired to conceal vital e-mail evidence, which we, as plaintiffs paid over $200,000 for. This crucial evidence comprised of documents that contained the word "nigger" nearly 400 times which clearly demonstrated the racial animus of these defendants as it related to their contractual dealings with plaintiffs. Had Attorney Martin Gold and his co-conspirators not perpetuated this fraud upon the court by their intentional concealment of these documents (the e-mails) and other vital evidence of anti-trust violations (which was concealed from both their clients and this court), I truly believe that this Court would have reached a different outcome on summary judgment.

6. Martin Gold did these despicable things after charging me and other plaintiffs more than two hundred thousand ($200,000) dollars for e-mail discovery of the defendants files.

7. After Attorney Martin Gold and others had taken practically all of the money received in partial settlements for the Plaintiffs, he then threatened to further sabotage my case by coming to you, the judge in this case and make disparaging remarks and assertions ***ex parte.*** Martin Gold said he would go directly to the Judge "if not allowed to withdraw from the case."

8. While I was generally informed about one year ago that my case may have involved "ineffective counsel" and/or other certain unethical attorney actions, is wasn't until February 7, 2012 that I specifically learned that the actions constituted violations of various crimes.

DESTRUCTION OF EVIDENCE
Vital Evidence Secreted From the Court!

9. Attorneys Martin Gold, Ray Heslin, Richard Primoff, Christine Lepera and Carl Aron, after taking over $200,000 for e-mail discovery and compelling us to wait, patiently, attorneys Gold, Heslin, Primoff and Lepera advised that nothing had been found as a result of the e-mail search. When this was reported to me, I

could tell that Mr. Gold, Mr. Primoff and Mr. Heslin were not being truthful but I had no "proof" at that time.

10. I then asked that they please send all of the entire e-mail search results, which were to be included in all findings and documents, to me. I carefully examined each document that these attorneys provided to me and found nothing that proved our position against the defendants. Having worked in this industry for over 25 years at that time, and enduring the racism that all African-Americans had then and continue to endure along with the collusion that existed then and continues to date, I found this to be impossible to believe.

11. About two (2) weeks later, I was called to New York for a meeting with Attorney Heslin. While I was waiting outside of his office I overheard Attorney Heslin on the phone discussing meetings with opposing counsel in my case which he had not previously informed us of. After going into his office, Attorney Heslin received another call and he turned his back to me for privacy. I then glanced on his desk and saw a file that was labeled "Rowe Entertainment v. William Morris, E-Mail results". It was then that I observed the word "nigger" was lined on the entire first page of the report. When Attorney Heslin finished his call, I asked him "what was that?" pointing to the e-mail results report on his desk. Attorney Heslin then turned over the report, in my face, and told me that "I was not supposed to see that."

12. I then asked the question "WHY?" since it pertained to my case. Attorney Heslin then got very angry and argumentative with me. I then called Attorney Willie Gary and told his law firm what I had seen on Attorney Heslin's desk. Attorney Gary then asked that the e-mail report be sent to them for review. But, importantly, THOSE EMAILS WERE NEVER SENT! This is how only the report was finally obtained by the plaintiffs. But Mr. Gold nor Mr. Heslin or their firm, despite my numerous requests for the actual documents (the stack of emails) that contained the word "nigger" nearly 400 times, they always, to this date, have refused my request to turn over property that rightfully belongs to me as a plaintiff and for which we had paid over $200,000 to obtain. Mr. Heslin and Mr. Gold- and others who had knowledge- alway failed to report this (the emails) to law enforcement AND the Court.

13. I also subsequently learned that Attorneys Martin Gold and Ray Heslin had a previous relationship with Dale Head, the In-House Attorney for Defendant Clear Channel. During settlement discussions with Clear Channel, the Howard Rose Agency as well as Monterey Peninsula , I was always pressured by Attorney Martin Gold and his firm to settle under the continual threat of their withdrawal from the case.

14. During the deposition of CAA employee, Mr. Rob Light, which was being conducted by Attorney Carl Aron, of Martin Gold's law firm, Plaintiff, Lee

King, while using the rest room during a break in the proceedings, overheard the attorneys from Weil Gotcha, telling Mr. Light that he would not be asked "any hard questions" from Mr. Aron. Whenever I would ask Attorney Aron to ask defendants pertinent questions, such as, are blacks given the same opportunity as whites, he would refuse to ask the requested question without a confrontation. I knew then that our case was being intentionally sabotaged by Attorney Martin Gold and his law firm.

