No. 18-1300

In The
Supreme Court of the United States

NEVENKA OBUSKOVIC,

Petitioner,

v.

KATHLEEN L. WOOD, ESQ., ALTMAN, LEGBAND AND MAYRIDES, JOEY H. PARNETT, WOW ENTERTAINMENT, INC., MICHAEL NIESCHMIDT, ESQ., NIESCHMIDT LAW OFFICE,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Third Circuit

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Did the Third Circuit correctly hold that Petitioner did not plausibly state a claim under 42 U.S.C. § 1983 and § 1985(3) when Petitioner failed to satisfy requirements of FED. R. CIV. P. 8(a) and FED. R. CIV. P. 12(b)(6) by not alleging facts from which a conspiratorial agreement between Respondents could be inferred?

2. Did the Third Circuit err by not considering Petitioner's claim for "slavery" and "peonage" pursuant to 18 U.S.C. § 11589 when Petitioner raised the argument for the first time on appeal and failed to raise same before the District Court?

CORPORATE DISCLOSURE STATEMENT

Respondents Kathleen L. Wood and Altman, Legband and Mayrides are not subsidiaries or affiliates of a publicly-owned corporation. No publicly-owned corporation has a financial interest in this outcome.

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OPINIONS BELOW

The opinion of the United States Court of Appeals for the Third Circuit is not published in the Federal Reporter but is available at 2019 WL 168909. The memorandum opinion of the United States District Court for the District of New Jersey granting Defendants' motions to dismiss Plaintiff's Second Amended Complaint is not published in the Federal Reporter but is available at 2018 WL 2234898. The letter opinion of the United States District Court for the District of New Jersey granting Defendants' motions to dismiss Plaintiff's Amended Complaint is not published in the Federal Reporter but is available at 2017 WL 3429386. The memorandum opinion of the United States District Court for the District of New Jersey granting Defendants' motions to dismiss Plaintiff's Complaint is not published in the Federal Reporter but is available at 2016 WL 6471023.

JURISDICTION

The judgment of the United States Court of Appeals for the Third Circuit granting the Defendants/Respondents' Motions to Dismiss the Second Amended Complaint pursuant to FED. R. CIV. P. 12(b)(6) and 12(b)(1) was entered on January 11, 2019. Petitioner filed the instant petition for writ of certiorari on April 15, 2019. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

INTRODUCTION

Pro se Petitioner, Nevenka Obuskovic seeks review of questions that are not clearly articulated, but nonetheless, are not worthy of this Court's review. The Petition arises out of an underlying divorce proceeding which was initiated by Petitioner in January, 2013 between Obuskovic and Respondent, Joey Parnett. Respondent/Defendant, Kathleen Wood, Esq. is a partner with the firm Respondent/Defendant, Altman, Legband and Mayrides. Ms. Wood and the Altman firm represented Parnett in the divorce proceedings.

Obuskovic's Petition does not directly challenge any of the Court of Appeals' or District Court's findings and does not identify any errors in any of the opinions rendered in this matter. Rather than alleging any error, as is required for review in this Court, Petitioner appears to be attempting to retry her case once again. For this reason, this Court can confidently deny the Petition for Writ of Certiorari.

STATEMENT OF THE CASE

I. Factual and Legal Background

The Petition in this matter stems from Petitioner, Nevenka Obuskovic's ("Obuskovic" or "Petitioner") divorce from her now ex-husband, Respondent, Joey H. Parnett ("Parnett"). Compl. ¶¶ 29-30. On January 10, 2013, Petitioner filed a Complaint for divorce in the New Jersey Superior Court, Chancery Division, Family Part, Mercer County. *Id.* ¶ 9. The Honorable Catherine

Fitzpatrick was assigned to the matter. *Id.* ¶ 18. Parnett retained Respondents, Kathleen L. Wood, Esq. ("Wood" or "Kate Wood") and her law firm, Altman, Legband & Mayrides ("Altman Firm") to represent him in the divorce proceedings. *Id.* ¶ 31. Additionally, Parnett retained Respondents Michael Nieschmidt and his law firm, Nieschmidt Law Office. *Id.*

Over the course of the divorce proceedings, Petitioner retained five different attorneys, but ultimately terminated all but one shortly thereafter, alleging that they were all "controlled by" Respondents, or involved in "ongoing corruption." *Id.* ¶¶ 29-30. The fifth attorney whom was not fired by Obuskovic filed a motion to be relieved as her counsel. *Id.* ¶¶ 62-64. Petitioner's first attorney represented her from July 2012 until September 2012, when she fired him because she "no longer trusted him" once she "later realized [he] was working for Kate Wood." *Id.* ¶ 43. In October 2012, Petitioner retained her second counsel who represented her until April 2013, when Petitioner terminated his services, allegedly because "he refused to file a motion to get any relief and she was forced to do it herself." *Id.* ¶ 46. In June 2013, Petitioner then retained a third attorney, whom she terminated after only three months, allegedly because he was "essentially working for Kate Wood" and therefore, "he was not able to give [Petitioner] effective assistance of counsel in representing her" in the divorce proceedings. *Id.* ¶ 61. Petitioner's fourth counsel was retained by her in September 2013, and less than two months later, the fourth attorney filed a motion to be relieved as counsel. *Id.* ¶¶ 62-64. In

