

No. _____

In The
Supreme Court of the United
States

MODESTA R. SABENIANO,
Petitioner;
vs.

CITIBANK N.A., CITIGROUP, INC.
Respondents.

On Petition For Writ of Certiorari
with Recognition and Enforcement
United States Court of Appeals
For the Second Circuit
17-3181

**PETITION FOR WRIT OF CERTIORARI
WITH
RECOGNITION AND ENFORCEMENT**

Modesta R. Sabeniano
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Fontana, Ca. 92336
(909)463-7464
Representing herself
"Pro Se" Petitioner

Questions Presented

Whether petitioner Sabeniano was denied her constitutional right to due process when the Court of Appeals dismissed her appeal without giving her the opportunity to present her new evidences for review on her claims.

Is it prejudicial and a violation of petitioner's right under the Fourteenth Amendment of the United States Constitution when the Court dismissed petitioner's appeal without review of defendants-respondents counsels' use of perjured statements to gain favorable judgment.

II
List of Parties

(1). Citibank, NA, registered address of principal executive office and registered agent for service in New York as 399 Park Avenue, New York, NY. 10022;

(2) Citigroup Inc., principal executive office and place of business and corporate headquarters address as 399 Park Avenue, New York, NY 10022. All defendants appearing on the caption.

(3) Counsel Stuart Krause of Zeichner, Ellaman & Krause, 1211 Ave., of the Americas, 40th Flr, New York, NY 10036; and

(4) Counsel Ronald Neuman Krause of Zeichner, Ellaman & Krause, 1211 Ave., of the Americas, 40th Flr, New York, NY 10036.

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Opinions Below:

Petitioner Modesta R. Sabeniano, Pro Se respectfully prays the Honorable United States Supreme Court, Washington, DC. to Grant Motion For Leave to File her Petition for Writ of Certiorari with Recognition and Enforcement to review the judgment below. The opinion of the United States Court of Appeals (Appendix A) is unpublished. Likewise, the opinion of the United States District Court, Southern District of New York appearing on Appendix B is unpublished.

Jurisdiction:

In her Petition for Writ of Certiorari with Recognition and Enforcement, Petitioner Modesta R. Sabeniano, an American Citizen and a Resident of California invokes the Jurisdiction of the Honorable United States Supreme Court under Rule 13, Part III, The Supreme Court of the United States Washington DC as the United States Court of Appeals has entered Mandate on **February 14, 2018** (Appendix A-1 page App-6), an ORDER in **April 13, 2018** (Appendix A page App-4) and Notice of Non-Jurisdiction dated **May 1, 2018** (Appendix A-2 page App-9) and this Petition for Writ of Certiorari with Recognition and Enforcement was filed on a timely manner on April 27, 2018 as the Notifications to the parties required by Rule 29.4(b) or (c) was provided on April 27, 2018.

The Court's ORDER dated **April 13, 2018** and Notice of Non-Jurisdiction dated **May 1, 2018** (after request for rehearing) abruptly dismissed Petitioner's Appeal (which contain her Affidavit and Crucial Evidences that will Finally resolve the case) despite of the fact that Respondents Citibank NA and Citigroup Inc.'s Counsel Stuart wrote a letter to the Court dated: **December 26, 2018** (Appendix C page App-35) requesting to file his Brief as per Local Rule 31.2 to respond by 91-days due **(March 20, 2018)** more than sufficient time to respond to Petitioner's Certified and Authenticated Evidences contained in her Appeal. However, the Court of Appeals dismissal of the case **Pre-empted** Counsel's pending Ninety One (91) days Response Brief and untimely suppressed the Discovery Process without Court and litigants' Opportunity to Review and Challenge the Veracity of the Evidences presented on Appeal which is a Violation of the ¹Equal Protection Clause, Fourteenth Amendment of

¹ United States Constitution, Section 1: *"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."*

the United States Constitution, ²FRCP Rule 26 (b)(d)on Discovery and
³FRCP Rule 56 (c): **Summary Judgment.** The SWIFT dismissal of the

² FRCP Rule 26: Discovery: Basis for Initial Disclosure; Unacceptable Excuses. A party must make its initial disclosures based on the information then reasonably available to it. A party is not excused from making its disclosures because it has not fully investigated the case or because it challenges the sufficiency of another party's disclosures or because another party has not made its disclosures. (D) (ii) if the evidence is intended solely to contradict or rebut evidence on the same subject matter identified by another party under Rule 26(a)(2)(B) or (C), within 30 days after the other party's disclosure.

³ FRCP Rule 56. Summary Judgment: (c) Procedures: (1) Supporting Factual Positions. A party asserting that a fact cannot be or is genuinely disputed must support the assertion by: (A) citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials; or (B) showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact. (2) *Objection That a Fact Is Not Supported by Admissible Evidence.* A party may object that the material cited to support or dispute a fact cannot be presented in a form that would be admissible in evidence. (3) *Materials Not Cited.* The court need consider only the cited materials, but it may consider other materials in the record. (4) *Affidavits or Declarations.* **An affidavit** or declaration used to support or oppose a motion **must** be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant or declarant is

appeal "prevented Respondents counsels from filing their pleading and affidavit in response to the authenticated evidences of Petitioner and failed to identify what specific facts on the Petitioner's authenticated evidences would have revealed that would have precluded summary judgment against their favor under ⁴Rule 56 (c)(d)"...(⁵William Swoger v. Rare Coin Wholesalers; Steven L. Contursi; Donald Kagin).

The Petitioner's Appeal contains duly Authenticated Evidences Proof essential to the Final Resolution of the Case including Proof that Respondents counsels used perjured statements in their Briefs and Motions alleging satisfaction of Judgment in the District Court and in the

competent to testify on the matters stated. (d) When Facts Are Unavailable to the Non-movant. If a non-movant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition. Address a Fact. * If a party fails to properly support an assertion of fact or fails to properly address another party's assertion of fact as required by Rule 56(c), the court may: (1) give an opportunity to properly support or address the fact; (2) consider the fact undisputed for purposes of the motion; (3) grant summary judgment if the motion and supporting materials including the facts considered undisputed show that the movant is entitled to it; or (4) issue any other appropriate order.

⁴ Rule 56 Ibid.

⁵William Swoger v. Rare Coin Wholesalers; Steven L. Contursi; Donald Kagin No. 13-56501. Decided: October 08, 2015.

Court of Appeals in order to secure favorable Judgment (6Pyle v. Kansas) knowingly well but **did not** reveal to the Discovery ⁷FRCP Rule 26 that they Maliciously "Retrieved All the Consigned Checks" upon securing the Three Court Resolutions and not a SINGLE PENNY was ever received by the Petitioner on any of the Judgments.

In her appeal, Petitioner presented two certified and authenticated evidences that were issued by the enforcing court of the foreign judgment ⁸ GR 156132, the Philippine Regional Trial Court, Branch 141 Authenticated Certification duly signed by the Judge and the Clerk of Court contradicting Respondents Citibank NA and Citigroup Inc.'s Allegation of Satisfaction of Judgment. Likewise, Petitioner submitted in her Appeal a duly Certified and Authenticated Documents to Confirm that all the Checks Cconsigned in Court containing INCORRECT AMOUNT and were all Retrieved by the Respondents Citibank NA and Citigroup Inc.'s Counsel except one check (with **same incorrect** *✓*)

⁶Pyle v. Kansas, 317 U.S. 213 (1942) U.S. Supreme Court.

⁷ FRCP Rule 26, Ibid

⁸Philippine Supreme Court Report Annotated (SCRA),

Citibank NA vs. Sabeniano, February 6, 2007, Volume 514, pages 446-452, Exhibit A-6 to 12," (Please see page 21).

amount)which remains STALE and UNCLAIMED in foreign court judgment dated October 16, 2006 also indicate that the consignment by the Respondents Bank in Foreign Court Judgment Case No. 156132 does not Support a Judgment of Accord and Satisfaction (⁹Fidelity & Cas. Co. v. C. E. B. M., Ltd.,") (Appendix F-1 page App-71) (Appendix G page App-78) therefore, Respondents Citibank NA and Citigroup Inc. Failed to Comply Foreign Court Judgment dated October 16, 2006 Case No. 156132 already TWELVE(12) YEARS OLD, for Recognition and Enforcement only.