15. It is reprehensible that these attorneys, that were supposed to be representing my interests, were actually engaged in the intentional sabotage of my case by subverting our positions and hiding key evidence from me and the other plaintiffs. **This Honorable Court, I respectfully submit, MUST vacate the judgment and restore this case to the active calendar.**

16. I have now been made fully aware that the egregious acts were, in fact, not only acts of gross attorney misconduct, fraud and collusion, but that these acts specifically constitute the commission of serious crimes. **A HEARING ON THESE ISSUES IS REQUIRED, IN THE INTEREST OF JUSTICE.**

Knowing Crimes By Officers of the Court

17. Specifically, when Attorneys Martin Gold, Ray Heslin, Richard Primoff and Christine Lepera, with their co-conspirators, withheld the evidence

(the damning emails) from the plaintiffs, this Court, and law enforcement, they knowingly committed the crimes of conspiracy, obstruction of justice, misprison of a felony, *inter alia*. And these attorneys grossly breached ethical oaths and, obviously, various attorney disciplinary rules of conduct that must be fully investigated by state and federal attorney ethics committees.

18. Specifically, when these same attorneys destroyed the e-mail evidence which Plaintiffs paid over $200,000 to obtain, they committed the crime of destroying evidence, *inter alia.*

19. Specifically, when these same attorneys, with the conscious input from their co-conspirators on the defense side of the table, came into this Court and lied, on the record, they committed the crime of perpetrating a "fraud upon this Court." They lied directly to the Court, and they lied by omission when they did not produce to the Court the damning emails they had in their possession and control.

20. Further, specifically, the actors sought to sway focus away from the the large quantity of emails when Attorney Martin Gold and Ray Heslin, sent me a letter, threatening me- right before summary judgment- that if I opposed their withdrawal that they would come to you and further sabotage my case. This misconduct is also a crime of coercion and extortion, and was done while failing to report their knowledge of misdeeds and crimes.

21. I believe this Court should be outraged by the knowingly improper actions of my former attorneys that resulted in a despicable and calculated fraud perpetrated upon me and this court. It is nothing short of reprehensible and I believe that the U.S. Attorneys' Office, the F.B.I and the various attorney disciplinary mechanisms of the State of New York will undertake and complete a full, complete and impartial investigation of all who were involved, in any way, with the manner in which this case was ***knowingly and deliberately*** mishandled.

True Justice Must Prevail

22. The previous ruling that was entered by this Court single handedly destroyed practically all black businesses that were dependent on the black concert promoters for their livelihood such as limousine companies, catering companies, stage hands, production companies and others whom have gone bankrupt because of the diminished opportunities wrought by the impermissible determination of this case on summary judgment.

23. My efforts in bringing this matter has NEVER been to destroy the music entertainment industry but to try and stifle the numerous instances of contractual disparities and other pernicious instances of discrimination. **SADLY because of how this case ended, and at the hands of unethical and illegal actors, the widespread acts of the redlining of music promoters because of the**

color of their skin CONTINUES TO THIS DAY! My father served proudly in the U.S. Army for 14 years. In 1966 he gladly laid down his life on the battlefields of Vietnam fighting for this country so that we all could have a chance to experience freedom and liberty, leaving me and my mother behind. I was 14 years old at the time. We received ten thousand dollars from the U.S. Army for his death. I also received a purple heart and a bronze star, which I am very proud of to this day. My mother and I took our payment from the Army and proceeded to try and purchase a home in Columbus, GA, where we lived. At the time we were not allowed to buy a home in the neighborhood of our choice because of our race. We were only allowed to purchase a home in the black neighborhoods. Here we are today sir, some forty five years later with civil rights laws firmly in place and the music industry continues to operate under the same discriminatory policies of the past and ignoring the civil rights laws of this great nation.

