

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Post Office Box 193939, San Francisco, CA 94119-3939

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6	Dr. Nira Schwartz dba Jaffa OptroniX) No: 07-55091
7)
8) Lower Case No.: CV - 06-04010 DDP (JCx);
9	Plaintiff,)
10	vs.	) Plaintiff's Notice Of Motion and Motion
11		) with leave of the appellate court to reopen
12	United States Of America	) case CV- 06-04010 DDP (JCx) to have lower
13	Office of the US Attorney;	) Court correct its dismissed Order entered on
14		) 12/15/2006 to get just relief based on lower
15	MIT Lincoln Laboratory known as	) Court Oversight and Omission; Mistakes;
16	"MIT/LL";	) Inadvertence; Excusable Neglect; Newly
17		) Discovered Evidence; Fraud, ETC. FRCP 60;
18	Lawrence Livermore National)
19	Laboratory known as "LLNL";	) My Declaration;
20)
21	Aerospace Corporation known as)
22	"AERO";	) Proof of service with Defendants' lawyers
23		) Contact information;
24	Defendants)
25)
26)
27)
28)

- 1 **i. The Defendants are identified properly in the Complaint:** This Order alleged
2 inability to: “determine what claims are made against which defendants” (**Id. 9:1-**
3 **5**). This is in contradiction to the Complaint ¶ 7 and I quote: “Plaintiff is informed
4 and believes and thereon alleges that Defendants together and independently in
5 doing the things alleged herein... which they knew and intended would have
6 detrimental and injurious and damaging effects in this State”, and “all reference
7 made to “Defendants” shall include said Defendant (1), (2), (3) and (4) together
8 and each of them independently”. I asked to correct that and get a relief from that.
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- 10 **ii. I have restricted the Intellectual Property (IP):** This Order alleged that: “ Here, it
11 does not appear that the plaintiff offered her intellectual property to the
12 government or defendants with the understanding that it would be held in
13 confidence. The Plaintiff does not offer facts indicating that her “intellectual
14 property” was provided with restriction” (**Id. 11:11-23**). This statement has no
15 merit and in contradiction (**a**) to me “marking Plaintiffs *intellectual-property* with
16 “Dr. N. Schwartz copyright and proprietary information” “ (Complaint ¶¶ 95); (**b**)
17 to me “*instructions* in writing the Defendants and the POET to safe guard the
18 and not disseminate the information” (Complaint ¶¶ 95); (**c**) to me providing the
19 Court with copies of my instructions in writing on 09/17/98, 09/22/98, and
20 09/25/98 to DOJ Attorney Egan requesting not to disseminate IP; and (**d**) to me
21 providing the Court with copies of 10/09/98 instructions by Special Agent Sam
22 Reed on my behalf instructing Dr. Ming Tsai (Poet Leader) to safeguard and not
23 disseminate IP. See my Response in Opposition ¶¶ 53, 54, 55, 56 Docket # 25, 26
24 and Attachment A pages page 24, 25-28); I asked to correct that and get relief
25 from that.
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1 **iii.** My IP is well defined; This Order alleged that: “ the complaint does not define the
2 plaintiff’s alleged intellectual property or trade secret with the requisite
3 specificity” (**Id. 12:22-24**). This statement has no merit and in contradiction to **(a)**
4 the Order itself (**Id. 4:23-28**); **(b)** in contradictions to Court of Federal Claims
5 Opinions dated 12/29/03, which accepted the IP definition. See entire Exh. #2
6 filed by the Defendants Docket # 19 and its first par. on page (**Id. 19:3-7**); **(c)** in
7 contradiction to my providing the Court with definition of my copyrighted IP and
8 with true and accurate copies of the copyrighted IP and its certificates of
9 registration. See Complaint ¶¶ 48(a)-(g) and Attachment A page 30-42, 83-103,
10 104-119, 120-121; **(d)** in contradiction to my providing the Court with the IP ideas
11 and what the ideas are for, and how they will perform. See my Response in
12 Opposition ¶¶ 46-52, 60 Docket # 25, 26. and the relevant references made to
13 Attachment A; **(e)** in contradiction to the fact that a person knowledgeable in the
14 art can understand the IP with requisite specificity to produce “counter reports” as
15 the Poet did, and in contradiction to my providing the Court with copies of the
16 Poet “counter reports” that were provided based on their understanding the IP with
17 requisite specificity. Attachment A, pages 65-80, 128-142, 143-151; See
18 Complaint ¶¶ 16, 48. I asked to correct that and get relief from that.