Petitioner diligently requested several clarifications from the Court of Appeals regarding the abrupt dismissal of the appeal without court review of her authenticated evidences for reference to her Twelve (12) Years Judgment of Three Chief Justices of the Supreme Court of the Philippines case no. 156132 dated October 16, 2006, she persistently filed Several Motions, Rehearing *En Banc*, leave of Court to file Supplemental Exhibits and strongly believe that this Honorable Supreme Court of the United States, Washington DC are the ONLY Justices who can ORDER the Recognition and Enforcement of her Case no. 156132

⁹Fidelity & Cas. Co. v. C. E. B. M., Ltd., 116 Ga. App. 92 (156 SE2d 467

dated October 16, 2006 already TWELVE YEARS DUE. Plaintiff wrote a letter to Hon. Chief Judge Robert A. Katzmann of the Court of Appeals and filed Motion for Stay of Mandate pending resolution of the submitted authenticated evidences...for the purpose of Recognition and Enforcement but there was no single response issued by the Court of Appeals instead issued a Notice of Non-Jurisdiction due to the Mandate, again without Reference, nor Evidences presented which all Tantamount to Suppression of Petitioner's Due Process Rights under FRCP Rule 26 and FRCP Rule 56.

Upon careful review of the records, it will show that there was nothing to indicate that Respondents Citibank, N.A and Citigroup Inc. affirming nor denying the crucial facts contained in Petitioner's authenticated evidences which warrant the remand of the Case for Recognition and Enforcement that the Decision issued was not based on the records presented by the litigants required under ¹⁰FRCP Rule 26 on Discovery and ¹¹FRCP Rule 56. Based on the reasons cited above and

¹⁰ FRCP Rule 26, Ibid

¹¹ FRCP Rule 56. Ibid

upheld in the United States Supreme Court cases of ¹²Fidelity & Cas. Co. v. C. E. B. M., Ltd.,¹³Haines v. Kerner, ¹⁴Pyle v. Kansas, and ¹⁵Cochran v. Kansas et al, the United States Court of Appeals Prejudicially Deprived Petitioner Sabeniano of her Right to due Process under the Constitution (¹⁶Brady v. Maryland), (¹⁷Pyle v. Kansas) (¹⁸Napue v. Illinois). Therefore, the Court of Appeals Decision is in conflict with the Decisions of other Courts of Appeals including this Honorable Supreme Court on the same important matter including a federal question that It had so far departed from the accepted and usual course of judicial proceedings as it calls for an exercise of this Court's Supervisory Power to Review and Resolve the Case at hand (¹⁹*Rule 10 of the United States Supreme Court*).

The Case met all the requirements under the Diversity Jurisdiction for the District Court under U.S. Const. Art. III, Sec. 2., 28 U.S.C. §1331 and §1332; §1343 and §1367 and the United States Court of Appeals has

¹²*Fidelity & Cas. Co. v. C. E. B. M., Ltd. Ibid*

¹³*Haines v. Kerner*, 404 U.S. 519

¹⁴*Pyle v. Kansas*, 317 U.S. 213 (1942).

¹⁵*Cochran v. Kansas et al*, 316 U.S. 255 (1942)

¹⁶*Brady v. Maryland*, 373 U.S. 83 (1963)

¹⁷*Pyle v. Kansas Ibid*

¹⁸*Napue v. Illinois*, 360 U. S. 264, 269

¹⁹ FRCP Rule 10

Jurisdiction under 28 U.S.C. § 1291 on the Case whereby all the Diversity Requirements were MET, Timely Filing and Notifications of the Litigants were properly served and Opposing Parties' Counsel did not challenge the service of process in the Courts and Notice of Appeal was filed and served in a timely manner Rule 4(a)(1) as there was no issue raised by the Courts nor the Respondents on any of these requirements. Notifications on this Petition for Certiorari with Recognition and Enforcement to the Respondents Citibank NA and Citigroup Inc. and their respective counsels required by Rule 29.4(b) or (c) have been timely made on July 2017.

(1). The United States District Court, Southern District, Hon. Judge Alison J. Nathan issued Memorandum and Order filed **September 1, 2017** (Appendix B page App-11) and a Judgment on **September 8, 2017**(Appendix B-1, App-32) denying Petitioner Sabeniano's Motion for Summary Judgment to Recognize and Enforce Philippine Supreme Court Judgment²⁰**GR 156132 dated October 16, 2006.**

(2). **September 27, 2017**, Petitioner Sabeniano filed in a timely manner her Notice of Appeal and Motion Information Sheet with Certificate of Service, served on all the Respondents and their respective counsels

²⁰Philippine Supreme Court Report Annotated (SCRA), *Citibank NA vs. Sabeniano*,

February 6, 2007, Volume 514, pages 446-452, Exhibit A-6 to 12,"(Please see page 21)

certified with registry receipt stamp dated September 27, 2017.

(3). **December 15, 2017**, Petitioner Sabeniano filed with the United States Court of Appeals her Duly Authenticated Evidences with her Brief and Affidavit to prove that Respondents Citibank NA and Citigroup Inc. never, never, never, never and never COMPLY to the Foreign Court Judgment done by Three (3) Chief Justices of the Supreme Court of the Philippines, that there is no **Res Judicata** issue and that Respondents' counsels used perjured statements to obtain judgment in their favor alleging satisfaction of judgment despite of the fact that the Respondents Citibank, N.A and Citigroup, Inc. have the knowledge of the fact (but failed to reveal under FRCP Rule 26) that Respondents Citibank NA and Citigroup Inc. "*retrieved All consigned checks in Philippine Regional Trial Court Branch 141 on various dates*" upon securing foreign court resolutions and that checks consigned since March 1977 are all INCORRECT AMOUNT, (²¹*Fidelity & Cas. Co. v. C. E. B. M., Ltd.*) in violation of the Regional Trial Court Branch 141 ORDER dated 25 November 2011 (Please see Appendix E, page App-66);

(4). **December 26, 2017**, Respondents' counsels' wrote a letter to United States Court of Appeals, Clerk of Court, Ms. O'Hagan Wolfe requesting

²¹*Fidelity & Cas. Co. v. C. E. B. M., Ltd. Ibid*

Ninety One (91) days from the date of Petitioner's brief due (**March 20, 2018**) to file Appellees' Brief. (Appendix C, page App-35) and did not comply.

(5). **February 14, 2018**, Court of Appeals MANDATE: (Appendix A-1 page App-6) denied appellant's motion for Summary Reversal quoting *Pillay vs. INS* without review, comment nor resolution on the veracity and impact of Petitioner's presented authenticated evidences, (²²*Haines v. Kerner*);

(6). **February 23, 2018**, Petitioner's Letter to Hon. Chief Judge Katzmann requesting for Clarification on the Basis of the Denial of Appeal with the absence of Respondents Lawyers Discovery response under Rule 26 and Rule 37;

(7). **March 17, 2018**, Petitioner filed Motion for Reconsideration of her Recognition and Enforcement and Request for Rehearing *En Banc*, Motion for Leave to File Authenticated Evidences as Exhibits to Supplements her Motion and No Court Reply.

(8). **April 13, 2018**, Order Denying Appeal citing *Pillay v. INS* without opinion or review on the evidences *317 U.S. 654*(Appendix A page App-4).

(9). **April 13, 2018**, Order Denying Petitioner's Motion for

²²*Haines v. Kerner*, Ibid

Reconsideration En Banc, Leave to Attach Exhibits and Supplement Motion in Support of the Appeal without comment on the evidences (Appendix A-2 page App-9).

(10). Mandate was issued by the Court of Appeals dated: February 14, 2018 forwarded to Petitioner on **April 13, 2018**(Appendix A-1 page App-6) without comment of the Respondents Lawyers on the duly Authenticated evidences submitted by the Petitioner.

(11). On **April 23, 2018**, Petitioner's Motion for Stay of Mandate in consideration for review of presented evidences was filed and again denied.

(12). **May 1, 2018**, Notice of Non-Jurisdiction issued by the United States Court of Appeals referring to the Mandate. (Appendix A-2 page App-9) without comment on the authenticated evidences.