24. In retrospect, the fact that ANY purported partial "settlement" was allowed without the ending of the criminal and race-based discrimination is unthinkable. Surely, any attorney with a spec of ethics would have insured that the improper and illegal practice would end. The on-going and current state of redlining could only result from the arrogance and greed of those who improperly acted, knowing perhaps that they would be protected by those similarly bent

toward corruption. This Court CANNOT let this continue. During this litigation, the defendants, because of their arrogance, never made any attempt to settle this case or to meet us half way on the problems that surrounded this litigation. It has never been my intention to destroy this industry in any way. But I thought that we should have been compensated for the many years that our Civil Rights had been violated. I also felt that we should have been given an equal opportunity to contract without regard to our race and to be employed in this industry on the same terms and conditions as all others. Doesn't this Court, the legal profession and, indeed, all good people owe it to future generations to insure that equal opportunity exists for all in the United States of America?

25. If this Court denies any part of this motion, I believe that it would only be condoning the unethical and illegal behavior of the attorneys in this case, by approving of their fraud upon this court of law and allowing the redlining of entertainment promoters based solely on the color of their skin to continue.

26. The ongoing and continuous hardship that me and my other colleagues have endured has been gut wrenching, emotionally draining and economically devastating and it is very difficult to think that it all has happened

because of fraud, collusion, attorney misconduct and the impermissible "weighing" of the evidence that was presented in this case on summary judgment.

27. All that I ever wanted was a chance to settle this case on terms that were fair, just and impartial so that my family and I, and those of the other black concert promoters, could make an honest living at the only craft and profession that we have ever known. ***Importantly, every child should be afforded such an opportunity, regardless of the color of their skin.***

28. I knew justice was not served in this case but it wasn't until I was asked to fly to New York for a meeting on Tuesday, February 7, 2012 that the depth of the injustice was made clear to me.

29. Previously, I sat in the Honorable Judge Patterson's courtroom and witnessed first-hand as justice unfolded. I witnessed this Court say time and time again, that the defendants needed to settle this case. I can also remember this Court stating, in open court, that there was "obviously some monkeying around in this industry". This Court also said that with the evidence that had been presented, that the Court did not see how they [the defendants] could prevail with a jury. The Court continued to plead with the defendants to settle. I also wanted the

defendants to make some sort of attempt to settle this legal battle so that I, along with my colleagues, could continue in the only profession that we knew which would allow us to take care of our families and loved ones, and provide a basis for need change so others would not be similarly discriminated against.

30. Sitting in Judge Patterson's courtroom throughout the many years of this left me feeling proud of my country's system of law. But then something happened. And it wasn't until February 7, 2012, that it was made clear to me what had, in fact, happened: that there was a series of knowing illegal acts and gross attorney misconduct by involved attorneys against me, the other plaintiffs, and the rule of law- and as out-lined above.

31. I pray, for myself and all others similarly situated, that this Court look into the depths of its heart and conscience and fairly undertake an impartial evaluation of the basis upon which the instant motion to vacate, set aside and restore is premised and that this Court place this matter back on its docket for adjudication, and for the other relief requested.

A Hearing on These Issues is Required, In the Interest of Justice

32. I ask this Honorable Court to restore my faith in my government and in this great country's rule of law. This Court must ***publicly and openly confront*** the involved attorneys on their misdeeds- gross acts that leave in place the disgraceful practice of promoter redlining based on the color of a person's skin.

33. The actions of the involved attorneys was, and is, wrong.

34. I am informed that these attorneys have violated various attorney disciplinary rules of conduct. I believe this Honorable Court is obligated to report these attorneys to the state ethics committee and to the U.S. Southern District of New York attorneys ethics committee as well.

35. I am informed that it is a crime (misprison of felony) ***NOT*** to report a crime, and that is exactly what herein involved attorneys did when they remained silent when critical evidence was secreted and when they all chose NOT to report what they knew existed (the email evidence) to the Civil Rights Division of the U.S. Attorney's Officer.

36. I am informed that it is a crime to destroy evidence, and that is exactly what Martin Gold did, with others, when he destroyed the material containing the

349 email uses of the words "nigger" and "coon" and other references to the redlining of me and other black promoters because of the color of our skin.

37. I believe this Court has an obligation to take all appropriate action, including formally report such conduct to various ethics committees and to Law Enforcement, and I am confident that Justice will soon prevail.