January 2014, Petitioner hired her fifth attorney, who she fired eight months later, in September 2014, purportedly "due to ongoing corruption." *Id.* ¶¶ 83-84. Thereafter, Petitioner did not hire another attorney and proceeded *pro se* for the duration of the divorce proceedings. *Id.*

On September 16 and 17, 2015, Obuskovic sent letters to Judge Fitzpatrick regarding the divorce proceedings. Pet. App. 3a. She objected to the divorce proceedings, requested the trial date be postponed and claimed she "could no longer attend any hearings due to her anxiety" and because she was "no longer represented by counsel." Pet. App. 3a. More specifically, Petitioner alleged that on September 4, 2015, on behalf of Parnett, Wood offered her a settlement agreement and a check for five hundred dollars for Petitioner to have an attorney review the agreement prior to the trial date. Compl. ¶ 88. Petitioner alleged that this was the Respondents trying to "coerce [her] into signing their settlement offer by forcing her" with a threat of trial. *Id.* ¶ 89. Petitioner failed to appear for each day of the trial and oral summations. *Id.* ¶¶ 95-97. On September 17, 2015, Judge Fitzpatrick sent a letter to all counsel and Obuskovic which acknowledged receipt of her letters and advised that Obuskovic's request to postpone the trial date of September 21, 2015 was denied. On September 29, 2015, Judge Fitzpatrick informed Petitioner that the trial had proceeded without her because she had told the Court she would be in

attendance.[1] *Id.* ¶ 95. Petitioner still claims, however, that she "tried numerous times to get the courts to give [her] an equitable division of marital property but was always denied by the court." *Id.* ¶ 100.

In May 2013, Parnett took out a home equity loan in the amount of $58,000 solely in his name. *Id.* ¶ 48. Petitioner falsely claims in her petition that she did not receive any funds from the home equity loan. Pet. 5. Petitioner states she was offered "no financial support from company assets and [Wood] instructed [Parnett] not to give any, so Ms. Wood could control the litigation." Pet. 5. Petitioner fails to mention in her Petition that on May 21, 2013, the state court entered an Order which provided, *inter alia*, that "the parties [are] to withdraw funds from the current home equity line of credit to be applied to Plaintiff's new retainer. . . . the funds are to be paid directly to the attorneys [Plaintiff's and Defendants'] and any experts. . . ." Brief of Appellee's Wood and Altman firm, p. 8.

Thus, the allegations made by Petitioner that Ms. Wood finalized a home equity line of credit in the amount of $58,000 under Mr. Parnett's name, and "retained the money and distributed the money for attorney's fees and mediation costs at her sole discretion" are not true. *Id.* 9. In actuality, Ms. Wood did not "retain the money" and had no control over the funds. Pursuant to the Court's Order, the funds from the home

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[1] A final Judgment of Divorce was entered by the Superior Court of New Jersey on March 2, 2018. Pet. App. 13a.

equity line of credit were paid by Mr. Parnett directly to the attorneys, due in part, to the frequency with which Petitioner changed attorneys. *Id.*

Petitioner's claim that she was given "no financial support from company assets" is equally false. Pet. 5. Contrarily, Petitioner received more money from the home equity line to pay for representation in the divorce proceedings than did Parnett. Petitioner received approximately $30,000 for attorney's fees from the line of credit, while Parnett received approximately only $15,000 and was exclusively paying down the line of credit. Pet. 6.

Moreover, on June 24, 2013, the parties entered into a Consent Order which provided for payment of expert fees and further allowing Parnett to use the existing home equity line of credit to retain and pay counsel of Petitioner's choice. *Id.* This consent order was consistent with the Court's May 21, 2013 Consent Order. *Id.* Additionally, Petitioner was represented by counsel when she executed the Order. *Id.*

II. Procedural Background

A. District Court Proceedings

On October 15, 2015, Petitioner filed a *pro se* civil rights complaint in the United States District Court for the District of New Jersey against Respondents/ Defendants Ms. Wood and the Altman firm, WOW

Entertainment,[2] and Nieschmidt and his firm Nieschmidt Law Offices. Pet. App. 3a. Petitioner also named Judge Fitzpatrick, who was assigned to the divorce proceedings, and the Superior Court of New Jersey, as defendants. *Id.* The Complaint set forth an action for an alleged violation of Petitioner's Due Process rights and for an alleged claim for intentional infliction of emotional distress. Compl. ¶¶ 114-30.

On March 11, 2016, Wood and the Altman firm, as well as the other Defendants/Respondents, filed Motions to Dismiss the Complaint pursuant to FED. R. CIV. P. 12(b)(1) and 12(b)(6). Pet. App. 4a. On October 31, 2016, the District Court entered an Order and Memorandum Opinion granting all of the Motions to Dismiss without prejudice, allowing Obuskovic to file an Amended Complaint.[3] *Id.*

On November 30, 2016, Obuskovic filed an Amended Complaint with the District Court.[4] Pet. App.

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[2] WOW Entertainment, Inc. is Parnett's business. The assets of this company were in dispute throughout the divorce proceedings.