20 **iv.** I have exclusive right to posses or control the IP. This Order alleged that the
21 complaint: “ nor does it allege any facts showing that the plaintiff had the
22 exclusive right to possess or control that property” (**Id. 12:24-27**). This statement
23 has no merit and in contradiction to **(a)** the fact that I have provided the Court
24 Officers with true and accurate copies of the IP copyrighted Certificates of
25 Registration that I have exclusive right to that IP. Neither court officer provided
26 documents to contradict that. Attachment A pages 65-80, 128-142, and 143-151;

1 (b) in contradiction to Court of Federal Claims Opinions date 12/29/2003 that I
2 authored the IP and therefore has exclusive right to it and I quote: “Plaintiffs allege
3 that Dr. Schwartz authored “13 reports between 1996 and 1999 and thousands of
4 pages of analysis and recommendations” for the government. Compl. ¶13(f).
5 These reports included flight test data analysis, technology concepts and test
6 procedures. *Id.* Defendant does not contest Dr. Schwartz's authorship in these
7 works” (highlighted added). See Exh. #2 filed by the Defendants Docket # 19 and
8 its first par. on page 19; (c) in contradiction to Court of Federal Claims Opinions
9 date 12/29/2003 that: “ this court has already determined that the government did
10 not enter into an enforceable agreement with Dr. Schwartz that would provide
11 compensations for the use of Dr. Schwartz's works.” The Consulting agreement
12 between the Government and me was not valid, because there was no valid
13 contractual relationship between the government and me. Which leave my IP clean
14 without any one legal claim to it, and give me the exclusive right to my IP, and
15 established the fact that the government made use of it. See Exh. #2 page 5 par B,
16 page 9 par.1, page 17 par 8(a), page 18 top par. Complaint ¶¶ 64, 67, 77, 89, 100.
17 I have a valid a claim against all defendants for Breach Of Trust and Confidence
18 and Abuse Of Powers, for Conversion of "Intellectual Property" or Trade Secret
19 Miss appropriation and more. I asked to correct that and get relief from that.

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21 v. In 2003 I exhausted Administrative remedies along 28 U.S.C. § 2675(a) for tort
22 claims against the Government: This Order alleged that: “ Accordingly, the Court
23 finds that Dr. Schwartz has not exhausted her administrative remedies and thus her
24 FTCA claim must be dismissed for lack of subject matter jurisdiction”. This
25 statement is in contradiction to (a) Court of Federal Claims Opinions date
26 12/29/2003. See entire Exh. #2, that established the fact that the Government was
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1 already served with the instant tort claims in 2003 by serving it with cases 03-37C
2 and 03-786C complaints. It is a re-filing in D.C. court the same tort claims. See
3 Exh. 1-11 and Exh. A-F (identified above). Order dismissing instant complaint
4 (**Id. 6:1-22**) for allege failure to comply with 28 U.S.C. § 2675(a). When this law
5 does not provide for dismissal of complaint for tort claims cases that were
6 previously filed in another court, such as Court of Federal Claims; **(b)** It is in
7 contradiction to the fact that I have notified the court officers and employees that
8 instant tort claims were previously filed with the Court of Federal Claims in 2003
9 (Complaint ¶¶ 11, 17). I have submitted to this court “**UNITED STATES**
10 **DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA CIVIL**
11 **COVER SHEET**”. On this Form I have answered the question: “**VIII(a)** .
12 **IDENTICAL CASES:** Has this action been previously filed and dismissed,
13 remanded or closed? If yes list case, list case number,(s):” and my answer was:
14 “Washington Court of Claims case 03-37C Judge Bush; Dismissed for lack of
15 Jurisdiction”. My Response in Opposition ¶ 7, 66-88, and references made in it to
16 Attachment A; and **(c)** It is in contradiction to the fact the Order page 1 foot note¹
17 indicates awareness of Exh. 1-11 and Exh. A-F. I asked to correct that and get
18 relief from that.

