Docket No. 99-585

THE SUPREME COURT
OF THE UNITED STATES

RONALD BRANSON, Petitioner,

v.

CITY OF LOS ANGELES; LOS ANGELES DEPARTMENT OF TRANSPORTATION (LADOT); THOMAS CONNER, General Manager LADOT; LOCKHEED MARTIN IMS CORPORATION (LIMSC); EDWARD AVILA, Western Region Senior Vice President LIMSC; CALIFORNIA DEPARTMENT OF MOTOR VEHICLES (DMV); SALLY REID, Director DMV, Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

SUPPLEMENTAL BRIEF

RONALD BRANSON
Petitioner, Pro Se
16623 Calahan St.
North Hills CA 91343
(818) 875-4231

December 21, 1999

SUPPLEMENTAL QUESTION PRESENTED FOR REVIEW

6. Whether the post-judgment Order of November 26, 1999, is void on its face.

* * *

TABLE OF CONTENTS

TABLE OF AUTHORITIES

The authority for this supplemental brief are pertinent portions from volumes 49 and 50 of Judgments, Corpus Juris Secundum (1997 edition). Section numbers are referenced:

* * *

INTRODUCTION

(Declaration of Ronald Branson)

I, Ronald Branson, declare and say:

That I am the petitioner herein, and plaintiff/ appellant in the courts below. That the facts herein stated are based on my personal knowledge and that I could competently testify thereto as a witness if called upon to do so. That other matters herein stated of a conclusory nature are based on my information and belief, and as to those matters, I believe they are true.

PLEASE TAKE NOTICE that I cannot conscientiously participate in what appears to be an extortion plot devised between Circuit Judges O'Scannlain, Rymer, and Silverman, with Lockheed Martin IMS Corrporation, Edward Avila, and its counsel Patrick McAdam of the lawfirm Iverson, Yoakum, Papiano & Hatch in Los Angeles.

That I place the above-named officials and entities, as well as Chief Judge of the District Court Terry J. Hatter, Jr., on this notice.

That I have petitioned time and time again, for the Ninth Circuit Judges involved to take mandatory judicial notice of the substantive law, i.e., California Code of Civil Procedure section 906, under which I claim my statutory right to procedural due process, as well as the material facts relevant thereto, alleged in both my original and amended complaints, all supported by exhibits evidencing the truth of those

facts. That I have listed those facts verbatim, citing their location in the record, for judicial notice.

That I have also petitioned time and time again, that those judges take mandatory judicial notice of the relief sought, alleged in both complaints, as well as the prayer for relief alleged in both complaints.

That all of those matters are necessary to determine whether I have attacked a prior state court judgment as those judges are falsely contending.

That I have also petitioned those judges to take mandatory judicial notice of my entire opening brief on appeal, necessary to determine whether my arguments on appeal are frivolous and without merit. That I have requested that if they are determined to be so, that they state on what basis they are so determined, citing the evidence supporting that conclusion. That I have specifically requested judicial notice of my argument on subject matter jurisdiction, giving the applicable page numbers.

That I have petitioned those judges to take mandatory judicial notice of my petition for rehearing, especially bringing to their attention that their determination of June 17, 1999, is not supported by the record, explaining this omission in detail.

That I have also petitioned those judges to take mandatory judicial notice of my reply brief to Lockheed's responding brief on appeal, showing by evidence how their arguments are not relevant to the subject matter of my complaint, specifically to the

process due under California Code of Civil Procedure section 906.

That I have petitioned time and time again, in my briefs on appeal, that those judges convert the motions to dismiss to the summary judgment procedure as required by the Federal Rules of Civil Procedure, so that all the evidence presented by both sides could be tested thereby.

That after my repeated entreatment that the Ninth Circuit judges pay attention to the subject matter of both of my complaints, and take notice of the fact that I am petitioning for a state remedy under California Code of Civil Procedure section 906, which the record shows has never been given, they have nevertheless failed and refused to do so, and at the same time, have let stand their false representation that I have impermissibly collaterally attacked a prior state court judgment.