[3] In regards to Defendants Judge Fitzpatrick and the Superior Court of New Jersey, the Court held that sovereign immunity barred the claims against the State of New Jersey and that judicial immunity barred the claims against Judge Fitzpatrick. The Court further held that the Complaint did not adequately plead the existence of a conspiracy between any of the private party Respondents and Judge Fitzpatrick. Finally, because the Court had discussed all claims under federal law, it declined to exercise supplemental jurisdiction over the state law claim of intentional infliction of emotional distress.

[4] Obuskovic's Amended Complaint included four causes of action: (i) due process violations under 42 U.S.C. § 1983; (ii) equal

5a. Again, all defendants moved to dismiss the Amended Complaint pursuant to FED. R. CIV. P. 12(b)(1) and 12(b)(6). *Id.* On August 9, 2017, the District Court entered an Order and Memorandum opinion granting the Motions to Dismiss.[5] The Court made it explicitly clear that Obuskovic would be allowed one final opportunity to amend her complaint. Pet. App. 27a.

On September 8, 2017, Obuskovic filed a Second Amended Complaint which pled five counts.[6] Pet. App.

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protection violations under 42 U.S.C. § 1983; (iii) conspiracy to violate 26 U.S.C. § 529; and (iv) intentional infliction of emotional distress and outrage through violations of the Commerce Clause of the United States Constitution. Am. Compl. ¶¶ 129-71.

[5] As to counts one and two, the Court held Plaintiff failed to adequately plead that Defendants were acting under the color of state law and therefore no liability to attach to them. Pet. App. 31a. The court noted, that contrarily, the Complaint alleged facts that could seemingly show the absence of any conspiracy. The Court noted, "[Obuskovic] alleged that Defendants 'deceived' Judge Fitzpatrick and that they made misrepresentations to the court." *Id.* As to count three, the Court held there was no viable claim under the statute because the provision alleged to have been violated was a provision containing the definition of a "qualified tuition program." *Id.* As for count four, the Court declined to exercise supplemental jurisdiction, but regardless Obuskovic "failed to state a claim." *Id.* 32a.

[6] The five counts alleged were: (i) violation of due process under 42 U.S.C. § 1983, and the Fifth and Fourteenth Amendments of the United States Constitution; (ii) conspiracy to violate 42 U.S.C. § 1985(3); (iii) conspiracy to violate 42 U.S.C. § 1985(3) and 42 U.S.C. § 1983; (iv) conspiracy to violate 42 U.S.C. § 1985(3) and 42 U.S.C. § 1983 (denial of substantive and procedural due process, denial of equal protection, and malicious abuse of process); and (v) deceit. *Id.* 14a.

14a. The Second Amended Complaint was nearly identical to and equally deficient as the previous complaints. All Defendants again moved to dismiss the Complaint and asked that the dismissal be made with prejudice. *Id.* On May 15, 2018, more than two and a half years after the filing of the original complaint, the District Court granted all of the Motions to Dismiss the Second Amended Complaint with prejudice.[7] *Id.* 23a. The Court stated, "[Obuskovic] ha[d] again failed to plead a federal claim, and any further amendment would be futile." *Id.*

B. Court of Appeals Proceedings

On June 15, 2018, Obuskovic filed an appeal with the United States Court of Appeals for the Third Circuit. Pet. App. 6a. Obuskovic argued generally that the District Court incorrectly decided the claims raised in her amended complaints.[8] *Id.* Additionally, for the first time on appeal, Obuskovic added a new claim for "slavery" and "peonage" pursuant to 42 U.S.C. § 1985(3). *Id.* 7a. Specifically, Obuskovic contended that she was

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[7] The Court employed the same reasoning as it did when it reviewed Obuskovic's two previous complaints. *Id.*

[8] The counts alleged were: (i) violation of due process under 42 U.S.C. § 1983 and the Fifth and Fourteenth Amendments of the United States Constitution; (ii) conspiracy to violate 42 U.S.C. § 1985(3); (iii) conspiracy to violate 42 U.S.C. § 1983; (iv) conspiracy to violate 42 U.S.C. § 1985(3); (v) conspiracy to violate 42 U.S.C. § 1985(3) and 42 U.S.C. § 1983 (denial of substantive and procedural due process, denial of equal protection, and malicious abuse of process).

"forced" to represent herself as a result of the defendants' actions.[9] *Id.*

With regards to Obuskovic's section 1983 claims, the Court of Appeals found that the District Court properly concluded that "Obuskovic's vague allegations of a conspiracy involving the defendants and Judge Fitzpatrick to defraud her of her share of the marital property did not satisfy the plausibility standard of Rule 12(b)(6)." Pet. App. 8a. Further, Obuskovic's amended complaints were nothing more than her "dissatisfaction with the rulings of the matrimonial court." *Id.*

Turning to Obuskovic's claims under section 1985(3), the Court held that her "conclusory statements of a conspiracy . . . [were] insufficient to state a section 1985(3) claim" and that she "alleged no facts in her two amended complaints from which a conspiratorial agreement [could] be inferred." *Id.* 9a.