38. I am informed that it is a fraud upon the court when a person- and in this case it was numerous attorneys!- fails to bring to the Court's attention the misconduct of another attorney. That happened in this case when the attorneys who knew of the secreting of the email evidence and failed to inform the Court that such actions had happened in a federal court of law.

Frauds Upon the Court Must Be Reported By the Court to All Appropriate Attorney Ethics Entities

39. The above frauds upon this Honorable Court MUST be formally reported by this Court. I believe this Honorable Court will fulfill its obligation to do so.

40. I pray that this Honorable Court will stand up to the illegal and *improper actions of those who would dare defraud a court of law or* knowingly scoff at our system of law. I trust this Court will join the courageous members of this nation's federal bench as in:

(a) District Court Judge Michael Mills of Oxford Mississippi who, in the Massey/ Nowlin public corruption case, boldly departed from sentencing guidelines and responded to the greedy, former public official by saying,

"But you destroyed the faith of the people in their government."

(b) U.S. District Court Senior Judge Neal Biggers, Jr. who berated famed attorney Dickie Scruggs and said,

"The justice system made you a rich man, yet you attempted to corrupt it."

and

(c) The Honorable Pennsylvania U.S. District Court Judge, Edwin M. Kosilk, who bravely rejected a plea agreement in the ***Kids for Cash*** scandal.

IN THE INTEREST OF JUSTICE,

A HEARING ON THESE ISSUES IS REQUIRED

CONCLUSION

WHEREFORE, for the above reasons and in the interest of justice, plaintiff Leonard Rowe respectfully requests that the Honorable Court enter an **ORDER**:

a. Setting aside the judgment in this case;

b. Ordering that the case be reopened and restored to the calendar as an active case and that justice be properly administered under the law;

c. Referring the newly discovered evidence to: the Criminal Division of U.S. Attorney's Office, the Committee on Grievances of the Board of Judges of the Southern District of New York and to the New York State Appellate Division, First Department, Departmental Disciplinary Committee (the "DDC"); and

d. Granting such further relief as the Honorable Court deems just and proper.

DECLARATION UNDER PENALTY OF PERJURY

The undersigned declares under the penalty of perjury that he is a plaintiff in the above action, that he has read the above and that the information contained herein is true and correct, 2 8 U.S.C. § 1746; 18 U.S.C § 1621.

Respectfully submitted,

Dated: Johns Creek, GA
March 2, 2012

Leonard Rowe
5805 State Bridge Road, Suite 350
Johns Creek, Georgia 30097
email: ***roweentertain@aol.com***

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ROWE ENTERTAINMENT, ET AL., Plaintiffs, -against- THE WILLIAM MORRIS, ET AL., Defendants.	:	98 Civ. 8272 (RPP)

MEMORANDUM OF LAW IN SUPPORT OF MOTION

INTRODUCTION

1. Leonard Rowe, *pro se*, and as an individually named plaintiff in the above entitled action, respectfully submits the herein Memorandum of Law in Support of his motion, pursuant to Rule 60, *inter alia*, for an order: **(a)** vacating and setting aside the judgment; **(b)** restoring the case to active status; **(c)** referring the newly discovered evidence to: the Criminal Division of U.S. Attorney's Office, the FBI, the Committee on Grievances of the Board of Judges of the Southern District of New York and the New York State Appellate Division, First Department, Departmental Disciplinary Committee (the "DDC"); and **(d)** such further relief as the Honorable Court deems just and proper.

2. Now before the Honorable Court is a series of newly revealed evidence that wrongly continues the widespread practice of the redlining of Concert Promoters based on the color of their skin.

BACKGROUND FACTS

3. Plaintiff Leonard Rowe, appearing now in his own individual capacity, originally brought this action with other African-American Music Concert Promoters. The filing against the defendants alleged various causes of action including, but not limited to Anti Trust Violations, Civil Rights Violations under 42 U.S.C. 1981 and other claims for relief.

4. Two years after oral argument, and after extensive discovery and pre-trial motion practice, this Honorable Court granted summary judgment to the defendants. The Court's Order failed to include any mention of the derogatory utilization of the term "niggers" (which was found in the defendants William Morris Agency and CAA's e-mail records some 349 times), "coons" and other blatant evidence of racial discrimination by defendants that has been and continues to be directed toward plaintiff and others similarly situated. Additionally, the Court Order did not mention substantive documentary evidence, consisting of over 2000 contracts which showed the systemic disparities in contracting between plaintiffs, who are all African-American and members of a protected class, versus "white" concert promoters in terms of favorable terms extended to "white" concert

promoters and said terms and conditions are wholly denied African-American concert promoters in clear violation of the terms of *42 USC 1981*.