That based on that false representation, those judges affirmed the district court's dismissal of my case besides a monetary sanction, and in addition thereto, have now, since the filing of my Petition for Writ of Certiorari, awarded Lockheed and Avila attorney's fees and double costs on appeal.

That the judges say, "We may affirm the district court's decision on any basis which the record supports," yet they refuse to provide that supporting basis, all in an effort to carry out an attempted criminal extortion in conspiracy with Lockheed.

That any attempts to extort funds from me based on this fraudulent scheme will, of course, be

resisted. That it is my firm belief that this act of attempted extortion constitutes bad behavior within the meaning of Article III, Section 1 of the U.S. Constitution, of which Congress should be apprised.

I declare under penalty of perjury under the laws of the United States that the foregoing is true to my knowledge, and on my information and belief.

Executed this _____day of December, 1999, at Los Angeles, California.

_____

RONALD BRANSON

STATEMENT OF THE CASE

This supplemental brief is filed pursuant to USSC Rule 15.8 and the notice on pages 12-13 of the petition that petitioner anticipated filing one upon the decision by the Ninth Circuit on the post-judgment motion for Rule 38 FRAP sanctions. That decision has been made by Order filed November 26, 1999 **[SA-1]**.

On August 3, 1999, petitioner was served by mail a post-judgment motion for sanctions under Rule 38, Federal Rules of Appellate Procedure, by respondents Lockheed IMS Corporation and Edward Avila ("Lockheed"). **[SA-3** *minus exhibits***]**.

On August 9, 1999, petitioner served by mail his opposition to that motion containing (1) Special Request for Citation of Evidence from the Record Supporting the Court's Memorandum Filed June 17, 1999; and (2) Request for Mandatory Judicial Notice under Rule 201(d) Federal Rules of Evidence, supplying the necessary information therewith under separate cover. **[SA-9** *minus the evidentiary documents* **]**.

On August 16, 1999, Lockheed served by mail its reply to the opposition. **[SA-18]**.

The court of appeals has disregarded all material facts alleged in the complaints, the substantive law alleged upon which petitioner claimed his right to due process in state court, the specific relief sought, the theory of the action as framed by the complaints, and everything presented by petitioner in his opposition to the Rule 38 motion.

ARGUMENT

6. The Order of November 26, 1999 is void on its face.

The post-judgment Order of November 26, 1999, is an outgrowth of the judgment of June 17, 1999, and depends upon the integrity of the latter for its own validity. The validity of the June 17th judgment is the threshold question presented in the petition, pages 7-9. All issues rest upon the showing of proof from the record that petitioner did in fact collaterally attack a prior state court judgment. Despite numerous requests that the court of appeals cite such evidence, necessary to support the judgment, it still refuses to do so. "Branson's requests for citation of evidence from the record and mandatory judicial notice are denied." **[SA-2]**

A. <u>The judgment must be sustained by the evidence.</u>

> A judgment is the sentence of the law on ultimate facts admitted by the pleadings or proved by the evidence. It is not a resolve or decree of the court, but the sentence of the law pronounced by the court on the action or question before it. 49 Corpus Juris Secundum (1997) Judgments §3 p.53.
>
> The evidence must be of a substantial character, sufficient to support the judgment rendered. The judgment must be founded on sufficient

> facts legally ascertained…. ¶A judgment may not rest on conjecture and speculation or on mere surmise or suspicion, nor may a judgment find support in assumptions or in possibilities or probabilities falling short of actual proof. ¶… [A] valid judgment may not be predicated on evidence that cannot be true. *Idem.* Judgments §48, pp 109-110.

B. <u>Petitioner's complaints are necessary to the consideration of evidence supporting the judgment.</u>

> [A] judgment rendered without pleadings in support thereof is erroneous, a nullity, and void rather than voidable. *Idem.* Judgments §43 pp 103-104.
>
> A declaration, petition, or complaint is essential to the regularity of a judgment. *Ibid.*

The complaints in their entirety have been ignored by the courts below.

