

No.

IN THE
Supreme Court of the United States

JAMES SEAMAN, PETITIONER

v.

WESTFIELD MEDICAL CENTER, LP,
ELIZABETH KAHN & YASIN KHAN

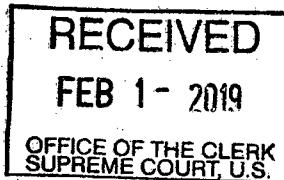
*PETITION FOR A WRIT OF CERTIORARI
TO THE SUPERIOR COURT OF PENNSYLVANIA*

PETITION FOR WRIT OF CERTIORARI

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pro se

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QUESTION(S) PRESENTED

I, James Seaman, Pro Se Petitioner/Appellant, request this Petition for Writ of Certiorari to be Granted given the salient issues, the constitutional matter of proper notice and service of a pleading, and the impact upon public policy of a party's failure to deviate from the notice requirements of the rules of procedure. An impermissible burden of proof was placed upon Pro Se Petitioner/Appellant to meet that since notice was not tendered, Withdrawal of Appearance wasn't presented to Pro Se Petitioner/Appellant and Withdrawal Granted, and Dismissal was not subsequently warranted. Given the lack of service of an essential pleading, the Petitioner requests to have the dismissal vacated under Fed.R.Civ.P. (60)B should have been granted under the rules of procedure and the constitutional issues. Pro Se parties must be afforded the same protections mandated by the rules and the constitution.

WHETHER THE FAILURE TO SERVE A PLEADING UPON PRO-SE LITIGANTS WARRANTED A FAVORABLE RULING UNDER FED.R.CIV.P 60 AND REMOVAL OF A DISMISSAL OF AN ACTION GIVEN THE VIOLATIONS OF THE NOTICE REQUIREMENTS TO MEET DUE PROCESS AND PUBLIC POLICY?

TABLE OF CONTENTS

	Page
QUESTION(S) PRESENTED	i
TABLE OF AUTHORITIES.....	iii
OPINIONS BELOW.....	1
JURISDICTION	2
RELEVANT PROVISIONS INVOLVED	3
STATEMENT	5
REASONS FOR GRANTING THE PETITION.....	10
CONCLUSION.....	15
APPENDIX	
<i>Order of the Supreme Court of Pennsylvania in Docket Number: 73 MM 2018 dated June 18, 1a</i>	
<i>Order of the Superior Court of Pennsylvania in 2955 EDA 2017 dated February 6, 20182a</i>	
<i>Order of the Superior Court of Pennsylvania in 2955 EDA 2017 dated December 20, 20173a</i>	
<i>Order of the Superior Court of Pennsylvania in 2955 EDA 2017 dated November 16, 2017 4a</i>	
<i>Order of the Superior Court of Pennsylvania in 2955 EDA 2017 dated October 16, 2017 5a</i>	
<i>Order of the Superior Court of Pennsylvania in 2955 EDA 2017 dated September 19, 2017 7a</i>	
<i>Order of the Court of Common Pleas of Lehigh County in Docket Number: 2016-C-1397 dated August 7, 2017 8a</i>	
<i>Order of the Court of Common Pleas of Lehigh County in Docket Number: 2016-C-1397 dated June 30, 2017 9a</i>	

