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LOS ANGELES

BY: \_\_\_\_\_

Attorney for Jeffrey D. Moffatt, Pro-Per

**UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

<p>Jeffrey D. Moffatt,  Plaintiff  v.  State of Arizona, State Supreme Court of Arizona, State Bar of Arizona, and  Scott Bales, Chief Justice in his Official Capacity,  Defendants</p>	<p><b>DOCKET NO.: CV 17-06029-VBF (DFM)</b></p> <p><b>REPLY TO STAY CHALLENGE</b></p> <p><b>Date:</b> <b>Time:</b> <b>Courtroom:</b></p> <p>Honorable Judge Valerie Baker Fairbank</p>
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**WHEREFORE PLAINTIFF** submits this Reply to corporate Defendant State Bar of Arizona's response on the Propriety of the Stay Request.

## **CO-DEFENDANTS DISREGARDED COURT ORDERS**

Presently the only defendant to answer before this Court has been the corporate entity State Bar of Arizona. Other defendants, have not challenged Plaintiff' Moffatt's 60(b) Motion filed with this court, nor have Co-Defendants challenged the Stay Motion, nor provided a position on the Stay Motion. More importantly, Co-Defendants have failed to abide by TWO Court Orders.

### **LUCIA V. SECURITY EXCHANGE COMMISSION (APPOINTMENTS CLAUSE)**

In Lucia v. Securities Exchange Commission U.S. Supreme Court Docket #17-130, a core issue "is whether administrative law judges of the Security Exchange Commission are officers of the United States under Appointments Clause." If ALJ's are employees, and not constitutionally appointed officers they are improperly sitting, thus unconstitutionally sitting, and rulings made while unconstitutionally sitting are void.

### **EMPLOYEE ADMISSION BY SUPREME COURT**

**Admission:** Heather Murphy, Spokeswoman of the State Supreme Court of Arizona made a public admission that administrative law judge-State Supreme Court of Arizona Presiding Disciplinary Judge (PDJ) William J. O'Neil, is not an elected official of the State of Arizona and said (PDJ) *O'Neil is only an employee* of the State Supreme Court of Arizona, rather than an elected official.

**Attached hereto is a true and correct copy of Murphy's public admission marked as Exhibit A.**

Murphy, Spokeswoman of the State Supreme Court of Arizona, is quoted saying to media outlet Santa Clarita Valley (SCV) Signal on May 25, 2017, posted via through website and Printed media the following:

***"...O'Neil would not comment on the case...the judge is an employee of the state Supreme Court rather than an elected official." ...Exhibit A, Page 2, Para. 11.***

**"EMPLOYEE or JUDGE"  
(QUESTIONS PRESENTED)**

Whether administrative law judge (ALJ)-State Supreme Court of Arizona Presiding Disciplinary Judge (PDJ) William J. O'Neil, is defined as an employee or appointed justice or judge –within the meaning to Appointment Clause of Arizona Constitution Article VI, Section 37 (c)? **Answer** Administrative Law Judge (ALJ)-State Supreme Court of Arizona Presiding Disciplinary Judge William J. O'Neil (PDJ), is an employee and not an elected official, per the public admission on May 25, 2016, with the Santa Clarita Valley Signal by Heather Murphy, spokeswoman for the State Supreme Court of Arizona. Murphy gave the Arizona Supreme Court's, public admission statement with media outlet Santa Clarita Valley Signal, during Plaintiff Moffatt's (2016) U.S. Congressional race. **Attached hereto is a true**

and correct copy of Murphy's public admission marked as Exhibit A, Page 2, Paragraph 11.

Whether *Defendants* exceeded their jurisdiction and authority?

**Answer** – Yes, Defendants exceeded their jurisdiction and authority, because Defendants admission that William J. O'Neil, is an "employee" rather than an elected or appointed judge, again per Murphy. If Lucia's argument and recent agreement by the DOJ holds, by the Supreme Court, O'Neil will be equally unconstitutionally sitting and the Final Judgment and Order of Disbarment against Moffatt equally in violation and void.

### **PROPRIETY OF STAY REQUEST**

Moffatt requested a Stay congruent with Lucia v. Securities Exchange Commission, U.S. Supreme Court Docket #17-130, to await the U.S. Supreme Court interpretation whether employees acting as administrative law judges...are unconstitutionally seated, and violating the Appointments Clause.

Since both Lucia and the DOJ agree that an SEC ALJ is an improperly sitting ALJ, based on removal, appointment and separation of powers, the potential need for a stay becomes actualized, and the days of improperly

sitting ALJ's questioned. The fact that Lucia also argues that there is no basis for limiting its holding to Article 1 ALJ's improperly sitting, thus the pending Supreme Court decision will have ramifications on both National and State ALJ's, or in the Moffatt case a PDJ.