5. It is of extreme importance and concern to note that while the Court weighed certain evidence during the summary judgment phase of the case, the Court could not have considered the actual e-mail records because of the improper actions and misconduct by certain involved attorneys. In short, the evidence emails were improperly kept from the Court.

6. Plaintiff brings this motion as he has only recently learned that the acts of misconduct that transpired in this case were required by law to be reported to federal officials by involved attorneys. Each and every involved individual with a law degree was aware of the egregious injustice occasioned by the perpetration of the fraud upon the court concerning the hundreds of emails, and all of those "officers of the court" failed to properly report these matters according to civil and criminal law, and a variety of state and federal attorney ethics rules .

RELIEF UNDER RULE 60

7. The general purpose of Rule 60 "... is to strike a proper balance between the conflicting principles that litigation must be brought to an end and

that justice must be done." Boughner v. Sec'y of Health, Educ. & Welfare, 572 F.2d 976, 977 (3d Cir.1978). "The decision to grant or deny relief pursuant to Rule 60(b) lies in the 'sound discretion of the trial court guided by accepted legal principles applied in light of all the relevant circumstances.'" **United States v. Hernandez**, 158 F. Supp. 2d 388, 392 (D. Del. 2001) (quoting **Ross v. Meagan**, 638 F.2d 646, 648 (3d Cir. 1981). Rule 60 provides "a mechanism for extraordinary judicial relief [available] only if the moving party demonstrates exceptional circumstances," **Ruotolo v. City of New York**, 514 F.3d 184, 191 (2d Cir.2008) (internal quotation marks omitted)(see also Paddington Partners v. Bouchard, 34 F.3d 1132, 1142 (2d Cir. 1994)) , by satisfying one or more of Rule 60(b) grounds for relief from judgment. **Van Skiver v. United States**, 952 F. 2d 1241, 1243-44) (10th Cir 1992).

AN ULTRA VIRES ACT RESULTS IN A VOID JUDGMENT UNDER FRCP 60(B)4

8. FRCP 60(b)(4) permits a injured party to seek relief from a judgment or order when the judgment is void. Plaintiff respectfully contends that the Court was defrauded by involved attorneys when the court "weighed" tainted evidence, thus resulting in an *ultra vires* act. , **Gross v. Rell, et al**, 585 F.3d 72 (2nd Cir. 2009) even though he would still be personally immune consistent with the law set forth in **Stump v. Sparkman,** 435 U.S. 349, 356-57, 98 S.Ct. 1099,

55 L.Ed.2d 331 (1978), his judgment, in this case, the order on summary judgment, would be void. See generally, **Gross v. Rell, et al**, 585 F.3d 72 (2nd Cir. 2009) and FRCP 60(b)(4).

A PERPETRATION OF A FRAUD UPON THE COURT REQUIRES REINSTATEMENT OF THE CASE UNDER FRCP 60(B)4

9. The 2nd Circuit Court of Appeals has held that "fraud upon the court" consists of "fraud perpetrated by officers of the court so that judicial machinery cannot perform in usual manner its impartial task of judging cases presented for adjudication" **Transaero, Inc. v. La Fuerza Area Boliciana**, 24 F.3d 457, 99 F.3d 538, cert denied, 526 U.S. 1146, 119 S. Ct. 2022, 143, L.Ed.2d 1033 (1994); **In re Clinton Street Food Corp**., 254 B.R. 523 (2000); **Gleason v. Jandrucko**, 860 F. 2d 556 (1988), which held that "fraud upon the court" warranting relief from final judgment, as distinguished from fraud upon an adverse party, is limited to fraud which seriously affects integrity of normal process of adjudication." Accord, **Buxbaum v. Deutsche Bank, AG**, 216 FRD 72 (2003), **Catskill Development, LLC v. Park Place Entertainment Corp.**, 286 F. Supp.2d 309 (2003).