Statement of the Case:

Since the early 1970's, Petitioner Sabeniano was a businesswoman and a regular depositor of Citibank NA, and Citigroup, Inc. where she deposited all her hard and honestly earned monies in savings account and certificates of placements/deposits in 1977 now Forty One (41) Years old and in 1979 the Illegally Transferred Money from Citibank Geneva, Switzerland is now Thirty Nine (39) Years old, Petitioner filed her

complaint against Respondents Citibank N.A and Citigroup, Inc. in foreign court in 1985 to recover her²³ monies to Citibank, N.A and Citigroup, Inc.". After more than three decades of litigation, Petitioner Sabeniano was granted favorable decision from the Three (3) Chief Justices of the Supreme Court of the Philippines and attached the judgments to her Petitioned to the United States District Court, Southern District Court of New York (District Court) to Recognize and Enforce her **First foreign judgment (a)GR 152985(dated November 13, 2002)**, presided by Honorable Judge Andrew L. Carter, which Petitioner Sabeniano filed together with her affidavit on **March 15, 2012** docketed as Case Number: **12CV1928** titled as **Modesta R. Sabeniano v. Citibank NA, Citigroup, Inc. New York.** is non-existent and non-registered in accordance with the New York Dept. of the State records and was inadequately served with the process as per Federal Rules; and that the first foreign court judgment (GR 152985) was filed without the required authentication as per Uniform Act, New York Laws (²⁴Griggs

²³ Philippine Supreme Court Decision GR 156132. (See Page18)

²⁴Griggs v. Gibson, 754 P.2d 783. Plaintiff committed the error of improperly filing in the district court the Complaint, Summary Judgment and the unauthenticated foreign judgment that did not meet the statutory requirement of authentication therefore the

v.Gibson) and (25Jack H. Brown & Co.,).In **September 25, 2014**, these was appealed to the United States Court of Appeals and was denied for lack of jurisdiction and then the United States Supreme Court denied at first instance “*Without Comment*”, but on **December 23, 2015**, the foreign judgment was returned to Petitioner “*for corrections*”; on **February 1, 2016**, the United States Supreme Court, Clerk of Court wrote a letter to Petitioner stating” *Lack of Jurisdiction as the Court extends only to cases and controversies properly brought before It from the lower courts*” (Mr. Scott Harris).In **March 7, 2016**, Petitioner filed her new complaint different from the first case. This time the Respondents are identified as **Citibank NA and Citigroup Inc.** who were formally served, and registered her most current and duly-authenticated second foreign court judgment Philippine Supreme Court Decision ²⁶**GR 156132** dated **October16, 2006** with her affidavit in accordance with Act of Congress and New York Law in the office of the Clerk of Court, United

court lack jurisdiction from the day of filing as there was no basis for the court to proceed.

²⁵Jack H. Brown & Co., 665 S.W.2d at 222

²⁶Philippine Supreme Court Decision GR 156132 dated October16,2006 (See page 21)

States District Court, Southern District of New York as per ²⁷Uniform Foreign Country Money Judgment Recognition Act, ²⁸ Article 53 CPLR New York and Rules § 5301(b) 5302 and 5303 within the required statutes of limitations (Vernon Supp.1983). The Case was Docketed as **16CV1723 (AJN)**, Honorable Judge Alison J. Nathan presided as the Case was titled as **Modesta R. Sabeniano v. Citibank NA and Citigroup Inc.** The properly authenticated foreign judgment comprised both Petitioner's original authenticated evidences for final judgment (²⁹Wolf v. Andreas). ³⁰ "A judgment so registered shall have the same

²⁷Uniform Foreign Country Money Judgment (Uniform Act):Converting a non-U.S. court judgment for enforcement: If all the prerequisites for enforcement are met, the non-U.S. court judgment will be converted to a state court judgment. Generally this is done either by commencing a new action in the state court or by a form of summary proceeding. *See, e.g.*, N.Y. CPLR 3213 (motion for summary judgment in lieu of complaint). Only after the non-U.S. court judgment is domesticated and converted to a state court judgment does it become enforceable as a judgment.

²⁸ Article 53 CPLR: §5303. Recognition and enforcement a foreign country judgment meeting the requirements of Section 5302 is conclusive between the parties to the extent that it grants or denies recovery of a sum of money. Such a foreign judgment is enforceable by an action on the judgment, a motion for summary judgment in lieu of complaint, or in a pending action by counterclaim, cross-claim or affirmative defense.

²⁹Wolf v. Andreas, 276 S.W.3d 23 Tex. App.—El Paso 2008

effect as a judgment of the district court of the district where registered and may be enforced in like manner" (28 U.S.C.A. § 1963). The current judgment **GR 156132** was also entered in the books and was printed in a book-bound law journal known as the Philippine Supreme Court Report Annotated (SCRA), Citibank NA vs. Sabeniano, February 6, 2007, Volume 514, pages 446-452, Exhibit A-6 to 12," (furnished copy to the district court) which judgment is stated *verbatim*:³¹ "On 16 October 2006, this Court promulgated its Decision in the above-entitled case, the dispositive portion of which reads:

IN VIEW OF THE FOREGOING, the instant Petition is PARTIALLY GRANTED. The assailed Decision of the Court of Appeals in CA GR No. 51930, dated 26 March 2002, as already modified by its resolution dated 20 November 2002, is hereby AFFIRMED WITH MODIFICATION, as follows-

1. *PNs No. 23356 and 23357 are Declared subsisting and outstanding.*

Petitioner Citibank is ORDERED to return to Respondent the principal amounts of the PN's. amounting to Three Hundred Eighteen Thousand Eight Hundred Ninety Seven Pesos (\$7,592.78)

³⁰ 28 U.S.C.A. § 1963

³¹ GR 156132 Philippine Supreme Court Decision 16 October 2006

and Two Hundred Three Thousand One Hundred Fifty Pesos (\$4,836.90) respectively plus the stipulated interest of 14.5% per annum beginning 17 March 1977;

2. The remittance of One Hundred Forty Nine Thousand Six Hundred Thirty Two Dollars and Ninety Nine Cents (\$149,632.99) from Respondents Citibank-Geneva accounts to Petitioner Citibank Manila ... is Declared illegal, null and void. Petitioner Citibank is ORDERRED to refund to Respondent the said amount... with stipulated interest beginning 26 October 1979;
3. Petitioner Citibank is ordered to pay Respondent moral damages in the amount of Three Hundred Thousand Pesos (\$7,142.85), exemplary damages in the amount of Two Hundred Fifty Thousand Pesos (\$5,952.38), and attorneys fees in the amount of Two Hundred Fifty Thousand Pesos (\$5,952.38); and
4. Respondent is ordered to pay Petitioner Citibank the balance of her outstanding loan which from the respective dates of their maturity to 5 September 1979 ... in the sum of One Million Sixty Nine Thousand Eight Hundred Forty Seven Pesos and Forty Cents (\$25,472.55) inclusive of interest in the rates stipulated in the corresponding PN's from 5 September 1979 until payment thereof. ✓

Respondent (Sabeniano) instituted a Complaint for: "Accounting Sum of Money and Damages" against petitioners Citibank the dispositive portion of which reads...On 26 March 2002, the appellate court promulgated its decision, ruling entirely in favor of respondent, to wit-

(*) The Philippine Supreme Court Decision GR 156132 Judgment amount was computed as **\$19,100,505.04** based on currency conversion rate of \$1.00 to PhP 42.00 October 31, 1979 inclusive of interests and costs since March 17, 1977 to the present; certified as correct by Lautze and Lautze, Certified Public Accountant, 111 W. St. John Street, Suite 1010, San Jose, Ca. 95113, Telephone: (408)918-0900 Fax (408)918-0915. This is a GR 156132 judgment and nowhere in this judgment ever referred itself nor identified as GR 152985 at the start of the judgment clearly stated... as **16 October 2006 Judgment**(Please see GR 156132 Judgment on Page 22). The Philippine Regional Trial Court enforcing the judgment GR 156132 issued a decision dated: **November 25, 2011**(Appendix E, page App-66) which states verbatim: "... Respondents Citibank, through counsel, is given a period of ten (10) days from today within which to file a written comment on plaintiff's "Extremely urgent motion to Order both Parties to submit Complete Computation with Summary and to Issue a Writ of Execution." Thereafter, the incident

shall be resolved. The Respondents Citibank failed to comply with the above-stated decision and order, instead consigned in the Regional Trial Court Branch 141 four(4) checks(all containing incorrect amounts of *Php16,716,439.61 (US\$398,010.46 each)*)and thereafter secured three foreign court resolutions dated **February 4, 2008, June 18, 2008** and **August 27, 2008**. However, upon entry of foreign court resolutions, Respondents Citibank NA and Citigroup Inc. maliciously “**retrieved all the consigned three checks respectively from the court**” as Petitioner Sabeniano persistently refused to accept all the checks consigned in foreign court because it was not supported with any computation or accounting documents required by the Philippine Regional Trial Court Branch 141 Order dated: **November 25, 2011** (Appendix E, page App-66).“The United States Supreme Court has held that a valid tender by a judgment debtor must be sufficient to cover all that the creditor has a right to recover, whether of debt, interest or costs. If he tender less, then the tender is not good” ³² River Valley Cartage Co. v. Hawkeye-Security Insurance Co) (³³ Niemeyer v. Wendy's

³²*River Valley Cartage Co. v. Hawkeye-Security Insurance Co.,*

17 Ill. 2d 242, 246, 161 N.E.2d 101

³³*Niemeyer v. Wendy's International, Inc.* No. 1-98-0689 (1999)

(Supreme Court Rule 23).

