No. __-_____

IN THE
In The Supreme Court of United States

KEVIN SINGSON,

Petitioner,

v.

UTAH ATTORNEY GENERAL, UTAH LABOR COMMISSION ANTIDISCRIMINATION AND LABOR DIVISION WAGE CLAIM UNIT, UTAH DEPARTMENT OF COMMERCE DIVISION OF CORPORATIONS, AND UTAH DEPARTMENT OF ADMINISTRATIVE SERVICES DIVISION OF FINANCE OFFICE OF STATE DEBT COLLECTION

Respondents.

On Petition for Writ of Certiorari to the
United States
Court of Appeals for the Federal Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

The Utah State Courts in this case evaluated Petitioner Kevin Singson's claim that the Utah Office of State Debt Collections collected a wage claim which the state had no statutory authority to collect. The debt was not owed to the state and was not owed by Singson. The debt was owed by a corporation to a former employee of the corporation. Singson brought his case in state court alleging an improper and unfair debt collection. Singson did not misplace his case as a federal claim in federal court under the Fair Debt Collection Practices Act ("FDCPA") and maintained throughout that there were "no other plain speedy and adequate remedies." However, the state courts would not address unfair debt collection practices as a cognizable state claim, and the Utah Court of Appeals used an ostensible briefing deficiency as pretext to deny Singson his day in court. Utah's skirting the issue highlights an urgent need for a fair and equitable playing field when state run collection agencies wield governmental powers over the citizenry as consumers to collect debts. In this case the state is indeed collecting the debt "of another" (wage claim) —giving rise to the questions presented as follows:

1) Whether the Utah State Supreme Court erred in affirming the Utah Court of Appeals in denying that a specific remedy exists for a citizen to challenge unfair debt collection practices committed by a state debt collection agency?
2) Are alleged abusive collection practices committed by a governmental debt collector, such as the State's Attorney General, subject to review by state courts under extraordinary writ proceedings when the administrative procedures themselves are the abuse complained of?

PARTIES TO THE PROCEEDINGS BELOW

Petitioner, Kevin Singson was the petitioner and the appellant in the state courts below. The State of Utah was the respondent and appellee in the state courts below with the following named parties: Utah Attorney General ("AG"), Utah Labor Commission ("LC") Antidiscrimination and Labor Division ("UALD") Wage Claim Unit ("WCU"); Utah Department of Commerce Division of Corporations ("DOC"); and Utah Department of Administrative Services Division of Finance, Office of State Debt Collection ("OSDC"). The Utah State Judiciary was a named respondent in the state district courts below, but was dismissed by stipulation early in the proceedings.

CORPORATE DISCLOSURE STATEMENT

No corporations are plaintiff parties, and there are no parent companies or publicly held companies owning any corporation's stock.

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PETITION FOR WRIT OF CERTIORARI

Petitioner Kevin Singson respectfully petitions for a writ of certiorari to review the Judgment of the Utah Supreme Court in this case.

OPINIONS BELOW

The Utah Supreme Court did not render an opinion, but rather a summary denial of certiorari which is not reported but printed and attached to the appendix herein. The Utah Court of Appeals opinion is not reported but printed and attached to the appendix herein.

JURISDICTION

The judgment below was entered on June 22, 2018. The jurisdiction of this Court is invoked under 28 U.S.C § 1257(a) with original jurisdiction to substantiate the Constitution in proof of the negative for jurisdiction under U.S.C. § 1331 in a case in which a state of the United States was a party.

STATUTORY AND REGULATORY PROVISIONS INVOLVED

Utah Payment of Wages Act ("UPWA") U.C.A. § 34-28-2(1)(c)(i). The state declined to hear Petitioner's case on the merits and a jurisdictional question is raised. Thereby the relevant statutory provision giving original federal jurisdiction over unfair collection practices by state debt collectors —is this Court's own jurisdictional statute, 28 U.S.C. § 1257(a). Text of these provisions are attached as Appx. D *infra* 14a.