C. <u>The material facts and substantive law alleged must be considered in the judgment.</u>

> A court may not properly put on its record a judgment which is not a proper sequence to the pleadings, at least without the consent of all persons affected. It is a general rule that a recovery must be had, if at all, on the facts alleged in the pleadings;

> the judgment must conform to, and be supported by, the pleadings in the case. ¶A judgment must also be sustained by the evidence adduced, in connection with the facts admitted by the parties in the pleadings or otherwise…. ¶[T]he judgment must conform to, and be supported by, both the pleadings and the proofs, and be in accordance with the theory of the action on which the pleadings are framed and the case was tried. *Idem.* Judgments §52, pp 113-114.

The judgment of June 17, 1999, fails to conform to the theory of the action as framed by the complaint.

D. <u>The evidence supporting the judgment must be relevant to the basis of the action.</u>

> Judgments must be responsive to the issues presented in the pleadings or litigated between the parties, and issues not so raised may not be determined. ¶¶… Evidence which, although received without objection has no legitimate relation to the issues which form the basis of the action, or is in absolute conflict with the cause of action which is set out in the complaint, may not be deemed to support a judgment at variance with the pleadings. *Idem.* Judgments §54, p.117

The courts have refused to have all evidence tested for relevancy by the summary judgment procedure. The cause of action set out in the complaint is disregarded. It has been totally closed out from being heard. The case has been thrown out based on a false theory and no supporting evidence.

E. <u>Without supporting evidence, the judgment is void on its face and has no effect.</u>

> A void judgment is one that has merely the semblance of a judgment without some essential element or elements on which its validity as such depends. A judgment is void when granted in contravention of a mandatory statutory provision, or rendered by a court which … acted in a manner inconsistent with due process….
>
> A judgment is void on its face when that fact appears affirmatively from inspection of the judgment roll, and it has been held that a judgment is void only where the invalidity appears on the face of the record.
>
> A void judgment, unlike one which is merely erroneous or voidable, is not entitled to any respect or deference by the courts, but may be attacked at any time by anyone, including the party in whose favor it is given, and may be impeached in any action, direct or collateral. It is not necessary to take

> any steps to vacate or avoid a void judgment; it may simply be ignored. All subsequent actions predicated on a void judgment are tainted by the judgment's nullity and are similarly without effect.
> 50 Corpus Juris Secundum (1997) Judgments §546 pp 101-103.

The Order of November 26, 1999, is, accordingly, tainted by the nullity of the June 17, 1999 judgment, and is similarly without effect.

F. <u>The Order cannot be made valid and operative by judicial action.</u>

> A void judgment [or order] cannot be made valid and operative by judicial action, such as its subsequent approval by the judge, by his approval of a sale on execution held under it, by a subsequent proceeding instituted for that purpose, by citing the party against whom it was entered to show cause why it should not be declared valid, by the filing of written pleadings postjudgment, by a revival of the judgment, or by the taking of an appeal from it, or even by an affirmance on appeal.
> *Idem.* Judgments §548 p.104

CONCLUSION

Because the judgment and the post-judgment order are both void, not voidable, they carry no legal effect or credence, and will continually be held to be such by petitioner in regards to any further action taken.

What further makes this case an anomaly, is that attorney's fees don't even apply to a city operation, under which authority Lockheed is operating.

Petitioner fully intends to use this case as an example to the public and to Congress as to why the judicial system just doesn't work.

Dated: _____, 1999

_____

RONALD BRANSON
Petitioner, Pro Se
16623 Calahan Street
North Hills CA 91343
(818) 875-4231

SUPPLEMENTAL APPENDIX

Contents

POST-JUDGMENT ORDER

F I L E D
NOV 26 1999
CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

RONALD BRANSON,
Plaintiff-Appellant-
Cross-Appellee,
v.
CITY OF LOS ANGELES; LOS ANGELES DEPARTMENT OF TRANSPORTATION (LADOT); THOMAS CONNER, General Manager LADOT; CALIFORNIA DEPARTMENT OF MOTOR VEHICLES; SALLY REID, Director DMV.
Defendants-Appellees,
and
LOCKHEED MARTIN IMS CORPORATION (LIMSC); EDWARD AVILA, Western Region Senior Vice President (LIMSC),
Defendants-Appellees-
Cross-Appellants.