International, Inc.).Attached in this petition, please see duly-authenticated Philippine Regional Trial Court Certifications dated: **September 29,2017, October 3, 2017, October 4, 2017** on Appendix: F, F-1 and G contradicting Respondents' Citibank NA and Citigroup Inc.'s allegation of satisfaction of foreign judgment (Rule 803 (6)(b)(c)(d) Evidence).The authenticated certifications stated verbatim: "*Citibank N.A. Citigroup Manager's Check No: 60416512, 60224669 and 60435911 were respectively retrieved on various dates by the ACCRA Law Office. Currently only Citibank NA Citigroup Manager's Check No. 60470189 dated December 13, 2010 in the amount of Php16,716,439.61 (US\$398,010.46) payable to Modesta R. Sabeniano remains in the records and unclaimed by the said payee up to this date. Sabeniano refused to receive the said checks allegedly for being incorrect amount... signed by:*

(*) Honorable Maryann L. Corpus-Manalac, Presiding Judge, Philippine Regional Trial Court,September 29, 2017And (**)

Branch Clerk of Court, Atty. Charlie E. Vallo, on October 4, 2017(Appendix: F, F-1 and G).

"Mere retention of a stale check, where the evidence demands a finding that there was knowledge on the part of the debtor at the time that the creditor refused to accept it in full satisfaction of the un-liquidated liability, and where the check was never cashed and was, at the time of

the summary judgment order, in the hands of the maker, will not support a judgment of accord and satisfaction .Anything to the contrary in
³⁴*Fidelity & Cas. Co. v. C. E. B. M., Ltd., must yield to the statute law and older precedents hereinabove cited”.*

On April 15, 2016 and reiterated on June 16, 21016 Respondents through their counsels wrote two letters to the former judge of a previous case **GR 152985** Honorable Judge Andrew L. Carter Jr. Docket No:**12CV1928 ALC** requesting pre-trial conference for Motion to Dismiss the case as frivolous seeking sanctions alleging that the current case **16-CV-01723 AJN** as allegedly related to previous case **12CV1928 ALC** decided by Hon. Judge Carter (Please see United States District Court (USDC) 16-CV-01723 AJN Civil Docket No: (5), Appendix D, page App-40 dated 04/15/2016 and No: (11) page App-44 dated 06/16/2016). However, in July 21, 2016, Honorable Judge Andrew L. Carter **12CV1928 ALC** contradicted Respondents Citibank NA and Citigroup Inc. counsel's allegation and issued a denial letter to counsel's letters (Civil Dockets No: (5) and (11))denying Respondents request stating: "CASE DECLINED AS NOT RELATED. Case declined by Judge Andrew L. Carter and returned to wheel for assignment" (Please see USDC Civil Docket No: (*) (13) MD

³⁴*Fidelity & Cas. Co. v. C. E. B. M., Ltd., 116 Ga. App. 92 (156*

dated 07/21/2016 Appendix D, page App-45). This fact is very important information which Honorable District Court Judge Alison Nathan overlooked for consideration in her decision as there is no *res-judicata* issue here. Petitioner Sabeniano is merely seeking recognition of the case and not to re-litigate a conclusive and enforceable foreign court judgment. Likewise, in this case as compared to the previous case, there is *no res judicata* issue because the present action involves different Respondents, different cause of actions and primary rights than the ones involved in the previous action. Therefore, this case is not precluded by the doctrine of *res judicata* (Brenelli Amedeo, S.P.A. v. Bakara Furniture, Inc. (1994) 29 Cal. App. 4th 1828 [35 Cal. Rptr. 2d 348]) which will be elaborated later.

In **June 16, 2016**, Petitioner filed her Motion for Summary Judgment, on **October 11, 2016**, district court granted Petitioner's Leave of Court to file Second Amended Complaint and Second Amended Petition for Recognition of Authenticated Foreign Court Judgment Filed in **October 4, 2016** case titled as **Modesta R. Sabeniano v. Citibank NA and Citigroup Inc.** In **March 1, 2017**, the district court response to Petitioner Supplemental Motion for Summary Judgment for Recognition

and Enforcement of Foreign Court Judgment ³⁵GR 156132 Denied;
ORDER: WITHOUT PREJUDICE (Please see Appendix B, page App-11).

The District Court Decision to dismiss the case was based on two reasons:

(1) "that Petitioner was allegedly seeking to enforce the same judgment where Respondent Citibank NA was previously granted summary judgment therefore barred under the principles of *res judicata*" and (2) "that Respondents allegedly have satisfied the foreign judgment" which Petitioner Sabeniano will prove that both opinions as erroneous in her argument.

On December 15, 2017, Petitioner filed her appeal together with her evidences with the United States Court of Appeals. These evidences contain three important facts: (a) Respondents' counsels used perjured testimonies by failing to state fraudulent facts known to them at the time of filing this complaint under FRCP Rule 26; (b) Respondents did not satisfy foreign court judgment and (c) that this case is not precluded by the principle of *res judicata*. *et*

³⁵Philippine Supreme Court Report Annotated (SCRA), GR 156132 *Citibank NA vs. Sabeniano*, February 6, 2007, Volume 514, pages 446-452, Exhibit A-6 to 12," (Please see page 21)

Argument

The United States Court of Appeals Decision Violated Petitioner Sabeniano's right to Due Process under the Fourteenth Amendment of the ³⁶United States Constitution in the following instances:

(1).The Court's abrupt decision to dismiss the petitioner's appeal on **April 13, 2018** **(a)** without opportunity for the Respondents Citibank NA and Citigroup Inc.'s counsels to confront and cross-examine Petitioner's presented evidences under ³⁷ FRCP Rule 26 Discovery (³⁸ Haines v. Kerner);**(b)** the Respondents counsels 'failure to file response in accordance with³⁹FRCP Rule 56 (⁴⁰Celotex Corp. v. Catrett); **(c)** the Court's dismissal of the appeal without review of perjured testimony of the Respondents' counsel and dismissal frustrated Petitioner's ability to perfect appeal (⁴¹Cochran v. Kansas);**(d)**the absence of the Court's conclusive review and opinions on the evidences as well as the absence of conclusive judgment on the merits is without any doubt prejudicial and

³⁶ United States Constitution, 14th Amendment

³⁷*FRCP Rule 26 Discovery*

³⁸Haines v. Kerner, *Ibid*

³⁹ *FRCP Rule 56 (e) Ibid*

⁴⁰Celotex Corp. v. Catrett, *Ibid*

⁴¹Cochran v. Kansas,*Ibid*

that the decision was not based on the records presented by the litigants (42*Pyle v. Kansas*, 317 U. S. 213, 215-216)(43*Haines v. Kerner*) (44*Brady v. Maryland*). "Nowhere in the court records show that the Court acknowledged the evidences nor did the Respondents deny nor affirm the truthfulness and the impact of the evidences that would warrant the remand of the case back to the district court" (45*Cochran v. Kansas et al*). The dismissal of the appeal rendered Respondents unable to identify what specific facts on the Petitioner's evidences would have revealed that would have precluded summary judgment against their favor. 46Federal Rule of Civil Procedure **Rule 56(d)** provides "that if a party opposing summary judgment "shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition, the court may: (1) defer considering the motion or deny it; (2) allow time to obtain affidavits or declarations or to take discovery; or (3) issue any other appropriate order". As decided in the United States Supreme Court

⁴²*Pyle v. Kansas, Ibid*

⁴³*Haines v. Kerner, Ibid*

⁴⁴*Brady v. Maryland, Ibid*

⁴⁵*Cochran v. Kansas et al. Ibid*

⁴⁶Federal Rule of Civil Procedure Rule 56(d)

case of ⁴⁷*Celotex Corp. v. Catrett* (1986), the Court of Appeals judgment must be precluded because of Respondents Citibank NA, and Citigroup Inc.'s failure to support its Motion with evidence to negate Petitioner's evidences as required by ⁴⁸Federal Rule of Civil Procedure Rule 56(e), Rule 26, and in the case of ⁴⁹*Adickes v. S. H. Kress & Co.*⁵⁰Rule 56(c), "mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial". In such a situation, ⁽⁵¹⁾*Celotex Corp. v. Catrett* (1986) can be "no genuine issue as to any material fact," since a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial. The moving party is "entitled to a judgment as a matter of law" because the nonmoving party has failed to make a sufficient showing on an essential element of his case with respect to which he has the burden of proof. "The standard for granting summary

⁴⁷*Celotex Corp. v. Catrett* (1986) No. 85-198 June 25, 1986

⁴⁸FRCP Rule 56 (e) Ibid

⁴⁹*Adickes v. S. H. Kress & Co.*, 398 U.S. 144.