STATEMENT OF THE CASE

A. State courts cannot force a misjoined party like Singson to have to prove (or brief) the negative existence of other remedies at the pleading stage, when the state collected a wage claim from the wrong party and a plausible statement that "no other remedies exist" was pleaded.

The State lacked authority to collect a debt from a putative officer of a corporation. The reason the state had no statutory authority is because the word "employer"[1] as found in the Utah Payment of Wages Act ("UPWA") does not include putative officers of corpo-

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[1] See 29 U.S.C. § 203. The federal definition of "employer" imported to the UPWA, U.C.A. § 34-28-2 effective 5/9/17 has become apparent only recently. The State of Utah had undergone a history and small barrage of cases challenging its authority to collect from putative officers of Utah Corporations. The litigation ultimately culminated in a case before the Utah Supreme Court in *Heaps v. Nuriche, LLC,* 345 P.3d 655 (Utah 2015) (during the pendency of the underlying abstract of judgment in this case) where the Utah Supreme Court held that the Labor Commission had no authority under the UPWA to collect wage claims from putative owners or officers. Under the new definition of "employer" the FLSA federal interpretation set forth that directors or officers may be liable for wage claims *not* because of the "title" but only under the "economic realities test" and only where "control over financial affairs" with power to "hire and fire" exists. Audio of the Utah House Floor debate on H.B. 238 indicates (and makes clear) that the Labor Commission took part in the arguments on the floor of the state legislative body. (http://utahlegislature.granicus.com/MediaPlayer.php?clip_id=21132&meta_id=673751) (begin index 10:37).

rations who have no connection, control, or responsibility for the payment of wages to employees. When Singson sought to challenge the state's authority (under a typical state rubric in a petition for extraordinary relief) Utah law required that there were "no other plain, speedy, and adequate remedies." Utah Rules of Civil Procedure, Rule 65B; U.C.A. § 48-2e-805; U.C.A. § 48-2e-1005; Utah Constitution Article VIII, Section 3, Jurisdiction of the Supreme Court.

Singson consistently noted in his prayers for relief and on appeal that the state courts were the proper forum for bringing his unfair collection practices action. Utah law authorizes the state government to collect only "state debts"[2] The State of Utah, in the face of adverse authority in the *Heaps v. Nuriche, LLC,* 345 P.3d 655 (Utah 2015) holding that putative officers like Singson could not be held liable for wage claims in Utah, the state did in fact begin a process of "hiding of the ball" as to its lack of authority by arguing "other remedies" existed. *infra* (below).

During all the state court proceedings (throughout the trial court and appeals) the Utah AG maintained a pretext that because it did not know whether Singson had any connection, control, or responsibility for wages, that the state had every right to pursue Singson in 2014 as a putative officer of the corporation. However, a 2005 Utah Department of Workforce Services order gave the state constructive notice (to all divisions or departments) that Singson was not a proper party to recover for a 2006 wage claim. The discharge of Singson from the corporation in 2005 put Singson in a position with no authority to "act" or to

[2] U.C.A. § 63A-3-501 et. seq. Office of State Debt Collection

control anything at the corporation, let alone the payment of an employee's wages in 2006.

Singson argued at the Utah Court of Appeals that regardless of how the Utah Labor Commission ("LC") obtained a default order in 2006, the Office of State Debt Collection ("OSDC") and Attorney General ("AG") had knowledge in 2014, when it began its collections actions, that Singson had no actual notice of the wage claim until 2014. It became irrelevant whether or not the AG specifically knew that Singson had been dismissed from his position in 2005.

With knowledge that Singson's business relationships with the corporation had been severed in 2005, and lack of notice to Singson until 2014, the state created a situation that *no* other remedies were plain, speedy, and adequate.[3] The State's collection activities against a putative officer of a corporation who had no authority to "act" in relation to the subject employee, were indeed to collect a debt "of another" on behalf of a corporation's employee for a non-state-owned corporation.