Nos. 98-56530, 98-56685

DC# CV-98-00778-TJH
Central California
(Los Angeles)

ORDER

Before: O'SCANNLAIN, RYMER, AND SILVERMAN, Circuit Judges.

We award Lockheed and Avila reasonable attorney's fees, double costs on

----------1----------

appeal and sanctions. *See* Fed.R.App.P. 38; *Gaskell v. Weir*, 10 F.3d 626, 629-30 (9th Cir. 1993). We refer this matter to Appellate Commissioner Peter Shaw to determine a reasonable amount of attorney's fees.

Lockheed's and Avila's request to require Branson to pay sanctions before making any filings in this court is denied.

Lockheed's and Avila's request for a vexatious litigant order to compel Branson to seek authorization before filing any matters in this circuit or in a district court within this circuit is denied. *See De Long v. Hennessey*, 912 F.2d 1144, 1148 (9th Cir. 1990).

Branson's requests for citation of evidence from the record and mandatory judicial notice are denied.

No motions for reconsideration, modification, or clarification of this order shall be filed or entertained.

----------2----------

LOCKHEED/AVILA'S MOTION
FOR SANCTIONS (FRAP 38)
[minus exhibits]

PATRICK McADAM,
BAR NO. 48242
IVERSON, YOAKUM,
PAPIANO & HATCH
624 South Grand Avenue,
27th Floor
Los Angeles, California
90017-3328
(213) 624-7444

Attorneys for defendants-
Appellees-Cross-Appellants
LOCKHEED MARTIN IMS
CORPORATION and EDWARD
AVILA

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

RONALD BRANSON, Nos. 98-56530, 98-56685
Plaintiff-Appellant-
Cross-Appellee, D.C. No. CV-98-00778-TJH
vs. (C.D. Cal., Los Angeles)
CITY OF LOS ANGELES,
LOS ANGELES DEPARTMENT
OF TRANSPORTATION
(LADOT); THOMAS CONNER,

General Manager LADOT; CALIFORNIA DEPARTMENT OF MOTOR VEHICLES (DMV); SALLY REID, Director DMV, Defendants-Appellees, and LOCKHEED MARTIN IMS CORPORATION (LIMSC); EDWARD AVILA, Western Region Senior Vice President (LIMSC), Defendants- Appellees-Cross-Appellants	DEFENDANTS AND APPELLEES LOCKHEED MARTIN IMS'S AND EDWARD AVILA'S MOTION FOR SANCTIONS (FRAP 38)

Defendants and appellees Lockheed Martin IMS and Edward Avila hereby move this court for an award of attorney's fees and

----------1----------

double costs pursuant Rule 38 of the Federal Rules of Appellate Procedure on the grounds that the appeal filed by plaintiff and appellant Ronald Branson was frivolous. [1]

The record in this case demonstrates that the arguments advanced by Branson on appeal were wholly without merit. [2] His briefs raised issues that were contradicted by long-established precedent or were already litigated in his previous state court lawsuit. [3]

Accordingly, here the "just damages" under Rule 38 should include the attorney's fees incurred by Lockheed Martin IMS and Avila in resisting the appeal filed by Branson. [4] The costs to be doubled are those set forth in the bill of costs filed on behalf of Lockheed Martin IMS and Avila. [5]

Moreover, the record demonstrates that Branson has engaged in a pattern of appeals of groundless lawsuits filed by him. [6] Indeed, this court is confronting a repeat offender[7],

---

[1] Bell v. City of Kellogg (9th Cir. 1991) 922 F.2d 1418, 1425.

[2] See "BRIEF … OF DEFENDANTS … LOCKHEED MARTIN IMS CORPORATION AND EDWARD AVILA" pp. 1-20.

[3] Id.

[4] See declaration of Patrick McAdam attached hereto.

[5] See copy of bill of costs attached as Exhibit "C" to declaration of Patrick McAdam.