Additionally, with regards to the new claim raised on appeal for "slavery" and "peonage" under 18 U.S.C. § 1589, the Court merely mentioned and dismissed by stating, Obuskovic was "represented by numerous attorneys; her assertions that she was 'forced' to proceed *pro se* at the divorce trial is not plausible." *Id.* The Court did not conduct a substantive review of this claim because it was raised for the first time on appeal.

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[9] Obuskovic claimed that she "was subject to Peonage and Forced Labor of having to act as an attorney, when she wasn't one, due to the fact the opposition controlled the case by controlling the purse strings." Appellant's Brief, p. 17.

Id. n. 6 ("Generally, Court of Appeals does not consider arguments that were not raised before the District Court.").

REASONS FOR DENYING THE PETITION

The Petition for Writ of Certiorari in this case should be easily eliminated. There is no reason, let alone a compelling reason, to grant certiorari here. This case does not involve a conflict between circuit courts of appeals or present any issue of public importance. Ms. Wood and the Altman firm prevailed at the District Court level and in the Court of Appeals because Obuskovic failed to include sufficient facts to state any claims for relief that were plausible on its face.

In light of the fact-intensive nature of this case and for the reason that both courts actually granted the motions to dismiss in favor of Ms. Wood and the Altman firm, any muddled contentions made by Petitioner that this case involves an important issue of federal law that warrants this Court's review are meritless.

As such, this Court should deny the Petition for review because it fails to present the facts and the law with accuracy, brevity and clarity, review would require this Court to evaluate and assess the facts, and the case is a poor vehicle to review the questions presented.

I. The Petition Fails To Present The Facts And Law With Accuracy, Brevity, And Clarity.

A petition to the United States Supreme Court for a writ of certiorari should make a clear, definite, and complete disclosure concerning the controversy, since it is impossible for the Court critically to examine the record before ruling on the application, and it must rely largely on preliminary papers. *Southern Power Co. v. North Carolina Public Service Co.*, 263 U.S. 508, 509 (1924). *See also Furness, Withy & Co. v. Yang-Tsze Ins. Assoc.*, 242 U.S. 430, 432 (1917); *Layne & Bowler Corp. v. Western Well Works, Inc.*, 261 U.S. 387, 393 (1923). Procedurally, a petitioner's failure to present with accuracy, brevity, and clarity facts and law which enable the Court to adequately understand a petition is sufficient reason for the Court to deny a petition outright. SUP. CT. R. 14(4). Further, the petition must contain a statement "setting out the facts material to consideration of the question[s] presented." SUP. CT. R. 14(1)(g). *See, e.g.*, *Snyder v. Phelps*, 562 U.S. 443, 445 at n. 1 (2011).

The petition here fails to comply with the Rules of this Court and precedential case law because the petition lacks accuracy, is not brief but is repetitive and conclusory, and is very unclear as to the facts and the law. The Petition is disorganized and convoluted, which makes it extremely difficult to decipher the Petitioner's arguments with ease and should therefore be denied.

First, Petitioner has included arguments in sections of the Petition that require none. For example, included within the "Constitutional and Statutory Provisions" section, directly after providing the text of the Due Process Clause of the Fourteenth Amendment, there is language which clearly should have been placed elsewhere. Pet. 1. The same is true directly after the text for 18 U.S.C. § 1589. *Id.* 2. While Petitioner has included incorrect information within this section, she has astoundingly omitted the necessary required information which this section calls for. The Petition, for whatever reason, includes the text of Article 1, Section 1 of the State of New Jersey Constitution, although there are no allegations relating to same, and fails to include the applicable statutory provisions relating to the claims in the proceedings below.

Second, the questions presented for review are riddled with grammatical errors and are repetitive and unclear. *See* Pet. i. ¶¶ 1-2, ii. ¶ 1. It is a rule of this Court that the "questions presented for review, expressed concisely . . . should be short and should not be . . . repetitive. SUP. CT. R. 10(a). Not only are the questions unclear, but included within this section of the Petition are two statements (seemingly philosophical ponderings) that do not call upon any questions of federal law whatsoever for this Court to review. *Id.* ¶¶ 3-4. According to this Court's rules, the "questions shall be set out on the first page . . . and no other information may appear on this page." *Id.* The reasons for inclusion of these statements in the "Questions Presented" section are unknown to Respondents.

Third, disorder and disarrangement is consistent throughout the Petition. Throughout Petitioner's discussion of factual background in the "Statement of the Case" section, Petitioner has included unwarranted and inappropriate legal arguments. These arguments are all baseless and conclusory statements that do not allege any specific factual allegations. For example, Petitioner claims she was "deprived of her property and freedom choice (sic) as guaranteed by Due Process and Equal Protection Under (sic) the Law." *Id.* 7. Further, Petitioner states in the "Factual Background" section, "Using the law wrongfully against Petitioner, Ms. Wood and Mr. Nieschmidt persisted in torturing Petitioner." *Id.* 7-8. Petitioner has failed to cite any facts, and instead, recites a litany of unsupported, unsubstantiated, self-serving, and irrelevant allegations and rules which have no relation to the actual facts of this case.