10. This Court has inherent power to vacate its own judgment on proof that fraud has been perpetrated upon it. **Simpson v. Putnam County Nat. Bank**

of Carmel, 20 F. Supp.2d 630 (1998), **Levitin v. Homburger**, 932 F. Supp. 508, affirmed, 107 F.3d 3 (1996). In independent action to set aside judgment based on fraud, misconduct, or fraud upon the court, plaintiff must demonstrate an absence of plaintiff's own fault, neglect or carelessness. **Weldon v. U.S.**, 845 F. Supp. 72, affirmed 70 F.3d 1 (1994).

11. It has been held that when an attorney misrepresents or omits material facts to a court, or acts on client's perjury or distortion of evidence, his conduct may constitute fraud upon the court. **Trehan v. Von Tarkanyi**, 63 B.R. 1001, appeal after remand, 85 B.R. 920 (1986). The Federal Procedures govern relief from judgment due to fraud, misrepresentation, or other misconduct of adverse party applies to both intentional and unintentional misrepresentations. **DiPirro v. U.S.**, *189 F.R.D. 60 (1999).*

12. Fraud upon the court has been defined by federal courts to embrace that species of fraud which does, or attempts to, defile the court itself, or is perpetrated by officers of the court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases that presented for adjudication. See **Bulloch v. United States**, 763 F.2d 1115 (10th Cir. 1985),

Kenner v. C.I.T., 387 F.3d 689. A fraud upon the court makes void the orders and judgments of that court.

THE COURT CANNOT "WEIGH" TAINTED EVIDENCE FROM A FRAUD ON THE COURT PERPETRATED BY INVOLVED ATTORNEYS IN A SUMMARY PROCEEDING

13. One of the principal components of the instant motion to vacate, set aside and restore, is that this Court, unknowingly admitted "tainted" evidence - an impermissible "weighing" of "all the evidence in this case" in violation of the law. *See* "Conclusion" of January 5, 2005, Order on Summary Judgment.

14. On a summary judgment motion, the court is not to weigh tainted evidence. *See*, e.g., **Anderson v. Liberty Lobby, Inc.**, 477 U.S. at 255, 106 S.Ct. at 2513; **United States v. Rem**, 38 F.3d 634, 644 (2d Cir.1994); **Donahue v. Windsor Locks Board of Fire Commissioners**, 834 F.2d 54, 58 (2d Cir.1987); **Gallo v. Prudential Residential Services, Limited Partnership**, 22 F.3d 1219, 1223-24 (2d Cir.1994). The drawing of inferences and the assessment of the credibility of the witnesses remain within the province of the finders of fact.

15. In ruling on a motion for summary judgment, the district court is required to draw all factual inferences in favor of, and take all factual assertions-

not tainted evidence- in the light most favorable to, the party opposing summary judgment. See, e.g., **Anderson v. Liberty Lobby**, Inc., 477 U.S. 242, 255, 106 S.Ct. 2505, 2513-14, 91 L.Ed.2d 202 (1986); **Rodriguez v. City of New York**, 72 F.3d 1051, 1061 (2d Cir.1995). The function of the district court in considering the motion for summary judgment is not to resolve disputed issues of fact but only to determine whether there is a genuine issue to be tried. *See*, e.g., **Anderson v. Liberty Lobby, Inc.**, 477 U.S. at 255, 106 S.Ct. at 2513-14; **Eastman Machine Co. v. United States**, 841 F.2d 469, 473 (2d Cir.1988). Assessments of credibility and choices between conflicting versions of the events are matters for the jury, not for the court on summary judgment. See, e.g., Fed R. Civ. P. 56(e) 1963 Advisory Committee Note; **Anderson v. Liberty Lobby, Inc.**, 477 U.S. at 255, 106 S.Ct. at 2513-14; **United States v. Rem**, 38 F.3d 634, 644 (2d Cir.1994); 6 Moore's Federal Practice pg. 56.02, at 56-45 (2d ed.1986).

16. It is not the province of the court itself to decide what inferences should be drawn, especially when the court had tainted evidence presented to the Court by involved attorneys, *See*, e.g., **Cronin v. Aetna Life Insurance Co.**, 46 F. 3d at 204; **Chambers v. TRM Copy Centers Corp.**, 43 F.3d at 38; if there is any evidence in the record from any source from which a reasonable inference could be drawn in favor of the nonmoving party, summary judgment is improper, see, e.g.,

Stern v. Trustees of Columbia University, 131 F.3d at 312; **Brady v. Town of Colchester**, 863 F.2d 205, 210 (2d Cir. 1988).

