

CASE NO. 18-1560

**In The
SUPREME COURT OF THE UNITED STATES**

Richard Leland Neal,
Petitioner,

vs.

**B. MARC NEAL;
RICHARD WAYNE NEAL;
MICHAEL KENNETH NEAL;**
Respondents.

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

REPLY TO BRIEF IN OPPOSITION

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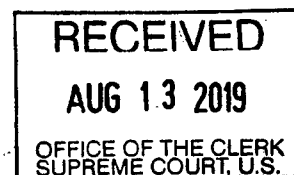


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REPLY TO BRIEF IN OPPOSITION

The case presents a compelling reason and the ideal vehicle to resolve the fundamental and recurring conflict the decisions entered by the lower courts creates, a clear and direct split among the district and circuit courts regarding the question that “a motion to dismiss pursuant F.R.Civ.P. Rule 12(b)(6) suspends the time in which to file an answer to an amended complaint until after the Court rules on the motion, and that respondents would only be required to file an answer if respondents’ motion to dismiss^{is} is denied;”

The lower courts have so far departed from accepted and usual course of judicial proceedings and other district and circuit courts’ decisions with no rationale, basis in logic or precedent where the facts, Federal Rules of Civil Procedure and case law provides no justification for denying Petitioner’s motion for a judgment by default, which is such an imperative public importance as to justify the exercise of the Supreme Court’s supervisory powers;

A. Petitioner Failed to Raise the Issues Before the United States Court of Appeals for the Ninth Circuit and the Question Presented in this Petition Was Not Before the Court Below;

Respondents' assertion is fundamentally flawed as shown by the following evidence;

Petitioner never applied for a new standard for the Ninth Circuit to interpret F.R.Civ.P. Rule 12(b)(6) because petitioner is applying to have the rules followed not changed;

The memorandum (Doc. 65.1) entered by the Ninth Circuit provides the evidence that the Appeal Court is supporting the District Court's hearing officer's violation of the Federal Rules of Civil Procedure;

Petitioner's motion (Doc. 64) for judgment by default entered in the District Court records provides the evidence the question before the Supreme Court is properly presented to the District Court;

Petitioner's request (Doc. 67) in the District Court for leave of court to file motion for reconsideration of Petitioner's motion for judgment by default clearly provided evidence that Petitioner properly argued prejudicial errors and manifest error of law that was so fundamental that gross injustice resulted when the lower court determined that respondents made a timely response to the amended complaint (Doc. 27);

The Arizona District Court's record (Doc. 84) also provides the evidence the question is properly presented to the District Court in Petitioner's motion to leave to file a second motion for a judgment by default;

Petitioner's "STATEMENT OF THE ISSUE" on page 3 in the opening appeal brief clearly shows evidence the question is properly presented to the Ninth Circuit Court of Appeals;

Petitioner's "QUESTION PRESENTED" on page 1 in the reply brief also clearly shows evidence the question is properly presented to the Ninth Circuit Court of Appeals;

Petitioner's documents identified above properly raised the question with sufficient briefing, case law and Federal Rules of Civil Procedures, on the incorporation question presented to the Supreme Court to show that gross injustice resulted in the lower courts' decisions on the question presented, which merits certiorari review;

B. The Lower Court's Decision Was Limited to the Facts of this Case and Does Not Implicate State or National Interests;

The United States Supreme Court has yet to rule in any precedent case pertaining to the question before the Court;

The facts and evidence in the case clearly shows that respondents "have failed to plead or otherwise defend" within the time allowed pursuant to Federal Rules of Civil Procedure which is the case here;

Petitioner is being held to the same rules of procedure that govern other litigants in the District court, see (Doc. 54), then without punitive the District Court violates the Federal Rules of Civil Procedure and ignores respondents violating the Federal Rules of Civil Procedure resulting in a gross injustice;

The question before the Court has applications to all the court within the 50 States and the District of Columbia by establishing the adequacy of Rule 12(b)(6) in the following cases that implicate State and National interest, *General Mills Inc. v. Kraft Foods Global Inc.*, 459 F.3d 1378 (Fed. Cir. 2007), *Centifanti v. Nix*, 865 F.2d 1422, 1431 n. 9 (3rd Cir. 1989), *Domino Sugar Corp. v. Sugar Workers Local 392*, 10 F.3d 1064, 1068 n.1 (4th Cir. 1993), *McDonald v. Hall*, 579 F.2d 120, 121 (1st Cir. 1979), *McLellan v. Miss. Power & Light Co.*, 526 F.2d 870, 872n. 2 (5th Cir. 1976), *Reuber v. United States*, 750 F.2d 1039, 1061 n. 35 (D.C. Cir. 1984), *St. Michael's Convalescent Hosp. v. State of Cal.*, 643 F.2d 1369, 1374 (9th Cir. 1981), *United States v. Newbury Mfg. Co.*, 123 F.2d 453 (1st Cir. 1941);