TABLE OF AUTHORITIES

	Page
CASES	
ASHCROFT V. IQBAL, 556 U.S. 662, 678 (2009).....	12, 13
BELL ATL. CORP. V. TWOMBLY, 550 U.S. 544, 570 (2007).....	12, 13
BUCK V. DAVIS, 137 S.Ct. 759 (2017)	11
COLLINS V. CITY OF HARKER HEIGHTS, 503 U.S. 115, 125 (1992)	14
GONZALEZ V. CROSBY, 545 U.S. 524, 532 (2005)	12
LILJEBERG V. HEALTH SERVICES ACQUISITION CORP, 486 U.S. 847, 863-864, 108 S.Ct. 2194, 100 L.ED.2D 855 (1988)	12
MENNOMITE BD. OF MISSIONS V. ADAMS, 462 U.S. 791, 195, 103 S.Ct. 2706, 2709, 77 L.ED.2D 180 (1982).....	14
MULLANE V. CENTRAL HANOVER BANK & TRUST Co., 339 U.S. 306, 314, 70 S.Ct. 652, 657, 94 L.ED. 865 (1950).....	14
RUFO V. INMATES OF SUFFOLK CTY. JAIL, 502 U.S. 367, 383 (1992)	11
STACY V. REDERITE OTTO DANIELSEN, 609 F.3D 1033, 1035 (9TH CIR. 2010).....	13
ZIXIANG LI V. KERRY, 710 F.3D 995, 999 (9TH CIR. 2013).....	13
STATUTES	
28 U.S.C. § 1257	2
CONST.	
U.S. Const. Amend. XIV.....	14
Rules	
Fed.R.Civ.P 12.....	3
Fed.R.Civ.P 60.....	4, 10
Fed. R. Civ. Proc. 60(b)	11

Federal Rule of Civil Procedure Rule 60(b).....	10
Fed. R. Civ. P. 60(c)	11
State Supreme Court 30	8

OTHER AUTHORITIES

SUPREME COURT'S CONSTRUCTION OF DUE PROCESS: 77 L.ED.2D. 1485 (1999)	14
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OPINIONS BELOW

The unreported order of the Supreme Court of Pennsylvania in *James Seaman v. Westfield Medical Center, LP, Elizabeth Kahn and Yasin Kahn* denying Petitioner's Petition for Leave to File Petition for Allowance of Appeal Nunc Pro Tunc in Docket Number: 73 MM 2018 dated June 18, 2018 is found at Appendix (1a).

The unreported order of the Superior Court of Pennsylvania in *James Seaman v. Westfield Medical Center, LP, Elizabeth Kahn and Yasin Kahn* denying the Application for Reconsideration of Order in Docket Number: 2955 EDA 2017 dated February 6, 2018 is found at Appendix (2a)

The unreported order of the Superior Court of Pennsylvania in *James Seaman v. Westfield Medical Center, LP, Elizabeth Kahn and Yasin Kahn* denying the Application for Relief in Docket Number: 2955 EDA 2017 dated December 20, 2017 is found at Appendix (3a)

The unreported order of the Superior Court of Pennsylvania in *James Seaman v. Westfield Medical Center, LP, Elizabeth Kahn and Yasin Kahn* denying the Application for Reconsideration of Order in Docket Number: 2955 EDA 2017 dated November 16, 2017 is found at Appendix (4a)

The unreported order of the Superior Court of Pennsylvania in *James Seaman v. Westfield Medical Center, LP, Elizabeth Kahn and Yasin Kahn* quashing

the Appeal in Docket Number: 2955 EDA 2017 dated October 16, 2017 is found at Appendix (5a)

The unreported order of the Superior Court of Pennsylvania in *James Seaman v. Westfield Medical Center, LP, Elizabeth Kahn and Yasin Kahn* to Show Cause in Docket Number: 2955 EDA 2017 dated September 19, 2017 is found at Appendix (7a)

The unreported order of the Court of Common Pleas of Lehigh County in *James Seaman v. Westfield Medical Center, LP, Elizabeth Kahn and Yasin Kahn* denying Motion for Reconsideration in Docket Number: 2016-C-1397 dated August 7, 2017 is found at Appendix (8a)

The unreported order of the Court of Common Pleas of Lehigh County in *James Seaman v. Westfield Medical Center, LP, Elizabeth Kahn and Yasin Kahn* granting Summary Judgment for all Defendants in Docket Number: 2016-C-1397 dated June 30, 2017 is found at Appendix 9(a)

JURISDICTION

The jurisdiction of this Court is invoked pursuant to the provisions of 28 U.S.C. § 1257. On September 21, 2018, the Honorable Justice Alito extended the time for the Pro Se Petitioner to File a Petition for Writ of Certiorari to and including November 15, 2018.

RELEVANT PROVISIONS INVOLVED

Fourteenth Amendment, Constitution of the United States

The Due Process Clause of the Fourteenth Amendment provides that no State "shall...deprive any person of life, liberty or property without Due Process of Law..."