17. Any weighing of ***untainted*** evidence is the prerogative of the finder of fact, not an exercise for the court on summary judgment. See, e.g., **Frito-Lay, Inc. v. Morton Foods, Inc.**, 316 F.2d 298, 301 (10th Cir.1963). The "weighing" of tainted evidence in this case by the Court on summary judgment constitutes a fraud upon the Court which must be corrected, in the interest of justice, and as a matter of law.

THE ATTORNEY MISCONDUCT COMMITTED IN THIS CASE WAS REQUIRED TO BE REPORTED TO FEDERAL AUTHORITIES

18. 18 U.S.C. 242 prohibits the deprivation, under color of law, of a right, privilege or immunity that is protected by federal law and is criminally punishable in a number of ways by federal officials. 18 U.S.C. 241 prohibits the conspiracy between two (2) or more persons to violate, intimidate or harass another in the exercise of their federal rights.

19. The manner in which the instant case preceded, it was only recently revealed to the herein movant, underscores the participation of involved attorneys to deprive plaintiff of his rights protected under federal law.

20. This Court, because it was defrauded by members of the bar, was prevented from taking necessary action to stop the pernicious racism that

permeates the live concert promotion business of the entertainment industry in America.

21. When the opportunity presented itself through the auspices of this lawsuit, for five (5) years, this Court indicated that the defendants would face insurmountable obstacles to survive the scrutiny of this Court and the jury. Unfortunately, the Court was defrauded, and justice was denied.

22. The time has come for this Honorable Court and a jury to see the real evidence, ***the untainted evidence***. Finally, this Honorable Court and a jury has the opportunity to consider the plethora of documentary evidence of racial disparity in contractual terms and conditions, which clearly violate the letter and spirit of 42 U.S.C. 1981.

23. It is now time to correct this injustice by vacating and setting aside the summary judgment order that was entered in this matter based on a fraud upon the court by involved attorneys. It is respectfully submitted that this case be added to the docket for adjudication according to law and to allow the jury, as the finder of fact, to make their determination based on the facts, the law and the **untainted** evidence.

24. The United States Supreme Court has reaffirmed the principal that "justice must satisfy the appearance of justice." **Levine v. United States**, 362 U.S. 610, 810 S. Ct. 1038 (1960), **Offutt, United States**, 348 U.S. 11, 75 S. Ct. 13, (1951). As it presently stands, the previous order on summary judgment does not have the "look", the "feel" or "the appearance" of justice having been properly served in this case. Due process compels a fair and impartial tribunal free from fraud, bias or prejudice. **U.S. v. Sciuto**, 521 F.2d 842 (7th Cir. 1996). Plaintiff was clearly deprived of due process in the previous proceedings before this Court when a fraud was put upon the Honorable Court by certain involved attorneys- either by any one attorney's deliberate illegal acts or by an improper silence and failure to report such conduct as required.

25. Attorneys Martin Gold, Ray Heslin, Richard Primoff and Christine Lepera, with their co-conspirators, withheld the evidence (the damning emails) from the plaintiffs, this Court, and law enforcement, they knowingly committed the crimes of conspiracy, obstruction of justice, misprison of a felony, *inter alia*. And the involved "officers of the court" grossly breached attorney ethical oaths, "Concealment of crime has been condemned throughout our history." *Branzburg v. Hayes*, 408 U.S. 665, 696 (1972).

CONCLUSION

WHEREFORE, for the above reasons and in the interest of justice, plaintiff Leonard Rowe respectfully requests that the Honorable Court enter an **ORDER**:

a. Setting aside the judgment in this case;

b. Ordering that the case be reopened and restored to the calendar as an active case and that justice be properly administered under the law;

c. Referring the newly discovered evidence to: the Criminal Division of U.S. Attorney's Office, the Committee on Grievances of the Board of Judges of the Southern District of New York and to the New York State Appellate Division, First Department, Departmental Disciplinary Committee (the "DDC"); and

d. Granting such further relief as the Honorable Court deems just and proper.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: Johns Creek, GA
March 2, 2012

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