The cases above presents a compelling reason to resolve the fundamental principles and recurring conflict the decisions entered by the lower courts creates, a clear and direct split among the district and circuit courts regarding the question presented, which merits certiorari review;

C. There is No Circuit Split as the Lower Court's Decision Properly Interpreted Rule 12(b)(6);

Here again Respondents' assertion is fundamentally flawed as the lower courts' decisions clearly shows a departure from other courts decisions on how to resolve the question before the Supreme Court and the following rules and case laws shows the split;

F.R.Civ.P. Rule 12(a)(4) does not extend the time for filing an answer to an amended complaint when the time remaining for filing a responsive pleading to the original pleading has elapsed, see *General Mills Inc. v. Kraft Foods Global Inc.*, 495 F.3d 1378 (Fed. Cir. 2007);

The express terms in F.R.Civ.P. Rule 12(a)(4) only alters "these periods of time" enumerated immediately before, in F.R.Civ.P. Rule 12(a)(1)(2)(3) and the period of time to answer an amended complaint is missing from that list of affected periods;

F.R.Civ.P. Rule 15(a)(3) sets the period of time to answer an amended complaint after the original pleading time has elapsed at fourteen(14) days after the day of service unless the court orders otherwise;

The District Court's record shows respondents failed to comply with the court order (Doc. 29), tolling the deadline on 05/16/2017 to file respondents' answer to the amended complaint (Doc. 27);

The District Court's record shows respondents' motion (Doc. 38) to dismiss is filed on May 17, 2017 not May 15, 2017 as claimed by the respondents, and is not an answer, or a responsive pleading to the amended complaint (Doc. 27), see *Centifanti v. Nix*, (3d Cir. 1989) citing *Reuber v. United States*, 750 F.2d 1039, 1061 n. 35 (D.C. Cir. 1984), *Domino Sugar Corp. v. Sugar Workers Local 392*, 10 F.3d 1064, 1068 n.1 (4th Cir. 1993) citing *United States v. Newbury Mfg. Co.*, 123 F.2d 453 (1st Cir. 1941);

A motion to dismiss is not a responsive pleading for purposes of F.R.Civ.P. Rule 15(a), see *McDonald v. Hall*, 579 F.2d 120, 121 (1st Cir. 1979), *McLellan v. Mississippi Power & Light Co.*, 526 F.2d 870, 872n.2 (5th Cir. 1976), *St. Michael's Convalescent Hosp. v. State of Cal.*, 643 F.2d 1369, 1374 (9th Cir. 1981);

Respondents admitted on page 17 in the appeal answering brief, that a Rule 12(b)(6) motion is not a responsive pleading, and supported respondents' admission, with the 9th Circuit Court's opinion in *St. Michael's Convalescent Hosp. v. State of Cal.*, 643 f.2d 1369, 1374 (9th Cir. 1981);

Respondents' assertion that a partial motion to dismiss will suspend the time to answer those claims or counterclaims that are not subject to the motion, is a moot point, as respondents' motion (Doc. 38) to dismiss the amended complaint with prejudice challenged all claims;

The District Court's records shows no evidence of a court order that provided respondents with additional time to file an answer to the amended complaint until after the District Court ruled on respondents' motion (Doc. 38) to dismiss;

The District Court's record shows respondents failed to file a motion for an additional extension of time to file an answer or responsive pleading to the amended complaint (Doc. 27);

The District Court's record shows respondents failed to file a request for a late filing past the deadline to file an answer to the amended complaint (Doc. 27);

Petitioner is applying to have the rules followed not changed, and the memorandum (Doc. 65.1) entered by the Ninth Circuit provides the evidence that the Appeal court is supporting the District Court's hearing officer's violation of the Federal Rules of Civil Procedure;

As a result of the District Court's and the 9th Circuit Court's exclusion of Petitioner's equal protection under the law to all people, the basic substantial right to trial caused the damages that otherwise is injuring Petitioner;

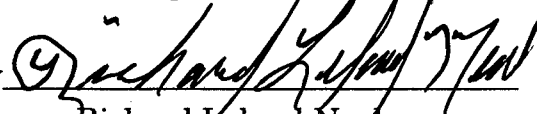
The Supreme Court's proceeding involves a question of such exceptional importance, based on the Arizona District Court's and the Ninth Circuit's opinions are so extraordinary unusual that gross injustice has resulted, making it necessary for a Writ of Certiorari to issue to secure and maintain uniformity of existing court opinions that substantially affects rules of national application in which there is an overriding need for national uniformity which merits certiorari review;

CONCLUSION

For the reasons stated above, respondents' brief in opposition should be denied.

Respectfully submitted on August 06, 2019 and

Affirmed by



Richard Leland Neal

Unrepresented litigant