⁵⁰ FRCP Rule 56(c), Ibid

⁵¹*Celotex Corp. v. Catrett* (1986) No. 85-198 June 25, 1986

judgment mirrors the standard for a directed verdict under Federal Rule of Civil Procedure 50(a) . . . ⁵²*Anderson v. Liberty Lobby, Inc.*, ante, at 250"(⁵³*Celotex Corp. v. Catrett* 1986).In addition, the Court was biased and prejudicial to the Petitioner Sabeniano with Its dismissal to favor the Respondents Citibank NA and Citigroup Inc. who on the contrary failed to meet the requirements under Rule 56 and Rule 26.

(2). That Respondents Citibank NA and Citigroup Inc. counsels used perjured testimony to gain judgment in their favor (⁵⁴*Pyle v. Kansas*) knowingly well (but failed to reveal in Court under FRCP Rule 26) that they do not have any proof ie: cancelled checks, computations required by the Philippine Regional Trial Court Branch 141 and other supporting documents expected from a multi-billion dollar conglomerate to support allegation of satisfaction of judgment except for the three foreign court resolutions which is misleading the American Courts because "all the checks consigned in foreign court in consideration of the three court resolutions were retrieved by the Respondents Citibank NA on various dates" upon recording/entry of the court resolutions, therefore the foreign court judgment remains unsatisfied, valid and enforceable

⁵²*Anderson v. Liberty Lobby, Inc.*, ante, at 250

⁵³*Celotex Corp. v. Catrett*Ibid.

⁵⁴*Pyle v. Kansas*, Ibid

under New York laws. (Please see Appendix F-1 App-71 and Appendix G App-78 Certifications). And that the court-consigned but retrieved checks do not contain the GR 156132 court-ordered interest and cost specified in the Certificates of Deposits issued by the Respondents Citibank NA at the rate of 14.5% per annum beginning March 17, 1977 until the present. (⁵⁵River Valley Cartage Co. v. Hawkeye-Security Insurance Co) (⁵⁶Niemeyer v. Wendy's International, Inc.);

3).This case is about the Recognition and Enforcement of a Foreign Court Judgment Philippine Supreme Court Decision ⁵⁷**GR 156132** wherein all issues and facts were already resolved in Its 16 October 2006 decision(Please see judgment on page 20).The complaint was filed with the foreign judgment GR 156132 and affidavit in the district court and

⁵⁵*River Valley Cartage Co. v. Hawkeye-Security Ins. Co.* 17 Ill. 2d 242 (1959) 161 N.E.2d 101.

⁵⁶Philip NIEMEYER v. WENDY'S INTERNATIONAL, INC., No. 1-00-3357. Decided: December 05, 2002

⁵⁷Philippine Supreme Court Report Annotated (SCRA)(Please see page 21)

met all the guidelines under ⁵⁸Acts of Congress Rule 902 and simply awaits Recognition and Enforcement in accordance with the⁵⁹Uniform Foreign Country Money Judgment Recognition Act, ⁶⁰Article 53 CPLR New York. New York law provides that "a foreign-country judgment that is final, conclusive and enforceable where rendered must be recognized and will be enforced as conclusive between the parties to the extent that it grants or denies recovery of a sum of money'... " (⁶¹Union Carbide,).

**(4).That, the Respondents did not satisfy foreign court judgment as shown in Appendix F-1 page 71 and Appendix G page App-78. Petitioner's new evidences consisted of two independently issued duly authenticated Certifications as per ⁶²Rule 902 from the Philippine Regional Trial Court, Branch 141,:
(a) The first authenticated Certification was issued by Presiding Judge Hon. Maryann Corpus-Manalac, dated: **September 29, 2017** (Appendix F-1 page App-71); and **(b)** the second Certification was issued by the Clerk of Court, Atty. Charlie E. Vallo, dated: **October 4,****

⁵⁸ Acts of Congress Rule 902. Self-authentication, Ibid

⁵⁹ *Uniform Foreign Country Money Judgment*: Ibid

⁶⁰Article 53 CPLR: §5303. Ibid

⁶¹Union Carbide, *supra*, 809 F.2d at 204

⁶² Rule 902 Authentications, Acts of Congress, Ibid

2017 (Appendix G page App-78) to confirm that Respondents Citibank NA and Citigroup Inc. consigned in the Philippine Regional Trial Court Branch 141 **four checks** payable to Modesta R. Sabeniano: (1) Citigroup Manager's Check No: 60416512 Dated: August 30, 2007 (Php 16,716,439.61) (US\$398,010.46); (2) Citibank NA and Citigroup Manager's Check: 60424669 Dated: March 3, 2008 (Php 16,716,439.61)(US\$398,010.46) and (3)Citigroup Manager's Check No: 60435911: Dated: October 10, 2008 (Php 16,716,439.61) (US\$398,010.46); (4)Citigroup Manager's Check No: 60470189: Dated: December 13, 2010 (Php 16,716,439.61) (US\$398,010.46), BUT "the consigned checks were all retrieved respectively by the Respondents' Citibank NA and Citigroup Inc.'s counsel ACCRA Law Office on various dates" (Please see Appendix F-1 App-71 and Appendix G App-78 Certifications)upon securing **three foreign court resolutions** dated: **February 4, 2008, June 18, 2008 and August 27, 2008.** "Currently, only Citibank NA Citigroup Manager's Check No: 60470189: Dated: December 13, 2010 in the amount of Php 16,716,439.61 (US\$398,010.46) payable to Modesta R. Sabeniano remains in the records and unclaimed by the said payee up to this date. Mrs. Sabeniano refused to receive all the said checks allegedly for being incorrect amount." ... **Branch Clerk of Court, Atty. Charlie E. Vallo, October**

4, 2017 (Please see Appendix G page App-78). "Mere retention of a stale check, where the evidence demands a finding that there was knowledge on the part of the debtor at the time that the creditor refused to accept it in full satisfaction of the un-liquidated liability, and where the check was never cashed and was, at the time of the summary judgment order, in the hands of the maker, will not support a judgment of accord and satisfaction. Anything to the contrary in ⁶³Fidelity & Cas. Co. v. C. E. B. M., Ltd., must yield to the statute law and older precedents hereinabove cited".

(5).The Courts dismissal of Petitioner's appeal which contain important evidences that would establish:(*) Respondents non-satisfaction of judgment, (**) that, the United States Court of Appeal's untimely dismissal pending discover response (91-days) from the Respondents counsels on Petitioner's presented evidences frustrated Petitioner's efforts to perfect an appeal (Cochran v. Kansas 316 US 255 Supreme Court 1942); (***) that Respondents used perjured statements by the counsels and (****) it contains proof to preclude the case from res judicata are essential facts suppressed by the dismissal of the appeal preventing due process and final resolution of this three decades-old case.

⁶³Fidelity & Cas. Co. v. C. E. B. M., Ltd., 116 Ga. App. 92 (156 SE2d 467

Therefore, violation of Petitioner's right to due process (⁶⁴Pyle v. Kansas, 317 U. S. 213, 215-216) (Cochran v. Kansas 316 US 255 Supreme Court 1942);

(6).That, Petitioner Sabeniano on several instances seek diligent effort for Court clarification on the dismissal of her appeal court review of the evidences such as Petitioner's letter to Hon. Chief Judge Robert A. Katzmann, Court of Appeals; Motion for Reconsideration and request for Stay of Mandate to review evidences, but all efforts were denied without comment or reference on review of the presented evidences (Pyle v. Kansas);

(7).In response to the Court of Appeals Decision which stated in summary: "the Appeal is DISMISSED because it lacks arguable basis in law and fact. See Pillay v. INS, 45F3d 14,17(2nd Cir. 1995)(holding that this Court has inherent authority to dismiss an appeal when it "presents no arguably meritorious issue". The case has several meritorious arguments as previously stated by Petitioner in items 1 through 7 including her next arguments on the subject of Res Judicata. *N*

⁶⁴ Pyle v. Kansas, Ibid.

Res Judicata Issue

As ruled in the case of⁶⁵ Brenelli Amedeo, S.P.A. v. Bakara Furniture, Inc. (1994)), this second case is different from the first case because it involves different Respondents, different causes of action and primary right as compared to the first case. Therefore, the Action Is Not Precluded by the Doctrine of Res Judicata.