Fourth, and most importantly, the Petition fails to accurately and clearly present the law in the Argument sections of the Petition. Throughout the Petition there are claims as to what the applicable law is, or what the courts have held. However, Petitioner inaccurately states the law and offers no support to substantiate her statements as true. For example, Petitioner states that "New Jersey Supreme Courts and lower appellate courts have ruled that one cannot be forced to trial in a divorce without counsel." There is no legal support for this statement included in the Petition. Accordingly, this is bare allegation made by Petitioner that is wholly unsupported by any citation to support her claim. Additionally, the Petition is repetitive and

unclear. For example, Petitioner begins and ends her argument under "Point I" by copying and pasting two verbatim paragraphs which include conclusory allegations. *Id.* 11-12, 14-15.

This Court does not have the time to merely visit the record of every petition submitted. *Southern Power Co.*, 263 U.S. at 509. However, the way in which this petition is constructed would require this Court to spend an insurmountable amount of time sifting through the claims in an attempt to make sense of Petitioner's arguments.

Therefore, this Petition should be denied because it is unclear, legally unsupported, and wildly inaccurate.

II. The Petition Requires This Court To Engage In A Fact-Finding Investigation

This Court is most inclined to deny certiorari in an intensely fact-specific case in which the Court of Appeals below unquestionably applied the correct rule of law and did not unquestionably err. *Kyles v. Whitley*, 514 U.S. 419, 459 (1995) (Scalia, J., dissenting). Petitioner has attempted to cast the questions presented for review as purely legal issues that turn on a determination of federal law. However, the Court of Appeals' decision clearly turned based on a factual determination after a case-specific review and analysis of whether the facts alleged satisfied the plausibility standard of Rule 12(b)(6).

In regards to Petitioner's 42 U.S.C. § 1983 claim, the decision to dismiss turned on two fact determinations. One, because Respondents are private actors not acting under the color of state law, they could not be held liable under section 1983. Pet. App. 7a-8a. Two, although liability could attach to private parties who conspire with a state actor, all facts alleged in Petitioner's complaint were too vague and too conclusory to infer any conspiratorial agreement. *Id.* 8a. The Court came to the same determination regarding Petitioner's 42 U.S.C. § 1985(3) claim. *Id.* In that, the Complaint did not set forth facts from which a conspiratorial agreement could be inferred. *Id.* Turning to the new claim Petitioner raised on appeal of "slavery" and "peonage" under 18 U.S.C. § 1589, the Court merely mentioned and dismissed by stating Petitioner was "represented by numerous attorneys; her assertions that she was 'forced' to proceed *pro se* at the divorce trial is not plausible." *Id.* The Court did not conduct a substantive review of this claim because it was raised for the first time on appeal. *See Appalachian States Low-Level Radioactive Waste Commission v. Pena*, 126 F.3d 193, 196 (3d Cir. 1997) ("Generally, Court of Appeals does not consider arguments that were not raised before the District Court.").

The Court of Appeals' holdings were all determined based upon the factual allegations, or lack thereof, in Petitioner's Complaints. Hypothetically speaking, had there have been a different set of facts behind these claims, the outcome may have been different, which

shows the decisions were factual based. Therefore, the petition mistakenly calls upon this Court to resolve a factual dispute. This Court's rules make clear that "[a] petition for writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law." SUP. CT. R. 10.

Petitioner does not ask this Court to review a decision that is in conflict with any other federal or state court. Instead, the Petitioner seeks another hearing and calls upon the Court to conduct a fact-finding investigation to decide whether her bald assertions and unsupported, sweeping legal conclusions can survive a motion to dismiss for failure to state a claim.

This Court, however, does not sit as a court of error correction. *Ross v. Moffitt*, 417 U.S. 600, 616-17 (1974). To the contrary, [t]he jurisdiction conferred on the Supreme Court to review decrees . . . was not conferred merely to give the defeated party another hearing. *See Magnum Import Co. v. Coty*, 262 U.S. 159 (1923). It was conferred to secure uniformity of decision and to bring up cases of importance, which it is in the public interest to have decided by the court of last resort. *Id.*

The petition contains nothing but conclusory allegations and no facts that support their truth. To decide otherwise would require this Court to conduct a fact-finding investigation. Because this Court does not grant a certiorari to review evidence and discuss specific facts, the petition should be denied. *Superintendent, Massachusetts Correctional Instn., Walpole v.*

Hill, 472 U.S. 445, 461 (1985) (quoting *United States v. Johnson*, 268 U.S. 220, 227 (1925)).

Put simply, Petitioner has not raised any issues based on the interpretation of federal law for this Court to consider an essential issue. Petitioner is attempting to seek review of the lower courts' decisions, which all held she lacked the facts. Petitioner has exhausted her opportunities for review in the lower courts and so "filing this single last exception presenting this petition to the Supreme Court is the last resort in this action." Pet. i. Petitioner is nothing more than "dissatisfied with the rulings of the matrimonial court," pet. app. 8a, and has wrongly called upon this Court to correct it.