[6] See "BRIEF… OF DEFENDANTS … LOCKHEED MARTIN IMS CORPORATION AND EDWARD AVILA" pp. 1-20. See also Branson v. Nott (9th Cir. 1995) 62 F.3d 287; Branson v. Fletcher No. 94-55951 reported in Table Case Format at 48 F.3d 1227 (9th Cir. 1995); Branson v. Haber No. 93-56696 reported in Table Case Format at 24 F.3d 244 (9th Cir. 1994).

[7] Branson v. Nott, supra, 62 F.3d at 294 ("[T]here appears to be ample support for the district court's

conclusion that Branson's complaint was frivolous…")

which is an appropriate factor to consider in determining the penalties to be imposed here. [8] Simply put, the time has come to impose restrictions that control Branson's subsequent conduct.

This motion respectfully requests that Lockheed Martin IMS and Avila be awarded, jointly, the sum of $17,169.00 in attorney's fees and the sum of $228.80 in double costs. Further, the Clerk of the Court for the Ninth Circuit should be directed to not accept any new appeals from Branson in any civil matters, excluding habeas corpus petitions, until Branson has certified, under oath, that he has paid this sanction.[9] Moreover, it is respectfully requested that this court issue an order that directs all clerks within the supervisory jurisdiction of the Ninth Circuit to decline to accept any filing from Branson unless, as to appellate filings, a judge of this court has first specifically authorized such and, as to the district court

/ / /

/ / /

/ / /

---

[8] See, e.g., Smith v. Kitchen (10th Cir. 1997) 156 F.3d 1025, 1030; Vinson v. Heckman (5th Cir. 1991) 940 F.2d 114, 116-117.

[9] See Smith v. Kitchen, supra, 156 F.3d at 1030.

filings, a judge of the forum court has first specifically authorized the filing. [10]

DATED: August 3, 1999

Respectfully submitted,
IVERSON, YOAKUM, PAPIANO
& HATCH
By: /s/_____
PATRICK McADAM
Attorneys for Defendants-
Appellees and Cross-Appellants
LOCKHEED MARTIN IMS
and AVILA

---

[10] See, Vinson v. Heckman, supra, 940 F.2d at 116-117.

DECLARATION OF PATRICK MCADAM

I, Patrick McAdam, declare:

I have personal knowledge of the facts set forth herein and if sworn as a witness I could and would testify as follows:

1. I am a partner in the law firm of Iverson, Yoakum, Papiano & Hatch ("Iverson firm"), the attorneys of record for defendants and appellees Lockheed Martin IMS and Edward Avila, and I have personally worked on this case from its inception. I am admitted to practice before this Court and have been practicing law since 1971.

2. Exhibit "A" attached hereto was prepared as a summary to show: (a) the work I performed on behalf of Lockheed Martin IMS and Edward Avila in resisting the appeal filed by Branson; (b) the hours of work I performed in that regard; (c) the normal hourly billing rate the Iverson firm charged for my work; and (d) the resulting total fees for that work. Exhibit "A" is based on Exhibit "B" attached hereto.

3. Exhibit "B" was prepared by the computer system the Iverson firm uses to regularly enter, record, store, and retrieve the time records for the work performed in resisting the appeal filed by Branson. The records are regularly kept by the Iverson firm's staff in the ordinary course of the Iverson firm's business.

/ / /

/ / /

/ / /

4. Attached hereto as Exhibit "C" is a true and correct copy of the bill of costs filed with this court on behalf of Lockheed Martin IMS and Edward Avila.

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

Executed within the United States on July 8, 1999. /s/_____

PATRICK MCADAM

OPPOSITION TO MOTION FOR SANCTIONS

[documentary evidence submitted with opposition not included here]