Fed.R.Civ.P 12 - Defenses and Objections; When and How Presented; Motion for Judgment on the Pleadings; Consolidating Motions, Waiving Defenses; Pre-Trial Hearing.

How to Present Defenses. Every defense to a claim for relief in any pleading must be asserted in the responsive pleading if one is required. But a party may assert the following defenses by motion:

- 1) Lack of subject matter jurisdiction;
- 2) Lack of personal jurisdiction;
- 3) Improper venue;
- 4) Insufficient process;
- 5) Insufficient service of process;
- 6) Failure to state a claim upon which relief can be granted; and
- 7) Failure to join a Party under Rule 19.

A Motion asserting any of these defenses must be made before pleading if a responsive pleading is allowed. If a pleading sets out a claim for relief that does not require a responsive pleading, an opposing may assert at trial any defense to that claim. No defense or objection is waived by joining it with one or more other

defenses or objections in a responsive pleading or in a motion.

Fed.R.Civ.P 60 - Relief from a Judgment or Order.

(a) Corrections Based on Clerical Mistakes; Oversight and Omissions. The court may correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record. The court may do so on motion or on its own, with or without notice. But after an appeal has been docketed in the appellate court and while it is pending, such a mistake may be corrected only with the appellate court's leave.

(b) Grounds for Relief From a Final Judgment, Order or Proceeding. On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

- 1) Mistake, inadvertence, surprise, or excusable neglect;
- 2) Newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
- 3) Fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
- 4) The judgment is void;
- 5) The judgment has been satisfied, released or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
- 6) Any other reason that Justifies Relief.

STATEMENT

Procedural History

Pro Se Petitioner/Appellant hired an attorney in April 2014 to file a Civil Law claim vs. Defendants. On or about April 21, 2014, Petitioners attorney filed the Original Complaint at the Court of Common Pleas in Delaware County, Pennsylvania, where all services were performed. The underlying claim was alleging the following Counts: (I) Breach of Contract; (II) Unjust Enrichment; and (III) Implied Contract. The Defendants were Served August 12, 2014 and the Defendants/Respondents Preliminary Objections were filed on September 10, 2014. On November 14, 2014, the Defendants Preliminary Objections were Sustained due to “no response” by Pro Se Petitioners Attorney.

After 14 months, on January 22, 2016, Pro Se Petitioners Attorney Responded to Defendants Preliminary Objections with an “Answer.” On April 14, 2016, the Defendants were able to change Jurisdiction and move the case to Lehigh, Pennsylvania. Due to my attorney’s error, the case was moved from Delaware County to Lehigh County at the request of the Defendants counsel. Unfortunately, the Defendants and their Counsel are based in Lehigh County, Pennsylvania which turned out to be a major factor in this case.

On April 27, 2017 at 12:09PM, I received an email from my Attorney’s assistant. The email attachment indicated that the “Motion for Leave to Withdraw as Counsel” took place that same morning at 9:30AM (2 hours and 39 minutes) before my email receipt. Therefore, somehow and unbeknownst to me, my attorney was able to Withdraw from my case without

my prior knowledge at the Lehigh County Court of Common Pleas. I am not an attorney but believe that this is surely unethical in the court of law? This is considered: 1) Improper venue; 2) Insufficient process; 3) Insufficient service of process; 4) Failure to state a claim in which relief can be granted; and 5) Failure to join a Party under Rule 19.

Under Pro Se representation, I subsequently sent 14 requests to the Lehigh County Court of Common Pleas noted below that were all Denied with no explanation. As noted, I didn't have a fair process at the Common Pleas Court level with the change of Jurisdiction and Withdrawal of Counsel, both of which I was unaware of at the time they were both Granted. Again, all Denied with no explanation from the Lehigh County Common Pleas Court Judge whatsoever. In addition, the Lehigh County Court would not grant me access nor would they mail me a Docket of Entries for my case, even though I did represent myself as a Pro Se Plaintiff. The District Court granted all Motions uncontested and ultimately Judgment was ruled in favor of the Respondents. The District Court informed me that I needed to be an Attorney and wouldn't grant access for the Docket of Entries that I needed to pursue at the next Appellate level. Therefore, I wasn't sure of the specific dates that I needed to file my Appeal at the Superior Court .