Singson's causes of action in his petition to the state courts for extraordinary relief focused on 2014 forward, where the OSDC should not have collected on a 2006 default judgment known to be obtained against the wrong person. Without notice to Singson

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[3] Singson also filed a claim for restitution against the State of Utah, state Case No. 170900210, concurrently with a motion at the ULC under the Utah Administrative Procedures Act (UAPA) (which had been denied) along with motions to consolidate all cases in the Utah Court of Appeals with his petition for extraordinary relief including "54(b)" motions for certification, arguing that "when the procedure itself is the alleged abuse," Singson cannot be required to exhaust administrative remedies —which ultimately were all denied or dismissed on the basis of governmental immunity.

until 2014, the state used its convenient ignorance to expropriate payment of a wage claim and added thousands of dollars in penalties and attorney's fees.

B. The Utah Court of Appeals' characterization of Singson's briefing of the "no other plain, speedy and adequate remedies" issue as nothing more than a "passing reference" is not true, and more importantly, immaterial, to the state's jurisdiction to hear allegations of unfair debt collection practices committed by the state.

While there is no "civil" equivalent to the criminal "Post-conviction Determination of Factual Innocence" statute in Utah (see U.C.A. § 78B-9-401), Singson did raise a basis for recognition of his *innocence for a civil debt* by pointing to the Utah Rules of Professional Conduct,[4] Rules 3.3,.3.8 and 3.9, as they apply specifically to the AG as a prosecutor, along with persuasive federal case law holding that knowingly collecting on default judgments obtained against the wrong party, constitute an abusive collection practice.

Debt collectors (in this case the AG) hold a special duty and place of power over citizen consumers to make corrections to a misjoined party as soon as they become aware that the party was misjoined. Those debt collectors should not force the disadvantaged putative debtor to have to prove his innocence to the court or to the debt collector —when the debt collector already knows the debtor is innocent of the debt. This is the very nature of the federal secondary and persuasive authority as to debt collectors who know-

[4] Utah's Judicial Council Code of Judicial Administration, Chapter 13, Rules of Professional Conduct.

ingly collect on judgments obtained against the wrong party.

All of Singson's pleadings and motions in the State courts consistently noted that the federal law including the Fair Debt Collection Practices Act ("FDCPA") are unavailing to citizen/consumers who are subjected to governmental debt collection activities.[5]

In order to conclude that the State of Utah abused its discretion, in pursuing collections of a wage claim from a putative owner which the State knew was not an "employer," the trial court would need only find: "(1) that the [collection activity] was not actually among the options the law permitted under the circumstances, or (2) that the process by which the [state] reached its decision [to collect] was incorrect or inadequate." See *State v. Christiansen*, 365 P.3d

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[5] Federal law is unavailing. See U.S. Fair Debt Collection Practices Act ("FDCPA") 15 U.S. C § 1692 et.seq.; Debt Collection Improvement Act of 1996 ("DCIA") ("Debts Owed to the United States of America"); Utah Administrative Services Code,; Federal Claims Collection Act of 1966, Pub.L. 89-508 (31 U.S.C.§ 3701 et seq.); Debt Collection Act of 1982, Pub.L. 97-365 (5 U.S.C. § 5514; 31 U.S.C. 3701 et seq.); Deficit Reduction Act of 1984, Pub.L. 98-369; (26 U.S.C. § 6402; 31 U.S.C. § 3720A); Computer Matching and Privacy Protection Act of 1988, Pub.L. 100- 503 (5 U.S.C. § 552a); Chief Financial Officers Act of 1990, Pub.L. 101-576 (31 U.S.C. § 901 et seq.); Federal Credit Reform Act of 1990, Pub.L. 101-508 (2 U.S.C. § 661 et seq.); Federal Debt Collection Procedures Act of 1990, Pub.L. 101-647 (28 U.S.C. § 3001 et seq.); Debt Collection Improvement Act of 1996, Pub.L. 104-134 (5 U.S.C. § 5514; 31 U.S.C. § 3701 et seq.); Claims Resolution Act of 2010, Pub.L. 111-291 (Specifically, Title VIII, Subtitle A, Sec. 801/26 U.S.C. § 6402(f)); Digital Accountability and Transparency Act (DATA Act) of 2014, Pub. L. 113-101 (Specifically, Sec. 5. Debt Collection Improvement).