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

RONALD BRANSON, Plaintiff and Appellant/ Cross-Appellee, v. CITY OF LOS ANGELES; LOS ANGELES DEPARTMENT OF TRANSPORTATION (LADOT); THOMAS CONNER, General Manager LADOT; CALIFORNIA DEPARTMENT OF MOTOR VEHICLES (DMV); SALLY REID, Director DMV, Defendants and Appellees, LOCKHEED MARTIN IMS CORPORATION (LIMSC); EDWARD AVILA, Western Region Senior Vice President LIMSC, Defendants and Appellees/ Cross-Appellants. _____	Case Nos. 98-56530 98-56685 OPPOSITION TO MOTION FOR FRAP 38 SANCTIONS; (supporting evidence submitted herewith under separate cover) SPECIAL REQUEST FOR CITATION OF EVIDENCE FROM THE RECORD SUPPORTING THE COURT'S MEMORANDUM FILED JUN 17, 1999; REQUEST FOR MANDATORY JUDICIAL NOTICE [F.R.E. 201(d)] (necessary information supplied herewith under separate cover)

Plaintiff/appellant RONALD BRANSON hereby (1) opposes "Defendants and Appellees Lockheed Martin IMS' and Edward Avila's Motion for Sanctions (FRAP 38)"

----------1----------

served August 3, 1999; (2) specially requests the citation of evidence making specific reference to its location in the record supporting the court's Memorandum filed June 17, 1999; and (3) requests mandatory judicial notice pursuant to Rule 201(d) F.R.E. of the necessary information supplied herewith under separate cover.

Plaintiff's supporting declaration is attached hereto; supporting evidence accompanies this opposition under separate cover.

1. Rule 38 sanctions are not applicable under the circumstances of this case.

The Rule provides:

> If a court of appeals determines that an appeal is frivolous, it may, after a separately filed motion or notice from the court and reasonable opportunity to respond, award just damages and single or double costs to the appellee.

A copy of the court of appeals' determination (Memorandum filed June 17, 1999) is submitted herewith under separate cover. [Tab 1] As shown, it does not state that the "appeal is frivolous." Nevertheless, if that determination can be implied from the Memorandum, either of two criteria must be met for an appeal to be frivolous:

> An appeal is frivolous when the result is obvious or the appellant's arguments are

> wholly without merit. *Bell v. City of Kellogg* (9th Cir.1991) 922 F.2d 1418, 1425.

There is no showing on the record herein that either of the above criteria have been met.

----------2----------

2. <u>The court's determination [Tab 1] is not supported by the record.</u>

Submitted herewith under separate cover is a copy of the text of plaintiff's Petition for Rehearing [Tab 2]. In it, plaintiff brought the above fact to the attention of the court. The court elected to disregard that fact by "vot[ing] to deny appellant's petition for panel rehearing" [Tab 3], leaving the matter in the same unresolved condition. That fact is material to a determination of whether or not this appeal is frivolous under FRAP 38, now before the court. Therefore, it is brought to the attention of the court assigned to this motion:

At the middle of page 2 of the Memorandum [Tab 1], the court states:

> Because Branson's action is an impermissible collateral attack against a prior state court judgment, the district court lacked subject matter jurisdiction and properly dismissed his section 1983 action. (citing *Branson v. Nott* 62 F.3d 287, 291-92).

The court also states on page 2 [Tab 1] "We may affirm the district court's decision on any basis <u>which the record supports.</u>" (*Id.*) [Emph. added]. However, the Memorandum [Tab 1] shows no support from the record for its "finding" that plaintiff is attacking a prior state court judgment in this federal suit.

3. <u>Plaintiff requests the court to supply evidence from the record to show that this action is "an impermissible collateral attack against a prior state court judgment."</u>

Since that "finding" made by the court of appeals is presumed by the court to have

---------- 3 ----------

been made by the district court without evidence shown, and the court's conclusion drawn therefrom is "the district court lacked subject matter jurisdiction and properly dismissed his section 1983 action," [Tab 1 p.2]; and since these moving defendants are relying on that finding and conclusion to justify Rule 38 sanctions, it is necessary that the court of appeals supply the evidence from the record supporting that determination. PLAINTIFF HEREBY SO REQUESTS THAT SUCH EVIDENCE BE SHOWN before this motion is decided.

4. <u>Plaintiff requests this court take mandatory judicial notice of certain information supplied herewith under separate cover to show that the appeal is not frivolous.</u>

(a) First criterion: "The result is obvious."