- 1) Initial Application for Continuance.
- 2) Second Application for Continuance.
- 3) Answer to and Request for Denial on Defendants Motion for Default Judgment
- 4) Request for an Extended Continuance
- 5) Motion for Re-Consideration
- 6) Petition for Extraordinary Relief

- 7) Rescind the Order to Return Discovery Items
- 8) Response to Motion for Summary Judgement
- 9) Petition for Leave to Proceed Informa Pauperis
- 10) Motion to Re-Instate Appeal Rights Nunc Pro Tunc
- 11) Notice of Appeal
- 12) Motion to Re-Instate Notice of Appeal
- 13) Motion for Extraordinary Relief
- 14) Motion for Re-Consideration

The next step was to file an Appeal at the Superior Court level. During the Superior Court level Appeal process, I did not receive any hard correspondence whatsoever from the Superior Court in Philadelphia, PA. I was informed that I was a "PAC" filer and therefore needed to go online to retrieve all information related to the Appeal. Unfortunately, I wasn't able to access any Superior Court appeal documentation online and was on the telephone numerous times with the Prothonotary's office and the IT Help Desk with no success. At this moment, I have no documentation to send to you from the Superior Court of PA.

The only form of communication from the Superior Court of PA is what they sent to me via email on February 6, 2018. On February 6, 2018, I received an email notice titled "Order Denying Application for Reconsideration of Order." As noted, I cannot open or access any Superior Court information online after spending many hours trying to resolve the Information Technology (IT) issue. Pro Se Appellant did not have a fair Appeal attempt at the Superior Court of PA. In

speaking with their Prothonotary's office, I was informed that my only option is to appeal at the Supreme Court of Pennsylvania.

Pro Se Petitioner/Appellant filed Petition for Allowance of Appeal to the Supreme Court of Pennsylvania on March 8, 2018, received by the Court of March 12, 2018. I later received a response from such court dated March 14, 2018 that my Petition was being returned as untimely. I was informed that I needed to file such Appeal to the State Supreme Court 30 days from the Superior Court Denial Order. By filing 30 days after the above email date I thought all would be fine. However, the Supreme Court letter noted that the Appeal needed to be filed in November 2017 to be considered timely. However, I wasn't aware of a Denial Order by the Superior Court in October 2017 due to the IT issues on the Superior Court IT system as noted above.

In speaking with the State Supreme Courts Prothonotary's office, they informed me that I could file a Petition for Leave to File a Petition for Allowance of Appeal Nunc Pro Tunc. On April 13, 2018, I sent such Petition for Leave to File a Petition for Allowance of Appeal Nunc Pro Tunc to the Supreme Court of Pennsylvania. A letter of such Petition's receipt was later received with a date of April 17, 2018. In the middle of June 2018, Pro Se Petitioner/Appellant telephoned the State Supreme Court to determine when a decision would be made on such Petition. The Prothonotary's office informed me that they did not know when a decision would be made and that I would be notified via mail.

Pro Se Petitioner left for vacation on June 21, 2018 and didn't receive the Denied Order dated June 18, 2018 until July 9, 2018. Pro Se Petitioner wanted to

file a Reconsideration but was informed by the Prothonotary that I had to file such Reconsideration within 14 days from the date of June 18, 2018. I then sent a letter on July 11, 2018 explaining that I was on vacation and couldn't possibly respond within 14 days after waiting longer than 2 months for a response. The July 11, 2018 letter was returned, and Pro Se Petitioner/Appellant was informed that the case remained closed on their end.

Therefore, my only recourse is to now file this Appeal at the US Supreme Court in Washington, DC. As detailed in this Statement, Pro Se Petitioner/Appellant has not been provided with a fair and just treatment in the Lower Court or the two Appellate Courts to date. Pro Se Petitioner/Appellant pleads that a fair and just outcome be provided, and the Petition for Writ of Certiorari be Granted.