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20 **vi.** I have valid Copyright claims and fraud against all Defendants not just against the
21 Government as dismiss order in error isolated (**Id. 7:4-12**): Because **(a)** I am the
22 author of the IP with exclusive right to the IP and control it; **(b)** I have provided
23 the Court officers with a copy of tampered IP made by the Defendants. See
24 Attachment A pages 65-80, 128-142, 143-151; **(c)** I put restrictions on my IP; **(d)** I
25 copyrighted portions of the IP; **(e)** The Defendants tampered and fraudulent the IP
26 and I have provided the Court with a copy of the tampered IP made by the
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1 Defendants; (f) I provided names of the Defendants that committed the fraud and
2 the time the fraud was committed, the place where the fraud committed and the
3 Defendants economical reasons to commit the fraud of rob/infringe /tamper
4 /fraudulent /disseminate/use/falsely classify my copyrighted IP. See My Response
5 in Opposition ¶¶ 64-85, and Complaint ¶¶ 21, 24, 37, 38, 47, 113, 114; The Court
6 and their officers dismissal this case, have provided the Defendants with right to
7 break the law, and get away with it, making them part of the fraud. I asked to
8 correct that and get relief from that.

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10 **vii.** The Court officers only communicate with each other. The Court filed the
11 Defendants MIT, LLNL and Aero Reply to my Opposition (Docket # 28), and
12 considered the Reply information in its Order to Dismiss. I had informed the Court
13 officers by many motions on 12/14/2006 and on 12/28/2006 that I had not
14 received this Reply document. I requested to stop the Court officers' procedures
15 and allow me to get the document and respond to it. But instead the Court officers
16 mailed back to me the motions, and entered the dismissed Order on 12/15/2006.
17 The Docket, and Docket # 31 failed to record the entire list of my motions that
18 were returned to me, concealing the fact that I complained on time and properly to
19 the fact that I was not served with the Reply. I asked to correct that and get relief
20 from that.

21 **viii.** Documents were presented to the court with the reasons for non-intervention in
22 prior qui-tam case. The Order page 10-foot note⁷ alleged: "The plaintiff appears to
23 be seeking a declaration that her qui tam case was improperly dismissed.
24 However, this Court does not have the authority to review the merits of the
25 dismissal". In My Response In Opposition ¶¶ 4, 20, 45, 59, 78, 80, 81, 84 and the
26 relevant references made to Attachment A in these paragraphs, I have provided
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1 Government documents to the reasons of non-intervention. The dismissal when
2 the facts provided in documents, puts the Court and its officers as a party to the
3 case and not acting impartially and lawfully. I asked to correct that and get relief
4 from that.

5 **ix.** The Order contradicts Judge RSWL Order entered July 17, 2006 “**Different case**
6 **with different Defendants and claims**”. See My Response In Opposition ¶¶ 31,
7 32, 37, 40, 78, 80. No Res Judicata and Collateral Estoppel can be applied without
8 being in contradictions to this order presented in Attachment A page 1. I asked to
9 correct that and get relief from that.