One of the criteria for determining that an appeal is frivolous, warranting Rule 38 sanctions, is that "the result is obvious." (*Bell v. City of Kellogg, supra,* 922 F.2d, at 1425). The result in this case is <u>not</u> obvious unless it can be shown by evidence from this record that plaintiff is making "an impermissible collateral attack against a prior state court judgment." Plaintiff submits herewith under separate cover a copy of the original complaint [Tab 4] and a copy of the amended complaint [Tab 5] from this record.

Rule 201(d), Federal Rules of Evidence, provides:

(d) When mandatory - A court shall take judicial notice if requested by a party and supplied with the necessary information.

Plaintiff requests mandatory judicial notice of both complaints from this record showing that nowhere is there shown an attack against a prior state court judgment. Nothing about a "prior state court judgment" is relevant to the allegations of either complaint. Of particular importance are: (a) the material facts alleged [Tab 4 ¶¶11-28; Tab 5 ¶¶12-29]; (b) the relief sought [Tab 4 ¶9; Tab 5 ¶11]; and the prayer [Tab 4 pg.8; Tab 5 pg.9].

(b) Second criterion: "The appellant's arguments are wholly without merit."

The second criterion for determining an appeal frivolous under Rule 38 is the "appellant's arguments are wholly without merit." (*Bell v. City of Kellogg, supra*, 922 F.2d at 1425). The arguments on appeal are made in light of the material facts of the complaint(s), the relief sought, and the prayer, all shown in the accompanying evidence. Plaintiff requests mandatory judicial notice of his opening brief on appeal [Tab 6] for further examination by this court of appellant's arguments to determine whether or not they are "wholly without merit," and if they are, on what basis they are so determined, citing the evidence supporting that conclusion.

Of particular importance in appellant's brief is his argument regarding "Jurisdiction [if 12(b)(1) applied]" [Tab 6 pp 31-41], since the court determined, without supporting evidence, that the district court lacked subject matter jurisdiction [Tab 1 p.2]. That conclusion

is based on a purported "collateral attack against a prior state court judgment"

and as with the complaint(s), the arguments on appeal do not relate to "a prior state court judgment."

The moving defendants make the conclusory statement on page 2:5-8 of their motion, "His briefs raised issues that were contradicted by long-established precedent or were already litigated in his previous state court lawsuit" in an attempt to support the "arguments-wholly-without-merit" factor. But rather than cite facts supporting that conclusion, they merely state by footnote "See BRIEF … OF DEFENDANTS … LOCKHEED MARTIN IMS CORPORATION AND EDWARD AVILA pp.1-20" which refers to their entire responding brief. Reliance on that broad conclusory statement cannot be given until the facts relating to that statement are first determined to be relevant to the issues raised within the scope of the complaint(s).

To shed light on that aspect of their motion, plaintiff requests this court take mandatory judicial notice of the text of plaintiff's reply [Tab 7] to their brief . Of particular importance is page 2 [Tab 7], showing the irrelevance of defendants' arguments in light of the subject matter framed by the complaint(s). The Introduction of plaintiff's reply brief [Tab 7 p.1] states:

> It should be noted that after reading the entire appellee's brief, there is not so much as a single argument or mention of the controlling law of this case, namely, the denial of due process to the right of an appeal under California Code of Civil Procedure §906, nary a word. …

As shown by the evidence provided herewith, the result is *not* obvious, appellant's arguments are *not* wholly without merit; thus the appeal is not frivolous to warrant sanctions under Rule 38.

5. <u>Plaintiff has filed an objection to the bill of costs</u>.

Plaintiff requests mandatory judicial notice of his objection to defendants' bill of costs of June 30, 1999 [Tab 8] on the ground that the Memorandum [Tab 1] is unfounded, i.e., not supported by the record.

To date, plaintiff has not received a disposition from the court on that objection.

Dated: August 7, 1999

/s/_____
RONALD BRANSON, Plaintiff/Appellant

----------7----------

DECLARATION OF RONALD BRANSON

I, Ronald Branson, declare:

That I am plaintiff and appellant herein and have personal knowledge of the matters set forth in this opposition and the accompanying papers in support thereof and that I could competently testify thereto if called upon as a witness to do so.