III. This Case Is A Poor Vehicle To Review The Questions Presented

A. The Court Of Appeals' Opinion Carries No Precedential Value And There Is No Circuit Split

Petitioner's bare assertions about the importance of the legal questions that are raised in this case are extremely exaggerated and carry little relevance beyond the parties' narrow interests. Further, as discussed, Petitioner fails to even raise any issue of federal law interpretation or conflicting decisions of another court. The opinion written by the United States Court of Appeals for the Third Circuit is unreported and was not selected for publication in the Federal Reporter. Unpublished opinions are neither

controlling nor binding precedent. *United States v. Brunken*, 581 F.3d 635, 638 (2009). *See, e.g.*, *In re Grant*, 635 F.3d 1227, 1232 (D.C. Cir. 2011); *United States. v. Stepanian*, 570 F.3d 51, 57 n. 10 (1st Cir. 2009); *United States v. Tennessee*, 615 F.3d 646, 654 (6th Cir. 2010). Additionally, the Court stated that the "disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent." Pet. App. 3a, n. 1.

The unpublished decision of the Court of Appeals does not, and cannot, implicate any split in the circuit courts or in lower court authority. In resolving this case, the Court of Appeals did not even rely on one of its own precedential decisions that could potentially form the basis for such a split. The affirmance by the Court of Appeals was based upon the result of applying well-settled federal and constitutional law and did not require much analysis.

Therefore, this case carries no precedential value and is neither controlling nor binding case law in the lower courts. At most, litigants will have the ability to cite this decision as persuasive authority to bolster their argument or hinder their opponents. This is obviously not the type of issues of nationwide importance in which this Court may consider granting Certiorari.

B. There Are No Questions Of Public Or National Importance

Certiorari is a power that this Court "sparingly exercise[s]." *Camreta v. Greene*, 131 S. Ct. 2020, 2033

(2011) (citing *Forsyth v. Hammond*, 166 U.S. 506, 514 (1897)). *See also Camreta*, 131 S. Ct. at 514-15 (explaining that this Court grants review "only when the circumstances of the case [can] satisfy [that] the importance of the question involved, the necessity of avoiding conflict [in the lower courts], or some matter affecting the interests of this nation . . . demands such exercise.").

Certiorari should not be granted where a case involves merely the application of well-settled principles to a familiar situation, and has little significance except for the parties. *Powell v. Nevada*, 511 U.S. 79, 86 (1994) (Thomas, J., dissenting).

This case does not present any important questions that are in the public interest or affect the interests of this nation. This is a minor dispute stemming from a divorce proceeding, which certainly does not qualify as one of national importance. Further, the outcome of this proceeding is of no importance to anyone but the parties involved. It will not control the outcome of any future litigations because it is not binding.

IV. The Court Of Appeals' Decision Is Correct

The Court of Appeals was correct in its finding that the District Court appropriately granted Defendants' motions to dismiss because Obuskovic failed to allege sufficient facts to support any of her claims. The

District Court provided Obuskovic with several opportunities to amend her Complaint to cure the deficiencies to conform to the Federal Rules. Obuskovic, however, only filed substantially similar versions of the previous deficient Complaints. In Petitioner's Informal Brief, she argued "generally that the District Court incorrectly decided the claims she raised in her [second] amended Complaint." Pet. App. 6a. Additionally, for the first time, Petitioner added a claim for "slavery" and "peonage." *Id*.

The Court of Appeals correctly affirmed the District Court's decision to dismiss the federal claims with prejudice because Obuskovic failed to satisfy the pleading requirements of the Federal Rules of Civil Procedure and therefore failed to state a claim upon which relief could be granted.

A. Petitioner Failed To State Any Claims Upon Which Relief Can Be Granted

A Rule 12(b)(6) motion tests the sufficiency of the factual allegations contained in the complaint. *See Kost v. Kozakiewicz*, 1 F.3d 176, 183 (3d Cir. 1993). Pet. App. 7a. FED. R. CIV. P. 8(a)(2) requires that a plaintiff plead a claim by setting forth "a short and plain statement of the claim showing that the pleader is entitled to relief"; so that a defendant has "fair notice of what the . . . claim is and the grounds upon which it rests." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). The "[f]actual allegations must be enough to raise a right to relief above the speculative level." *Id.*

at 555. The "short and plain statement" of a plaintiff's claim "must contain sufficient factual matter . . . to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009). While it is not necessary that a plaintiff provide "detailed factual allegations," a plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Id.* (internal citations omitted). A court is required to accept as true all factual allegations in the complaint and all reasonable inferences that can be drawn therefrom, to view same in the light most favorable to a non-moving party and to dismiss the Complaint only if the alleged facts taken as true fail to state a claim. *See Ashcroft*, 129 S. Ct. at 678; *Twombly*, 550 U.S. at 555; *Phillips v. Cnty. of Allegheny*, 515 F.3d 224, 233 (3d Cir. 2008).

The Court of Appeals exercised "plenary review over [the] Rule 12(b)(6) dismissal." Pet. App. 7a (citing *Weston v. Pennsylvania*, 251 F.3d 420, 425 (3d Cir. 2001)). The Court was "free to affirm the judgment on any basis which [it] f[ound] support in the record." Pet. App. 7a (citing *Bernitsky v. U.S.*, 620 F.2d 948, 950 (3d Cir. 1980)). Applying the approach established in *Iqbal*, the Court conducted an analysis and assessment of the allegations in the Second Amended Complaint. *See* Pet. App. 7a. The Court found the Complaint clearly demonstrated a complete failure to meet the standards established by the Court, in that the allegations were simply conclusory and therefore not entitled to the presumption of truth pursuant to *Iqbal*.