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11 **3)** All of the above, and more are making the Court officers and employees a party to the
12 case, to abuse and allow breach of the law, instead of acting impartially and lawfully.
13 All in correlation and harmony for "**Fraud upon the court**". To falsely stage the
14 ground to dismiss the case. People v. Zajic, 88 Ill.App.3d 477, 410 N.E.2d 626
15 (1980), and Bulloch v. United States, 763 F.2d 1115, 1121 (10th Cir. 1985), and
16 Kenner v. C.I.R., 387 F.3d 689 (1968); "a decision produced by fraud upon the court
17 is not in essence a decision at all, and never becomes final." And "Fraud upon the
18 court" makes **void** the orders and judgments of that court". **Allen F. Moore v.**
19 **Stanley F. Sievers**, 336 Ill. 316; 168 N.E. 259 (1929). And **People of the State of**
20 **Illinois v. Fred E. Sterling**, 357 Ill. 354; 192 N.E. 229 (1934). I asked to correct that
21 and get relief from that.

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23 **4)** I am entitled to WRIT OF ERROR - A writ issued out of a court of competent
24 jurisdiction, directed to the judge of a court of record in which final judgment has
25 been given, and commanding them, in some cases, themselves to examine the record;
26 in others to send it to another court of appellate jurisdiction, therein named, to be
27 examined in order that some alleged error in the proceeding may be corrected. I
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1 request the Court Officers to read my documents. I asked to correct that and get relief
2 from that.

3 **5) I am entitled to AUDITA QUERELA – Because I have not received the Reply; and/or**
4 **because the Court officers failed to mail it; and because they failed to correct it; and**
5 **because they acted to prevent me from correcting it by throwing my motions out of**
6 **court. I request hearing in open Court. I request the Court Officers to read my**
7 **documents. I asked to correct that and get relief from that.**

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9 **6) I pray my requests be granted and the Court will correct/void the Order and let me**
10 **write a first amended Complaint.**

11 **I declare under penalty of perjury under the laws of the State of California that the**
12 **foregoing is true and correct, and Attachment is a true copy of my document.**

13 DATED: February 13, 2007

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15 BY: Dr. Nira Schwartz
16 Dr. Nira Schwartz
17 Plaintiff non-attorney in pro se
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1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

3 NIRA SCHWARTZ WOODS, Richard Woods, and we do swear or declare that on this
4 date, as required by Supreme Court Rule 29, our address is 2550 PCH # 68, Torrance, California
5 90505.


6 On February 13, 2007, we served the foregoing document described as:
7 **CASE NO.: CV - 06-04010 DDP (JCx)**; Appeal to the 9th Circuit case 07-55091;

8 **Plaintiff's Notice Of Motion and Motion with leave** of the appellate court to reopen case
9 **CV- 06-04010 DDP (JCx)** to have lower correct its dismissed Order entered on 12/15/2006
10 to get just relief based on lower Court Oversight and Omission; Mistakes; Inadvertence;
11 Excusable Neglect; Newly Discovered Evidence; Fraud, ETC. FRCP 60; My Declaration;
12 **Proof Of Service**

13 on Defendants parties in this action by placing a true and correct copy thereof, enclosed in a sealed
14 envelope **BY FIRST CLASS MAIL** addressed as follows:

- 15 1) Debra Wong Yang, Jonathan B. Klinck – US Attorney [one copy]
16 Federal Building, suite 7516, Civil Process Clerk,
17 300 N. Los Angeles Street,
18 Los Angeles, California 90012
- 19 2) James J. Gallagher, Mana Elihu –Defendants Attorneys [one copy]
20 McKenna Long & Aldridge LLP,
21 444 South Flower Street, 8th Floor,
22 Los Angeles, CA 90071-2901
- 23 3) Office Of the Clerk, [Original + two copies]
24 Central District Of California,
25 Filing in Pro-se Room 526
26 312 N. Spring Street, Los Angeles, CA 90012

27 Executed on February 13, 2007, at Los Angeles, California.

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Richard Woods



Plaintiff Schwartz