I have filed this lawsuit and presented this appeal in good faith. I have supported my contentions with legal authority and factual evidence in this record. That nowhere in this lawsuit have I attacked a previous state court judgment, nor has the court nor defendants shown any evidence to the contrary. This lawsuit is based on the fact that according to my notice of appeal filed in

state court, I was entitled to an appeal covering both orders stated therein pursuant to California Code of Civil Procedure section 906. It is that law upon which my federal suit is based, and it has never been addressed by any of the parties, nor by any court. There has never been a state court judgment involving the process due under CCP §906, and therefore there is no "prior state court judgment" that could be the subject of attack according to the facts of my complaint.

That I have also filed for declaratory relief in Count I of my complaint, and that aspect of my case has never been addressed by the court. That because my constitutional challenge on the issue I have raised is being ignored, I anticipate this wrong will be carried

out on hundreds of thousands of people in the future until it is addressed.

That this case stands on its own and does not depend for its merit on previous cases. That the evidence from the record of this case are the criteria upon which the merit of my issues and arguments should be weighed. The Branson v. Nott case has been superimposed over this case, and because the court in that case determined that a prior state court judgment was impermissibly collaterally attacked, I am being accused of doing the same thing in this case without a showing of evidence that I have done so.

That counsel for Lockheed is proposing stringent restrictions against me, inferring that I am a "repeat offender." That as long as the court continues to superimpose Branson v. Nott over the evidence of this case, I will be falsely labeled a "repeat offender" and my First Amendment right to access to the courts will continue to be impaired. The evidence from the record

in this case is being overthrown, having a devastating impact on my rights.

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

Executed at Los Angeles, California this 7th day of August, 1999.

/s/_____
RONALD BRANSON

LOCKHEED'S REPLY TO OPPOSITION

PATRICK MCADAM,
BAR NO. 48242
IVERSON, YOAKUM,
PAPIANO & HATCH
624 South Grand Avenue
27th Floor
Los Angeles, California
90017-3328
(213) 624-7444

Attorneys for Defendants-
Appellees-Cross-Appellants
LOCKHEED MARTIN IMS
CORPORATION AND EDWARD
AVILA

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

RONALD BRANSON, Plaintiff-Appellant- Cross-Appellee, vs.	Nos. 98-56530, 98-56685 D.C. No. CV-98-00778-TJH (C.D. Cal., Los Angeles)
CITY OF LOS ANGELES; LOS ANGELES DEPARTMENT OF TRANSPORTATION (LADOT); THOMAS CONNER, General Manager LADOT; CALIFORNIA DEPARTMENT OF MOTOR VEHICLES (DMV); SALLY REID, Director DMV,	DEFENDANTS AND APPELLEES LOCKHEED MARTIN IMS'S AND EDWARD AVILA'S REPLY TO PLAINTIFF AND APPELLANT RONALD BRANSON'S OPPOSITION TO

Defendants-Appellees, and LOCKHEED MARTIN IMS CORPORATION (LIMSC); EDWARD AVILA, Western Region Senior Vice President (LIMSC), Defendants-Appellees-Cross-Appellants	DEFENDANTS AND APPELLEES LOCKHEED MARTIN IMS'S AND EDWARD AVILA'S MOTION FOR SANCTIONS (FRAP 38)

_____

Plaintiff and Appellant Ronald Branson's opposition fails to overcome the fact that the arguments he advanced on

----------1----------

appeal were wholly without merit. Moreover, from the tone of his opposition it is apparent that unless restrictions are imposed to regulate his subsequent use of the federal courts, Branson will continue to file groundless lawsuits that constitute impermissible collateral attacks on state court judgments.

The motion for sanctions under Rule 38 of the Federal Rules of Appellate Procedure should be granted.

Dated: August 16, 1999

Respectfully submitted,
IVERSON, YOAKUM, PAPIANO & HATCH
By /s/_____
PATRICK MCADAM
Attorneys for Defendants-Appellees and Cross-Appellants LOCKHEED MARTIN IMS AND AVILA

----------2----------