I. This case is not precluded by the principle of *res judicata* according to Honorable Judge Andrew L. Carter, Jr.'s who knows the case better than him who tried and decided on the previous case as he stated in his response letter to Respondents on **July 21, 2016** stating that the two foreign judgment cases namely previous case GR 152985 Docket No:12CV1928 ALC and current case GR 156132 Docket No: **16-CV-01723 AJN**, “*CASE DECLINED AS NOT RELATED. Case declined by Judge Andrew L. Carter and returned to wheel for assignment*” (Please see Appendix D page App-45) USDC Civil Docket No: (*) (13) dated 21 July 2016); **And** the Decisions on both previous and the current cases are conflicting that despite of current decision issued by Judge Nathan citing AN

⁶⁵Brenelli Amedeo, S.P.A. v. Bakara Furniture, Inc. (1994) 29 Cal. App. 4th 1828 [35 Cal. Rptr. 2d 348]

the judgment and opinion of former Judge Andrew L. Carter Jr. who stated that both previous and current cases are NOT RELATED, Judge Alison J. Nathan still insisted that the current case is a second chance litigation of the first case decided by Hon. Judge Andrew L. Carter Jr. even if she was citing the same opinions and findings contradicting hers with Hon. Judge Andrew L. Carter Jr.'s opinion as UNRELATED. The Certifications issued by the Regional Trial Court shows that the current case renders the old foreign decision as non-binding because the checks issued by the Respondents in consideration of the foreign court resolutions were retrieved by the Respondents.

II. This case has all the essential elements that makes *res judicata* inapplicable in this current case and will not prevent the Petitioner's present case to be reviewed by the Court as elaborated in ⁶⁶*Fate v. Dixon*:
(a). The final judgment on the merits of the first case was not conclusively established due to the previous courts' lack of jurisdiction and retrieval of the consigned checks; **(b)** There are differences in the primary rights and the causes of action in both the earlier and later suit;

⁶⁶ *Fate v. Dixon*, 649 F.Supp.551(EDNC 1986)

And (c) The parties in the two suits are totally different and unrelated from the other suit.

A. The final judgment on the merit of the first case was not conclusively established due to lack of jurisdiction of the previous district court from the onset of the trial for two reasons:(*)The requirements to establish court jurisdiction under Federal Rules of Civil Procedure ⁶⁷Rule 4, 4.1 and 5 on providing formal adequate notice to the Respondent Citibank NA, and Citigroup, Inc. New York was not met accordingly due to Respondent's inactive, non-existent and unregistered status, that the summons and complaint were insufficiently served; And (**)the filing of

⁶⁷Serving a Corporation, Partnership, or Association. Unless federal law provides otherwise or the defendant's waiver has been filed, a domestic or foreign corporation, or a partnership or other unincorporated association that is subject to suit under a common name, must be served: (1) in a judicial district of the United States: (A) in the manner prescribed by Rule 4(e)(1) for serving an individual; or (B) by delivering a copy of the summons and of the complaint to an officer, a managing or general agent, or any other agent authorized by appointment or by law to receive service of process and—if the agent is one authorized by statute and the statute so requires—by also mailing a copy of each to the defendant; or (2) at a place not within any judicial district of the United States, in any manner prescribed by Rule 4(f) for serving an individual, except personal delivery under (f)(2)(C) *ft*

unauthenticated Philippine Supreme Court judgment GR 152985 did not meet the requirements under New York Laws and Article 53 UFCMJRA (sup⁶⁸Griggs v. Gibson)(sup⁶⁹Jack H. Brown & Co.,)to establish court jurisdiction. Even if jurisdiction was discounted briefly in the first case by the Honorable District Court Judge Andrew L. Carter Jr. in his October 25, 2013 decision, the lack of jurisdiction issue was reiterated by the United States Court of Appeals in their June 11, 2014 *order to cure* and by the United States Supreme Court letter issued by the Clerk of Court, Mr. Scott Harris on February 1, 2016 addressed to petitioner Sabeniano ...
(“Lack of Jurisdiction as the Court extends only to cases and controversies properly brought before It from the lower courts”) (Please see previous Supreme Court letter dated February 1,2016 on records). Therefore, with lack of jurisdiction, the dismissal order by the previous district court, including the judgments in the United States Court of Appeals and the United States Supreme Court does not sufficiently and conclusively

⁶⁸Griggs v. Gibson, 754 P.2d 783. “Plaintiff committed the error of improperly filing in the district court the Complaint, Summary Judgment and the unauthenticated foreign judgment that did not meet the statutory requirement of authentication therefore the court lack jurisdiction from the day of filing as there was no basis for the court to proceed”.

⁶⁹Jack H. Brown & Co., 665 S.W.2d at 222

establish the merits of the first case. Fortunately, as ruled in the case of ⁷⁰Luker *v.* Nelson, a dismissal for lack of jurisdiction will not preclude a second suit unless the jurisdictional defects that lead to the first dismissal are cured, a second suit is no longer barred and the merits of the suit may be reached. (⁷¹Madden *v.* Perry, 264 F.2d 169 (7th Cir. 1959). Therefore, the district court's jurisdictional ruling on the current case is not binding upon the United States Supreme Court as *res judicata* and does not preclude this Court from reaching the merits of Petitioner's claims so long as she has satisfied the federal requisites for jurisdiction. (⁷²Sawyer *v.* First City Financial Corp). The second case is not precluded because it serves as *cure* to the first case (⁷³Luker *v.* Nelson) as it contains crucial evidences that were not available in the first case that will aid the Honorable Supreme Court in their judgment on the merits of the case. The second case is different from the first case whereby it met all the requirements under Federal Rules of Civil Procedures, new summons and new complaint was filed with affidavit together with a current foreign court judgment Philippine Supreme Court GR 156132

⁷⁰Luker *v.* Nelson, 341 F. Supp. 111 (N.D. Ill. 1972),

⁷¹Madden *v.* Perry, 264 F.2d 169

⁷²Sawyer *v.* First City Financial Corp., *supra*, 124 Cal.App.3d at p. 402.

⁷³Luker *v.* Nelson, *Ibid*

duly authenticated in accordance with the New York Laws and Article 53 UFCMJRA as all the Respondents Citibank NA and Citigroup Inc. were formally notified and served through the Departments of Corporation, State Secretary of the States in New York, Delaware and Ohio; and through their respective agents of services of process including their designated counsels in New York, Delaware and Ohio in accordance with the state and federal rules to formally effect a lawsuit as the service of process procedures were uncontested and unchallenged by their respective counsels in this current case while in the first case, there was improper service of process to the non-existent Respondent "Citibank NA New York" and the registration of unauthenticated foreign judgment prevented the court to establish jurisdiction on the first case. In the current case, in order for *res judicata* to constitute as a bar, the dismissal of the case must have been following "an adjudication of the merits of the controversy, ..." (⁷⁴Luker v. Nelson).

B. There is a difference in the primary right and the cause of action in both the earlier and later suit: The primary right and cause of action in this current case involves (*) claim as a result of a **tortious conduct** different from the first case which was a claim for a **breach of contract**

⁷⁴Luker v. Nelson, Ibid

which are two different primary rights and causes of actions; and (**) that this current action include among others a *cure* to the defectively filed documents in the previous case to establish that the previous district court's decision stating that "Respondents allegedly satisfied the foreign court judgment based on three foreign court resolutions..." is deficient and baseless as contradicted by Petitioner's presented evidences consisting of **two** authenticated Certifications from the Philippine Regional Trial Court Judge and the Clerk of Court stating ... "**that the checks consigned by the defendant in foreign court in consideration of the three court resolutions were retrieved by the Respondents upon securing the three court resolutions**" therefore there is no basis to support Respondent's allegation of satisfaction(⁷⁵*Fidelity & Cas. Co. v. C. E. B. M., Ltd.*) and that the decision in this current case must be reviewed by the Honorable Supreme Court to establish the merits and to conclude *non-res judicata* effect to this current case. The primary right and cause of action in the first case was based on Respondent's **breach of contract** specified in the certificates of deposits established in Petitioner's **first foreign court judgment GR 152985 issued on November 20, 2002** ordering *A*

⁷⁵*Fidelity & Cas. Co. v. C. E. B. M., Ltd.*, 116 Ga. App. 92 (156

Respondents Citibank, N.A, and Citigroup, Inc. the return of all Petitioners monies withheld since 1977. However, Respondents refused to comply with the court order alleging satisfaction of judgment. The current case is different primarily because Petitioner Sabeniano is seeking the Court for the Recognition and Enforcement of her **second foreign court judgment GR 156132** issued on **16 October 16, 2006** likewise granting her the refund of her illegally withdrawn savings deposits. This **second case** involves the primary right of Petitioner to a claim resulting from⁷⁶**Tortious Interference** by the Respondents by its use of perjured, false and malicious allegation of satisfaction of judgment to gain favorable court decisions, that the tortious conduct prevented for several decades Petitioner's claim rights from the satisfaction of judgment and the use of her savings as she suffered financially, emotionally and psychologically as a direct result thereof (⁷⁷Sawyer v.