In conclusion, Dr. Khan and Westfield Medical Center (WMC) not only regained Federal payments on my behalf, but also regained State payments and kept their operating license on my behalf. Dr. Khan later sold WMC to the Lehigh Valley Hospital system for a huge sum of money. Why can't Dr. Khan pay his signed contracts in full when we are the resources that He utilized to make such a significant gain from the sale? This is Unjust Enrichment.

Your Honorable, I truly appreciate your time, effort and understanding in this unfortunate matter. I implore you to find this request or "Petition for Writ of Certiorari" as acceptable in your highest appellate Court in our great country in the United States of America. I am requesting this "Petition for Writ of Certiorari" be Granted as my last hope in holding onto a matter in my life that has not only been an overwhelming blow to me financially but also mentally.

The failure of not only the Trial Court but also the two Appellate Courts has not served Justice to date. As this case has moved forward, I have exhausted all of my efforts in a failing attempt to achieve Justice. My confidence in the Judicial system at the Trial and Appellate Court levels to do what is right and just has been lost.

Last, I would like to thank Honorable Justice Alito for an extended time to file this Petition. It is truly unfortunate that I have had to represent myself in this case as my former Attorney was Granted a Leave of Withdrawal without my prior knowledge of the Courtroom decision, especially after the errors made while representing Pro Se Petitioner/Appellant in this case. In closing, I am not and do not claim to be an attorney so please forgive any grammatical errors made in this Appeal. Pro Se Petitioner/Appellant is doing the best that He can to preserve this unfortunate case and to try to achieve a Just outcome.

REASONS FOR GRANTING THE PETITION

The failure to serve a pleading upon Pro Se Litigants Warranted a Favorable Ruling under Fed.R.Civ.P 60 and Removal of a Dismissal of an Action given the Violations of the Notice Requirements to Meet Due Process and Public Policy.

Federal Rule of Civil Procedure Rule 60(b) provides in pertinent part:

On motion and just terms, the Court may relieve a party or its legal representative from a final judgment, order, or proceeding for ... (1)

mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b); (3) Fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party; (4) the judgment is void; (5) the judgment has been satisfied, released or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or (6) any other reason that justifies relief.

Fed. R. Civ. Proc. 60(b). The Petitioners claimed that the relief under Rule 60(b) was warranted based on the Superior Courts misconduct of not serving a pleading, the judgment is void since resulted from lack of notice in violation of the constitution, and other reasons such as the Petitioners' deprivation to protect their interest. "A motion under Rule 60(b) must be made within a reasonable time—and for reasons (1), (2), and (3) no more than a year after the entry of the judgment or order or the date of the proceeding." Fed. R. Civ. P. 60(c). The burden of proof is on the party bringing the Rule 60(b) motion. *See Rufo v. Inmates of Suffolk Cty. Jail*, 502 U.S. 367, 383 (1992); *Buck v. Davis*, 137 S.Ct. 759 (2017). The Petitioners met their burden of proof. The lower court and Superior court deviated from the applicable standards. The jurisdiction change, Leave of Withdrawal Granted without Pro Se Petitioners knowledge, original judgment, the dismissal of the complaint, was rendered with failure of such items. The appellate trier of facts never reviewed the merits of the complaint. A Rule 60(b) motion contains a claim if it

"seeks to add a new ground for relief" or "attacks the federal court's previous resolution of a claim on the merits." *Gonzalez v. Crosby*, 545 U.S. 524, 532 (2005). Therefore, based upon the inadvertence, mistake, excusable neglect, fraud, misrepresentation, or misconduct by the Courts for failure to meet due process notice requirements, the case should have been reopened. Relief under Rule 60(b)(6) is available only in "extraordinary circumstances." *Id. at* 545 U.S. 524, 535, 125 S.Ct. 2641, 162 L.Ed.2d 480). Determining whether such circumstances are present may include consideration of a wide range of factors, including "the risk of injustice to the parties" and "the risk of undermining the public's confidence in the judicial process." *Liljeberg v. Health Services Acquisition Corp*, 486 U.S. 847, 863-864, 108 S.Ct. 2194, 100 L.Ed.2d 855 (1988).