In considering the Second Amended Complaint under the standards set forth in Rules 8(a)(2) and 12 (b)(6), the Court of Appeals properly affirmed the District Court's holding that Plaintiff's Second Amended Complaint was deficient. Plaintiff's Complaint centered on allegations of conspiracy, yet, as noted by both the Court of Appeals and the District Court, Plaintiff failed to establish any of the required elements to support a conspiracy claim.

The District Court dismissed Plaintiff's Complaints three times for failure to adequately plead the existence of a conspiracy between Defendants and Judge Fitzpatrick. In the Second Amended Complaint, the Court properly found that Plaintiff once again, failed to address the deficiencies of her prior Complaints. The Court of Appeals correctly affirmed that the Second Amended Complaint contained the classic type of vague, broad assertions, unsupported conclusions, unwarranted inferences and sweeping legal conclusions alleged to be factual allegations, which the courts have held cannot and should not be accepted by the court. *Ashcroft*, 129 S. Ct. at 1949. Plaintiff failed to identify any factual details to support her claims. *See* Pet. App. 7a-8a.

Moreover, Obuskovic's Second Amended Complaint was woefully deficient, replete with conclusory statements and devoid of any facts to support any of the purported "causes of action" and lacked any legal basis. The Court of Appeals properly affirmed the District Court's finding that Obuskovic failed to explain

which Defendants participated in the alleged conspiracy and how each was implicated. Obuskovic failed to plead any plausible cause of action under the Federal Rules as to Wood and the Altman firm, and the Complaint was properly dismissed with prejudice.

B. Petitioner Failed To State A Claim Under 42 U.S.C. § 1983

The Court of Appeals properly affirmed that Plaintiff's claim against Defendants, Wood and the Altman firm, under 42 U.S.C. § 1983, failed on the first element because Defendants are not state actors and there were no facts alleged in which a conspiratorial agreement could be inferred.

First, to sustain a cause of action on a § 1983 claim, a plaintiff must allege that the defendant acted under color of state law, in other words, that there was state action. *Lugar v. Edmondson Oil Co. Inc.*, 457 U.S. 922, 941 (1982); *Great Western Mining & Mineral Co. v. Fox Rothschild LLP*, 615 F.3d 159, 175 (3d Cir. 2010). The District Court properly found, and the Court of Appeals properly affirmed, that Plaintiff's claim against Defendants, Wood and the Altman firm failed on the first element because Defendants are not state actors, but are private citizens. As Defendants are private actors, there is no state action.

Second, the Court of Appeals noted that "liability would attach if a party conspired with a state actor." Pet. App. 8a (citing *Dennis v. Sparks*, 449 U.S. 24, 27-18 (1980)). However, the Court held that "the District

Court properly concluded that Obuskovic's vague allegations of a conspiracy involving the defendants and Judge Fitzpatrick to defraud her of her share of the marital property did not satisfy the plausibility standard of Rule 12(b)(6)." Pet. App. 8a.

To substantiate her claim, Plaintiff was required, but failed to, sufficiently plead that an agreement existed between the State Court, Judge Fitzpatrick and the Defendants. There must be "enough factual matter (taken as true) to suggest that an agreement was made. The Plaintiff must assert facts from which a conspiratorial agreement can be inferred." *Great Western*, 615 F.3d at 178. *See also Startzell v. City of Philadelphia*, 533 F.3d 183, 205 (3d Cir. 2008) (stating that a conspiracy requires a "meeting of the minds"). "A bare assertion of conspiracy will not suffice." *Great Western Mining*, 615 F.3d at 178.

Here, the Court of Appeals properly held that Obuskovic had failed to assert facts from which a conspiratorial agreement could be inferred and that the "amended complaints allege[d] nothing more than Obuskovic's dissatisfaction with the rulings of the matrimonial court." Pet. App. 8a (quoting *Dennis*, 449 U.S. 24 at 28).

Obuskovic only alleged, in the most general terms, that an agreement existed. She failed to explain which Defendants are alleged to have participated and how each Defendant was implicated in each claim, and further failed to provide any factual support for her claims. The allegations were "often conclusory and

lacking specificity." Therefore, the District Court appropriately found that these allegations were clearly insufficient under the pleading requirement of Rule 8(a). For these reasons, the Court of Appeals properly affirmed that Obuskovic's § 1983 claims were properly dismissed.

C. Petitioner Failed To State A Claim Under 42 U.S.C. § 1985(3)

"Section 1985(3) provides a cause of action where a conspiracy, even by private actors, violates a plaintiff's federal rights." In this matter, as the District Court properly noted, Obuskovic failed to identify any right protected from private action. Her allegations stemmed from the Fourteenth Amendment – essentially that Defendants deprived her of property rights, equal protection, and substantive and procedural due process, which resulted in her deprivation of right to counsel. Notably, it was Obuskovic who was represented by counsel during the divorce proceedings, terminated all but one of the attorneys she retained, deliberately chose not to participate in the divorce trial, and has now alleged these due process claims. Obuskovic also alleged that Defendants discriminated against her "on the basis of gender, nationality, and marital status, pursuant to the Fourteenth Amendment Equal Protection clause," but failed to provide any factual support for those claims. She did not present any evidence whatsoever of any sort of alleged agreement between Defendants and the Court.