If administrative law judges are employees and in violation of the U.S. Appointments Clause, Supreme Court of Arizona Presiding Disciplinary Judge (PDJ) William J. O'Neil, will be equally in violation of the State of Arizona's Constitution Appointment Clause, and equally unconstitutionally sitting on Arizona's Supreme Court Bench. Lucia will become the Supreme Law of the United States, and thus Lucia would then control the outcome of Plaintiff Moffatt's case before this Court.

### **JANUARY 2018 SUPREME COURT 60(b) CASE, THARPE**

The Supreme Court just issued a decision regarding 60(b) motions, under Tharpe No. 17-6075. Decided January 8, 2018. The perception of bias, under Tharpe has now become an effective element, which when satisfied allows for a dismissed case to be reopened, under 60 (b) motions. In light of the standard regarding Bias "But on the unusual facts of this case, the Court of Appeals' review should not have rested on the ground that it was indisputable among reasonable jurists that Gattie's service on the jury did not prejudice Tharpe."

Here the fact of Moffatt being vindicated in New Mexico, and no criminal charges being issued against Moffatt, the PDJ of Arizona O'Neil unconstitutionally sitting as an admitted employee, rather than an officer, and the connection between O'Neil and land developers that were being protected from prosecution and would not have been if Moffatt's wife was elected a State Senator, combined with the employment connection between O'Neil's wife working for a company that is owned by a justice that denied Moffatt's motions, should be similarly satisfy bias seen as in Tharpe, infra.

It will not be indisputable among reasonable jurists that the claim that Moffatt had committed a crime when no crime had ever been charged should give way to allowing the 60(b) motion to survive in the Moffatt matter; bias has been shown in spades, as has corruption, due process violations, constitutional violations as well as 66 issues between the complaint and the 60( b) Motion itself, as such Tharpe has been satisfied, in spades, thus making the 60(b) Motion both viable, and effective, and the stay request equally viable.

The fact that Stay has been requested based on constitutional infrastructure violations, violation of separation of powers clauses, improper delegation of Judicial power, the unconstitutional transfer of judicial power to employee's, compounded by bias when the wife of such an employee works for a Supreme

Court justice, more than satisfies Tharpe bias alone and is proper for both a Stay and the 60(b) motion. If Lucia falls the way both Lucia and the DOJ have argued, judicial power and the ramifications of the improper transfer of power to employees are both unconstitutional and decisions void; these exact points are being litigated in the U.S. Supreme Court, as such a Stay was and is valid. The Constitutional infrastructure violations that exist with Lucia directly overlay with O'Neil, the PDJ that issued the Moffatt's disbarment, thus the propriety of a stay is relevant, exactly on point, saves years of resources and judicial time, and may singularly dispose of the case in Moffatt's favor, thus solving the case and paving the way for damages. The potential Lucia decision of unconstitutionally sitting and void, would also singularly cuts through the immunity claims and additionally allows for injunctive relief and damages.

#### **SIMILARITY OF LUCIA IN PLAINTIFF MOFFATT'S CASE BEFORE THE COURT**

The relevancy of a Stay in this matter before the Court can be found in U.S. Supreme Court case titled Lucia vs. Security Exchange Commission, Docket #17-130, Lucia argued unconstitutionally seated administrative law judges (ALJ's) have the impact of creating a lifelong professional death sentence against Lucia's professional occupational license as a Securities Broker and working in the securities industry. If the (ALJ) argument that the ALJ's for the SEC are employees, rather than constitutionally appointed officers, then the ALJ for Lucia

was unconstitutionally sitting, and the decision void. Moffatt equally is faced with a lifelong professional death sentence against Plaintiff Moffatt from working in the legal industry or in any other occupation that requires a professional license, because administrative law judge-State Supreme Court Presiding Disciplinary Judge (PDJ), William J. O'Neil is and has been, unconstitutionally seated on the Supreme Court bench. The same administrative law judge (PDJ), admitted to only being an, employee rather than the required constitutionally appointed officer or constitutionally elected officer of the Supreme Court of Arizona.