⁷⁶ Tortious Interference, defined: also known as intentional interference with contractual relations, in the common law of torts, occurs when one person intentionally damages someone else's contractual or business relationships with a third party causing economic harm.[1] For example, someone could use blackmail to induce a contractor into breaking a contract or they could obstruct someone's ability to honor a contract with a client by deliberately refusing to deliver necessary goods.[2]

⁷⁷(Sawyer v. First City Financial Corp., *supra*, 124 Cal.App.3d at p. 402.)

First City Financial Corp.)[29 Cal. App. 4th 1838]. Therefore, Petitioner's cause of action on the first case is separate and severable cause of action from that litigated in the second case (Id. at p. 403.) [29 Cal. App. 4th 1837].

C. The parties in the two suits are totally different and unrelated from the other. In the first case, the court records, complaints and motions identified the sole Respondents exclusively as **Citibank N.A and Citigroup, Inc. New York** (a non-registered and non-existent entity) and does not identify any other Respondents, while in the current case the Respondents are purely identified as **Citibank NA and Citigroup Inc.** with the inclusion of alter-ego liability of the parent company Citigroup Inc. as co-Respondents in the current case (⁷⁸Taylor v. Newton (1953)) (⁷⁹Fate v. Dixon) as there was no mention of the name of the Respondents in the first case therefore this case involve different parties, not related and non-privies to the past case. (⁸⁰Fate v. Dixon). *jk*

⁷⁸Taylor v. Newton (1953) 117 Cal. App. 2d 752 [257 P.2d 68]

⁷⁹ Fate v. Dixon, 649 F.Supp.551)(EDNC 1986))

⁸⁰ Ibid

Reasons for Granting the Petition

The Petitioner's request must be granted for the following reasons:

1. That, the Court of Appeals decision to dismiss Petitioner's appeal without Respondents challenge, cross examination and response on Petitioner's evidences in accordance with Rule 26 and Rule 56 and without Court review of Petitioner's documented and authenticated evidences is a prejudicial decision in violation of the Rules and the Fourteenth Amendment Right of Petitioner under the United States Constitution;

2. That, the evidences presented proves that Respondents did not satisfy foreign court judgment;

3. There is no res judicata issue that restricts the final resolution of the case towards its Recognition and Enforcement;

4. That, all the Petitioner's unopposed and unchallenged, documented and authenticated facts charge a deprivation of rights guaranteed by the Federal Constitution, and, if proven, would entitle Petitioner to relief under the rules for the Recognition and Enforcement of her Foreign Court Judgment GR 156132 (⁸¹*Mooney v. Holohan*); *jt*

⁸¹*Mooney v. Holohan*, 294 U. S. 103

Conclusion:

This DECADES old CASE started from across the vast Pacific Ocean and was resolved and concluded by the Three Chief Justices of the Philippine Supreme Court in Its October 16, 2006 GR 156132 Decision in favor of Petitioner Sabeniano awarding her the return of ALL her ILLEGALLY withdrawn monies in her Certificates of Deposits and Certificate of Placements with the duly Authenticated Documents submitted to the U.S Court of the ILLEGALLY Transferred from Citibank, Geneva, Switzerland since 1979 and the money deposited with Citibank, N.A., Citigroup, Inc. since 1977 with DAMAGES of Forty One (41) Years of SUFFERINGS and all the Petitioner BUSINESSES where closed up to the present in the Total Amount of Three Hundred Nineteen Million One Hundred Thousand Five Hundred Five Dollars and Four Cents (\$319,100,505.04) inclusive of interests and costs since March 17, 1977 to the present.

In the interest of Justice and fairness, Petitioner Pro-Se, humbly request the Honorable United States Supreme Court of Washington, DC., being the COURT of the LAST RESULT to grant Writ of Certiorari with Recognition and Enforcement and to

remand the Case to the United States District Court, Southern District of New York for the Recognition and Enforcement of the Philippine Supreme Court Decision GR 156132 dated October 16, 2006 already Twelve (12) Years old, in accordance with *Uniform Foreign Country Money Judgment Recognition Act Article 53* CPLR §5303.

Petitioner, M.R. Sabeniano request the Honorable Justices of the Supreme Court of the United States, Washington, DC., being the COURT of the LAST RESULT to Grant the Petition for Certiorari with Recognition and Enforcement with ORDER for the Respondents Citibank, N.A and Citigroup, Inc. to Release the Total Amount of Three Hundred Nineteen Million One Hundred Thousand Five Hundred Five Dollars and Four Cents (319,100,505.04) with damages included within Ten (10) days from the date of the Order of this Honorable Justices of the Supreme Court of the United States of Washington, DC., the COURT of THE LAST RESULT to avoid further delay by the Respondents Bank.



**Petitioner-Sabeniano urgently request the FINALITY with
ORDER of the Twelve (12) years Judgment by the Three (3)
Foreign Chief Justices of the Supreme Court of the Philippines
Case No. 156132 dated October 16, 2006.**


Modesta R. Sabeniano,
Petitioner, Pro Se

Notarized: United States Embassy, Philippines.

Executed on JUN 29 2018, 2018.

PETITIONER-M.R.SABENIANO APPEAL TO THE
CHIEF JUSTICE ROBERTS AND TO ALL THE
JUSTICES OF THE SUPREME COURT OF THE
UNITED STATES TO FINALLY ORDER THE
RESPONDENTS, CITIBANK, N.A., CITIGROUP, INC.
TO RELEASE THE CORRECT TOTAL AMOUNT
WITH DAMAGES, JUDGMENT ON G.R NO. 156132
DATED OCTOBER 16, 2006 OF THE FOREIGN
JUSTICES, PHILIPPINES SUPREME COURT TWELVE
(12) YEARS OLD STILL AWAITING THE FINALITY
OF THIS HONORABLE JUSTICES OF THE UNITED
STATES, WASHINGTON DC. THE COURT OF LAST
RESULT.

A handwritten signature in black ink, appearing to read "H. R. SABENIANO".

AFFIDAVIT

That, I Modesta R. Sabeniano, Petitioner in this case do solemnly swear under penalty of perjury:

1. That I, Petitioner Sabeniano was granted two favorable Philippine Supreme Court judgments (first judgment) GR 152985 dated November 13, 2002 and (second judgment) GR 156132 dated October 16, 2006 whereby both judgments awarded refund of all Petitioner's deposited monies illegally withheld by Respondents Citibank NA and Citigroup Inc.;
2. That, the Estimated Computation of the Judgment award of the Philippine Supreme Court Decision GR 156132 October 16, 2006 was Computed as \$319,100,505.04 based on Currency Conversion rate of \$1.00 to Php. 42.00 October 31, 1979

[Handwritten signature]

Affidavit

inclusive of interests and costs since March 17, 1977 to the present; Certified by Lautze and Lautze, Certified Public Accountant, 111 W. St. John Street, Suite 1010, San Jose, Ca. 95113, Telephone: (408)918-0900 Fax (408)918-0915.

3. That, in March 15, 2012, Petitioner filed her first case (GR 152985 dated November 13, 2002) docketed as Case Number: 12CV1928 titled as Modesta R. Sabeniano v. Citibank N.A, and Citigroup, Inc. New York, Petitioner Modesta R. Sabeniano, that as then Petitioner, I failed to formally complete service of process and improperly notified Respondents Citibank N.A, and Citigroup, Inc. New York in accordance with procedure because the Respondent Citibank NA and Citigroup, Inc. New York was non-existent and non-registered

PD
b

Affidavit

with the New York Secretary of State, where the case was initially filed and that the foreign court judgment GR 152985 was registered in the district court without the required authentications as per New York Laws and Article 53 UFCMJRA(Griggs v. Gibson) and (Jack H. Brown & Co.);

4. That, in March 7, 2016, Petitioner filed her second complaint 16CV1723 (AJN), Modesta R. Sabeniano v. Citibank NA and Citigroup Inc. and registered her most current and duly-authenticated second foreign court judgment Philippine Supreme Court Decision GR 156132 dated October 16, 2006 with her affidavit in accordance with Act of Congress and New York Law *Uniform Foreign Country Money Judgment Recognition* *Act*

Affidavit

Act, Article 53 CPLR within the required
statutes of limitations (*Vernon Supp. 1983*).