The Petitioners met their burden of proof under Rule 60(b) to have the judgment of dismissal vacated. The Petitioners met their burden of proof that the lower court and Superior court judgments should not have been entered. A judgment was entered due to the fact that the Petitioners did not receive a pleading from the Superior Court and that was never received as required under the rules. To avoid a Rule 12(b)(6) dismissal, a complaint need not contain detailed factual allegations, rather, it must plead "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). "Where a complaint pleads facts that are merely consistent with a defendant's liability, it stops short of

the line between possibility and plausibility of entitlement to relief." *Id.* at 678. "A claim is facially plausible when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Zixiang Li v. Kerry*, 710 F.3d 995, 999 (9th Cir. 2013)(quoting *Iqbal*, 556 U.S. at 678). The Petitioners met their burden of proof at this stage of the litigation.

When considering a Rule 12(b)(6) motion the court must "accept as true facts alleged and draw inferences from them in the light most favorable to the plaintiff." *Stacy v. Rederite Otto Danielsen*, 609 F.3d 1033, 1035 (9th Cir. 2010) (citing *Barker v. Riverside Cnty. Office of Educ.*, 584 F.3d 821, 824 (9th Cir. 2009)).

On the other hand, bare, conclusory allegations, including legal allegations couched as factual, are not entitled to be assumed to be true. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). Thus, if the Petitioners were given the opportunity to file an Opposition to the Superior Courts' Motion to Dismiss, then the case would have been reviewed by a trier of facts. Thus the lower courts placed an impermissible burden upon the Petitioners in their Rule 60(b) Motion to show that the violations of due process and notice warranted a void of the judgment. Further, the Superior and State Supreme Courts overstepped and addressed the merits of the causes of action without the Petitioners to be able to file a brief and conduct discovery with respect to the causes of action. Even if the merits were assessed by the District Court, similar to two other occasions, the motion would have been denied. The Superior and State Supreme court usurped the role of the trier of facts and the Petitioners were Dismissed due to technicalities.

In our facts, the lower courts placed an impermissible burden of proof upon the Petitioners that there was lack of service of a pleading. Given that there is no proof of receipt of the Superior Courts Notice to Dismiss, the Petitioners did not file an opposition. The fundamental requisite of due process is the opportunity to be heard. Applying the fundamental principles of due process, it is readily apparent that the lower courts misapplied the basic constitutional concept – the Petitioners were not given a reasonable opportunity to present their opposition and the facts of the case in order to defend their interest in their property.

The Due Process Clause provides that a state shall not "deprive any person of life, liberty, or property without due process of law." U.S. Const. Amend. XIV, §1; *Mennonite Bd. of Missions v. Adams*, 462 U.S. 791, 195, 103 S.Ct. 2706, 2709, 77 L.Ed.2d 180 (1982); *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314, 70 S.Ct. 652, 657, 94 L.Ed. 865 (1950); Supreme Court's Construction of Due Process: 77 L.Ed.2d. 1485 (1999). The Petitioners invoke the substantive component of due process, which "protects individual liberty against 'certain government actions regardless of the fairness of the procedures used to implement them.'" *Collins v. City of Harker Heights*, 503 U.S. 115, 125 (1992) (quoting *Daniels v. Williams*, 474 U.S. 327, 331 (1986)). Specifically, the Petitioners allege that the lower courts violated their liberty and property interests by failing to provide adequate notice. A dismissal was granted since the Petitioners did not respond to a pleading that was not served. The Petitioners plea with this Court to grant the Writ given salient public policy issues. Organizations (Health Care Systems) must be held at a higher standard in paying off their Debt and ensuring that the contractors who

kept them going and ultimately allowed them to sell their organization for a large sum be obligated to pay the Debt. After all, it is the small independent contractors such as Pro Se Petitioner/Appellant that keeps corporate America strong. I am grateful for this opportunity to express my concerns and I thank you for your time in reviewing this unfortunate case.

CONCLUSION

For the foregoing reasons, James Seaman, Pro Se Petitioner/Appellant, respectfully request that this Honorable Court grant this Petition for Writ for Certiorari or in the alternative vacate the dismissal, remand the case to the trial court, and allow the underlying matter be reviewed by a trier of facts.

Respectfully Submitted:

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