As the Court of Appeals noted, "merely resorting to the courts and being on the winning side of a lawsuit does not make [the winning] party a co-conspirator or a joint actor with the judge." Pet. App. 8a (citing *Dennis*, 449 U.S. at 28). This is precisely what Obuskovic is alleging here. Obuskovic's Second Amended Complaint does not contain any allegations as to specific conduct by Ms. Wood that shows any sort of agreement between Judge Fitzpatrick and Ms. Wood to rule in favor of Mr. Parnett and against Obuskovic during the divorce proceedings. Rather, this action is simply the result of Obuskovic being dissatisfied with the rulings that were issued by the matrimonial Court. Significantly, Obuskovic initiated the District Court action before the Divorce Judgment had even been entered.

Obuskovic's claim of "conspiracy to Violate Right (sic) 26 USC Section 529" in Count III is illogical and without merit. 26 U.S.C. § 529 is a provision that defines "Qualified Tuition Programs" for purposes of the Internal Revenue Code. Obuskovic made the unsubstantiated claim that Defendant Wood has "intentional (sic) misrepresented to Parnett not to sign off the account to 18-year-old son for his college expenses and tuition"; and that this constitutes a violation of the statute and "also constitutes a conspiracy to commit fraud under 26 USC (sic) section 1985(3) since it violates federal law and constitutional rights." Obuskovic did not assert any facts whatsoever to support a viable claim under 26 U.S.C. § 529. Further, the claims as to the distribution of funds in the 529 account were properly the subject of the matrimonial matter in

which a decision had not yet been rendered. *See* N.J.S.A. 2A:34–23; *Sauro v. Sauro*, 425 N.J. Super. 555, 572 (App. Div. 2012). In this case, the "college accounts" were the subject of the trial in the underlying matrimonial matter.

As to the claim relating to Judge Fitzpatrick's orders and Ms. Wood's representation of Mr. Parnett, Obuskovic failed to provide any supporting factual allegations and failed generally to identify any right protected from private action. As the District Court noted, "(i)t is firmly embedded on our constitutional law that the equal protection guaranteed by the Fourteenth Amendment erects no shield against merely private conduct, however, discriminatory or wrongful." *Park v. Tsiavos*, 679 F. App'x 120, 124 (3d Cir. 2007).

Accordingly, the Court appropriately found that these allegations were clearly insufficient under the pleading requirement of Rule 8(a). For these reasons, the Court of Appeals properly affirmed that Obuskovic's § 1985(3) claims were properly dismissed.

D. Petitioner Failed To Raise A Claim Of "Slavery" And "Peonage" Before The District Court

On appeal, Obuskovic for the first time, raises the issue of "Forced labor/Peonage and Slavery, 18 U.S.C. §§ 1581 and 1589; 42 U.S.C. § 1994" based upon her alleged " . . . deprivation of right to counsel in a civil proceeding that has caused significant deprivation of Obuskovic's liberties and property." Obuskovic's brief

at p. 20. Obuskovic argues that she was forced to represent herself "against her will, out of fear of punishment by the legal system or suffer a serious harm and/or refrain from taking some action out of fear," and that this somehow, constitutes forced labor/peonage and slavery. As set forth above, Obuskovic was represented by five different attorneys during the course of the matrimonial proceedings. She chose to fire four of these attorneys, claiming they were controlled by Defendants and the Court, and further chose to represent herself.

In addition to the fact that this claim is completely without any factual or legal basis, Obuskovic did not raise this claim in the District Court and apparently seized upon the District Court's reference to same in its opinion as a basis for the subject appeal. As the Court of Appeals noted, during the analysis of Obsukovic's 1985(3) claim, there are only two protected rights that the United States Supreme Court has recognized, the right to be free from involuntary servitude and the right to interstate travel. The Court continued, "[i]t appears that this reference has given rise to Obuskovic's new claim on appeal of 'slavery' and 'peonage' . . . [her] assertion that she was 'forced' to proceed *pro se* at the divorce trial is not plausible." Pet. App. 9a, n. 6.

Accordingly, the Court merely mentioned the claim in a footnote and dismissed it without actual analysis, noting "we generally do not consider arguments that were not raised before the District Court." *See Appalachian States Low-Level Radioactive Waste*

Commission v. Pena, 126 F.3d 193, 196 (3d Cir. 1997). Therefore, because the argument was not raised before the District Court, the Court of Appeals correctly dismissed this claim.

In sum, throughout litigation of this case, Obuskovic has confused, conflated, and created issues which make it a challenge to even correctly decipher her claims. She has caused undue burden and expense to the court and the parties for more than three and a half years. For these reasons, the Court of Appeals was correct to affirm the District Court's decision to dismiss Obuskovic's amended complaints, with prejudice.

CONCLUSION

For the foregoing reasons, this Court should deny the petition for a writ of certiorari.

Respectfully submitted,

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