5. That, according to Honorable Judge Andrew L. Carter Jr. who decided on the previous case, the two foreign court judgments are "NOT RELATED";
6. That, I am seeking Recognition and Enforcement of my most current foreign court judgment GR 156132 dated *October 2006* decision which was not acquired by default judgment and that it has no pending trial nor appeal up to this present time, it is final and conclusive to both parties and that the judgment is now for Recognition and Enforcement where the Foreign Country Money Judgment Recognition Act (FCMJRA) .
The current foreign court judgment GR

d

Affidavit

156132 dated October 16, 2006 was filed and registered with Affidavits in Accordance with Act of Congress and New York Law in the office of the Clerk of Court, United States District Court, Southern District of New York as it meets all the requirements for recognition as per Uniform Foreign Country Money Judgment Recognition Act, Article 53 CPLR New York and Rules § 5301(b) 5302 and 5303 within the required statutes of limitations;

7. That, the Philippine Supreme Court that rendered the GR 156132 Decision uses the Identical Legal System Patterned after the Judicial System of the United States of America which renders full faith and credit to properly rendered American Judgments in the

[Handwritten signature]

Affidavit

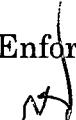
Philippines. (Gull v. Constam) (Hilton v. Guyot).

8. That, these Authenticated crucial evidences unavailable at that time in the United States District Court composed of two duly-certified and Authenticated Certifications independently issued by Honorable Maryann L.Corpus-Manalac, Presiding Judge, Philippine Regional Trial Court on September 29, 2017 Branch 141 Clerk of Court, Atty. Charlie E. Vallo, on October 4, 2017 (Appendix: F, F-1 and G) to certify that Respondents Citibank NA and Citigroup Inc. *"retrieved all the consigned checks in the Philippine Regional Trial Court Branch 141 on various dates"* upon securing foreign court resolutions stating satisfaction of judgment on February 4, 2008, June 18, 2008 and August

Affidavit

27, 2008; And that Respondents does not have any evidences to support their allegation of satisfaction of judgment such as cancelled checks, accounting or computations to establish proof that Petitioner Modesta R. Sabeniano received money as consideration from the foreign judgment case;

9. That, I did not receive a single penny from any of the two judgments granted to my favor; That, Petitioner Sabeniano's claim with damages in the total amount of Three Hundred Nineteen Million One Hundred Thousand Five Hundred Five Dollars and Four Cents (\$319,100,505.04) be Recognized by this Honorable Supreme Court of the United States, Washington DC and that this Court must Order the Respondents Bank to Enforce the Foreign Court Judgment.


g

Affidavit

(FCMJRA) Petitioner Sabeniano is seeking FINALITY of the foreign judgment awarded from the Philippine Supreme Court and the mentioned amount includes the damages that Petitioner's suffers in order to recover the loss of her home and businesses including pain and suffering for the 40-years of deprived access to her personal savings resulting from the Respondents, Lawyers Tortious Interference;

10. That, I filed in the United States Court of Appeals the authenticated evidences of my claimed for the district court to Recognize and Enforce the foreign judgment at that time, and that these evidences will prove that Respondents Citibank, N.A and Citigroup, INC. never, never and never complied the foreign court judgment, and that the foreign court resolutions dated February 4, 2008, June

Affidavit

18, 2008 and August 27, 2008 appearing on the record alleged by the Respondent Lawyers as their proof "for satisfaction of judgment" are not legally supported by any evidences such as cancelled checks, computations etc... besides the four consigned checks retrieved by the Respondents Citibank NA and Citigroup Inc. according to the foreign court record with authenticated documents submitted with Court of Appeals (one unclaimed) checks due to INCORRECT Amount supposedly intended for the three court resolutions granted in consideration thereof therefore did not warrant accord and satisfaction according to law (Fidelity & Cas. Co. v. C. E. B. M., Ltd) Respondents Citibank NA and Citigroup Inc. DID NOT satisfy foreign court judgments.

Affidavit

11. That, Respondents' counsels used perjured statements to attain judgment in their favor alleging satisfaction of judgment despite their knowledge (which they failed to reveal in the discovery) of the fact that they maliciously retrieved all the consigned checks after securing three court resolutions (FRCP Rule 26) in foreign court and maliciously failed to reveal in the district court when this case was filed hence the judgment was not satisfied as a result of the Respondents tortious interference.
12. That, I suffered financially and underwent emotional distress for four decades from the loss of my businesses and my home as I was prevented from my right to receive all my "illegally transferred money" from my personal savings awarded to me by the foreign court

Affidavit

because of Respondents tortious conduct of
false allegation of satisfaction of judgment
which unnecessarily prolonged my claim;

13. That, the duly-authenticated Evidences issued by the Philippine Regional Trial Court with Certifications dated September 3, 2017, September 29, 2017 and October 4, 2017, by Hon. Judge Manalac and by the Clerk of Court Charlie E. Vallo confirm that Respondents did not satisfy foreign court judgment;
14. That these evidences are the latest evidences referred to in the record. (Cochran v. Kansas 316 US 255 Supreme Court 1942);
15. That, there is no issue of *res judicata* in this Case as elaborated by Hon. Judge Andrew L. Carter Jr. in his response to Respondents' counsel and that this is a Case resolved more than three-decades ago as the case merely

Affidavit

awaits Recognition and Enforcement in American courts; That, there is *no res judicata* issue. Therefore, this Case is not precluded by the doctrine of *RES JUDICATA*;

16. That, I am filing this petition for Writ of Certiorari with Recognition and Enforcement purely to prove my claim that include damages in the amount of \$319,100,505.04 with the duly authenticated evidences, that Respondents did not satisfy foreign court judgment; that, I am not filing a frivolous action and that my petition is intended to present the TRUTH without any motive to cause delay in the proceedings.
17. That, this Judgment remains valid, FINAL, CONCLUSIVE and ENFORCEABLE which must be Recognized and Enforced as

Affidavit

Conclusive between the parties. (¹ *Union Carbide, supra*).

18. That I, Petitioner has in good faith attempted to confer with the person or party failing to make disclosure or discovery in an effort to obtain it through court action. That I did seek court assistance to comment or review the impact of the evidences on several occasions such as filing motion for stay of Mandate in reference to the evidences, motion for reconsideration, wrote a letter to Chief Judge Katzmann on the effect or significance of petitioner's duly-authenticated evidences. That despite of Petitioner diligent attempts seeking explanation on the dismissal of the appeal without Respondents evidences

Ad

¹*Union Carbide, supra*, 809 F.2d at 204

Affidavit

presented; neither reply to the Petitioner's Appeal there was no court opinion on the Decision affirming nor denying the facts contained in Petitioner's evidences in violation of ²FRCP Rule 56 and Rule 26., only this Court of the Last Result of the U.S Court Washington, DC can issue the FINALITY of the Twelve (12) years Decision dated October 16, 2006 on GR No. 156132 by the Foreign Chief Justices of the Philippines Supreme Court now Twelve (12) years old Judgment;

19. That, nowhere on record did the Respondents Citibank NA and Citigroup, Inc. lawyer Stuart deny the validity, authenticity and the impact of Petitioner's duly authenticated presented evidences and the foreign court judgment GR

²Rule 56, Ibid

Affidavit

156132 dated October 16, 2006 already Twelve (12) years old, confirms that Respondents did not satisfy foreign Court Judgment;

20. That, through the United States Postal Service with registry receipts and certified mail, I filed 40 book-bound copies and one 8.5 x 11 copy of this petition with the Clerk of Court of the United States Supreme Court and furnished by certified mail three copies to the Respondents and their counsels: Citibank N.A, New York Headquarters, 399 Park Avenue, New York, NY. 10043; Citigroup Inc., New York Headquarters, 399 Park Avenue, New York, NY. 10043; and their respective counsels Stuart Alan Krause, Zeichner, Ellman & Krause, 1211 Avenue of the Americas, New York, NY 10036, Counsel for Respondents Citibank, NA and Citigroup Inc.; and Ronald

July 11, 2018

Affidavit

M. Neumann, Zeichner, Ellman& Krause, 103

Eisenhower Parkway, Roseland, NJ, 07068

Counsel for Respondents Citibank, NA and

Citigroup Inc..

Petitioner Sabeniano request the Recognition

and Enforcement with FINALITY of her

Twelve (12) years Decision. June 29, 2018.



Modesta R. Sabeniano, Pro-Se
Plaintiff-Appellant

Notarized:

JUN 29 2018
June , 2018



*Embassy of the United States of America
Manila, Philippines*

Republic of the Philippines)
City of Manila)
Embassy of the United States)
of America) ss:

SUBSCRIBED AND SWORN to before me, Donna K. Carlson, a Consular Associate of the United States of America at Manila, Philippines, duly commissioned and qualified, this 29th day of June 2018, before me personally appeared

** MODESTA R. SABENIANO **

Donna K. Carlson
Donna K. Carlson
Consular Associate of the
United States of America
Indefinite Commission

“The Embassy assumes no responsibility for the truth or falsity of the representations, which appear in the foregoing (or, annexed) document (or specified elements of the document).”