Since the threshold for 60(b) actions has been reduced to only require bias, then unconstitutionally and void judgments certainly satisfy the Tharpe 60(b) bias element, since they flow to an impermissible level on the spectrum. The fact that a Supreme Court case is active in Lucia 17-130, and may fundamentally provide a second step to the 2010 Supreme Court case, Free Enterprise 561 U. S. 477 (2010), in finding fundamental constitutional structural failures and violations of the Sarbanes-Oxley Act's dual for-cause limitations on removal of members of Board contravened Constitution's separation of powers; Plaintiff Moffatt's Stay is warranted due to extreme circumstances, operative facts and would be in the best interest of the public to Stay this case.



**OTHER CASES THAT HAVE BEEN STAYED PENDING LUCIA, ONE OF WHICH IS IN THE  
NINTH CIRCUIT, PROVIDES A REASON TO HOLD THE MOFFATT CASE AS A STAY OR IN  
ABAYEANCE**

Other cases held in abeyance Page 4, FROM LUCIA BRIEF 17-130

As the government explains (at 22), **this division “has generated substantial confusion and disruption” throughout the administrative state.** See also, e.g., Chamber Br.11-12; PLF Br. 12-15. The Commission has sought or obtained orders holding in abeyance other appellate challenges to the constitutionality of its ALJs. See, e.g., Order, *J.S. Oliver Capital Mgmt. v. SEC*, No. 16-72703 (9th Cir. Oct. 25, 2017) (staying appellate proceedings pending disposition of petitions in this case and in *Bandimere*); Order, *Timbervest, LLC v. SEC*, No. 15-1416 (D.C. Cir.Aug. 8, 2017) (holding case in abeyance pending disposition of petition in this case); SEC Rule 28(j) Letter, *Bennett v. SEC*, No. 16-3827 (8th Cir. Nov. 29, 2017) (requesting abeyance pending disposition of petition in this case). Accordingly, “the Commission’s ability to enforce the nation’s securities laws has, in significant respects, been put on hold” until the Court decides this case. U.S.Br.25.2.

The government also agrees with petitioners that “this case, rather than *Bandimere*, presents the Court with the preferable vehicle” for resolving the circuit split. U.S.Br.24; see also Pet. 35 n.\*. Unlike *Bandimere*—from which Justice Gorsuch may be recused—this case presents a clean opportunity for the full Court to decide whether SEC ALJs are Officers. See Br. for Amici Curiae Raymond J. Lucia and Raymond J. Lucia Cos. at 5- 7, *SEC v. Bandimere*, No. 17-475 (U.S. Oct. 24, 2017). The question presented has been fully ventilated in the extensive proceedings below—including rehearing before the en banc D.C. Circuit—and there are no jurisdictional, preservation, or other problems that could prevent the Court from deciding the Officer question

***Garco Construction, Inc. v. Secretary of the Army* 17-225**

Garco Construction relisted for cert by the Supreme Court on 2-20-18 stands for whether *Bowles v. Seminole Rock & Sand Co.* and *Auer v. Robbins* should be overrule, thereby providing reviewability of ALJ decisions. As such, we now have ALJ structural violations, appointment clause violations, removal and separation of powers violations before the court in Lucia 17-130, Garco, and a half dozen cases mentioned in the Stay motion, thus questioning ALJ's improper status, power, reviewability and void decisions are in question, thus the Moffatt stay even gains higher relevance.

**STATE OF ARIZONA CONSTITUTION APPOINTMENT CLAUSE**

State of Arizona Constitution Article 6 Section 37(c) – **Judicial vacancies and appointments...** allows for a chief justice to appoint, **“Each justice or judge so appointed shall initially hold office for a term ending sixty days following the next regular general election after the expiration of a term of two years in office.”** William O’Neil, (PDJ) became Judge on the Supreme Court bench in February 2011; had O’Neil (PDJ) been seated on the Supreme Court bench in constitutional compliance, O’Neil (PDJ) has exceeded the emergency Arizona State Constitution Appointment Clause, which only provides for a maximum of two years and 60 days, since he has exceeded the emergency provision. Thus, the Appointment Clause, Removal Clause and non-officer status being argued in Lucia

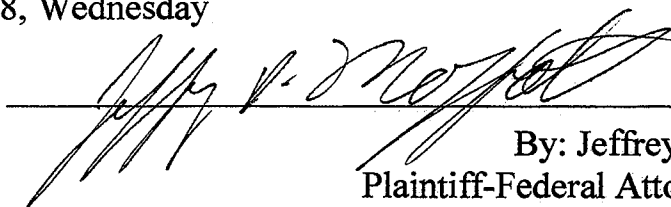
and several other cases mentioned in the original Stay request filed by Moffatt, are on point.

Consequently, since the administrative law judge State Supreme Court of Arizona Presiding Disciplinary Judge William J. O'Neil is an employee, and unconstitutionally seated, O'Neil's Final Judgment and Order of Disbarment against Plaintiff Moffatt is void and a Stay is warranted pending the adjudication of Lucia v. SEC; The Supreme Court direction in Lucia will provide the ramification for employees rather than constitutionally seated Judicial officers, and the impact of being unconstitutionally seated thus making Lucia, important both at the Federal level as well as the State level.

### CONCLUSION

For all the foregoing reasons stated above Plaintiff Moffatt request this Court grant Plaintiff's Stay Motion.

**Dated:** February 21, 2018, Wednesday

A handwritten signature in black ink, appearing to read 'Jeffrey D. Moffatt', is written over a horizontal line.

By: Jeffrey D. Moffatt,  
Plaintiff-Federal Attorney Pro-Se



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The Santa Clarita Valley Signal



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## Congressional candidate appeals disbarment over nude photos

By Matt Thacker

Signal Staff Writer

Posted: May 25, 2016 7:10 p.m. Updated: May 25, 2016 7:10 p.m.

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Jeffrey Moffatt

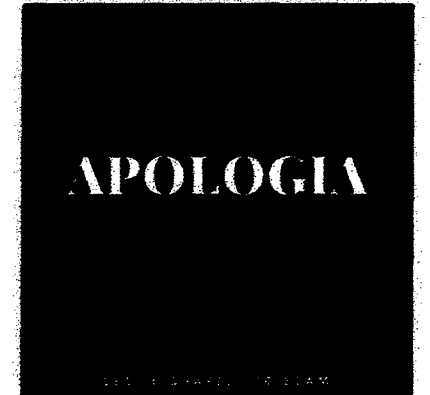
A tax attorney running for the 25th Congressional District has filed an appeal after an Arizona judge ordered his disbarment over allegations of misconduct.

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Jeffrey Moffatt, a Republican from Lancaster, admits that in October 2013 he sent a Facebook message to a woman asking her to send him nude photographs.

Moffatt — a candidate for the congressional seat that takes in the Santa Clarita Valley and is now held by Steve Knight, R-Palmdale — said his actions were a “mistake,” but he believes he did nothing illegal.

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"I happen to have a male drive that on occasion will come out," he said. "In this case, it was an inopportune time."

The woman who received the request filed a complaint in New Mexico, where she was at the time, according to Moffatt. He said the State Bar of New Mexico investigated the claims and determined by December 2013 that no attorney-client relationship existed and that the conduct was not illegal.

Moffatt said he believed the case was a "done deal" until November 2015, when the State Bar of Arizona filed charges against him. Although Moffatt is based in Lancaster, he handles federal cases and his license to practice law is through Arizona.

Judge William J. O'Neil signed the order of disbarment April 19. Moffatt appealed the decision to the U.S. Court of Appeals for the Ninth District.

Moffatt believes he is being targeted for political reasons, arguing that other attorneys have done worse and not been barred from practicing law.

"I'm being taken down for asking an out-of-state chick for a nude over Facebook three years ago," he said.

His appeal notes that the State Bar of Arizona filed charges only a week after his wife, Star Moffatt, announced her candidacy for California Senate District 21, which takes in most of the Santa Clarita Valley.

Moffatt alleges the judge who issued the order has a history of targeting high-profile Republican attorneys.

In his appeal, Moffatt argues the state of Arizona does not have jurisdiction in his case, which he asked to be moved to federal court. He also claims that O'Neil has not signed his oath of office, meaning every ruling he has issued is invalid.

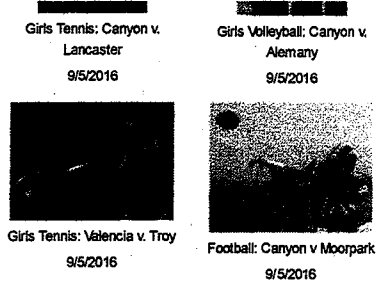
"If I happen to be proven right, then for all these Republicans who have been targeted by this Democratic judge, I might be able to get their bar cards back," Moffatt said.

Heather Murphy, spokeswoman for the Arizona Supreme Court, said O'Neil would not comment on the case. She said the judge is an employee of the state Supreme Court rather than an elected official.

She said his loyalty oath would have been filed with the court's human resources department and not with the Secretary of State, which keeps oaths for elected judges. Murphy said she has been told that O'Neil has signed his loyalty oath.

"It's a non-issue," she added.

Moffatt is running against Rep. Steve Knight, R-Palmdale, and Democratic challengers Bryan Caforio and Lou Vince. The top two vote-getters in the June 7 primary will advance to the general election.



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