1189 (Utah 2015). See also *State v. Laycock*, 214 P.3d 104 (Utah 2009) ([A] "court [administrative agency, or officer exercising judicial functions] exceeds the authority prescribed by law or abuses its discretion.") citing *State v. Twitchell*, 832 P.2d 866, 868-69 (Utah Ct.App.1992).[6] Many years of relevant federal case law strongly support the "economic realities test" for determining the employer-employee relationship and thereby present compelling law that putative corporate members like Singson, who have no control over finances or supervising employees, do not meet the UPWA definition of "employer."

Under the circumstances of this case, the definition of the term "employer" plays an important part in the manifest injustice which occurred here. As now found in the UPWA, "employer" could in no way cover Singson under such a definition. e.g. *Watson v. Drummond Co., Inc.*, 436 F.3d 1310 (11th Cir. 2006) ("This Circuit has also used the economic reality test in determining whether a party is an employer ... we considered 'the total employment situation' and, in particular, 'how much control did the alleged employer exert on the employees; and, did the alleged employer have the power to hire, fire, or modify the employment condition of the employees.") emphasis added, quoting *Welch v. Laney*, 57 F.3d 1004 (11th Cir. 1995); other circuits may differ slightly, however all, including the majority, focus on the "acting" part of the FLSA definition: "[putative officers] may be held liable in their individual capacities for violations of the Act if they are acting in the interest of the agency and meet the definition

[6] Rule 65B as applied to "courts, administrative agencies, or officers" (like the LC and AG) exercising judicial functions. U.R.C.P. Rule 65B)(d)(2).

of an employer." *Darby v. Bratch*, 287 F.3d 673, 680-81 (8th Cir.2002) emphasis added; see also *Wheeler v. Hurdman*, 825 F.2d 257, 258 (10th Cir. 1987).

C. Collecting from a citizen known to be the wrong party is an abuse of discretion (abusive collection practice) when the Agencies and Attorneys General are held to account pursuant to extraordinary relief.

A state's ignorance of its own law is no excuse for violating the constitutional rights of its citizens. This case may ultimately instruct state courts in the United States as to whether they must follow their own basic rule that courts will "achieve the just, speedy, and inexpensive determination of every action." e.g. U.R.C.P. Rule 1. However, a decision here will not be mere advisory. While the facts and history of the case are complex, the simplicity of the case remains grounded in Singson's right to have an answer to the question of whether or not the state agency committed an abuse by pursuing collections of a wage claim against a putative officer of a Utah corporation when it had no statutory authority to do so. Despite Singson's broad net cast in the Utah court systems, the question remains jurisdictional, as a court has yet to hear the merits of whether collecting from the wrong party is an abuse of power.

If the state really did not commit abuse by pursuing and ultimately collecting from Singson, then in the interest of justice, a court should rule that the state committed no abuse. Instead the Utah court system refused to consider the merits of the case and has forced Singson to pursue extremely complex, long, and drawn out remedies which are

completely inadequate to compensate Singson for the very specific damages caused. The state not only collected the alleged debt, but also added exorbitant penalties, and attorney's fees.

Particularly in light of the Utah Rules of Professional Conduct, and more precisely Rule 3.8, the AG has the "responsibility of a *minister of justice* and not simply that of an advocate." *See* Judicial Council Rules of Judicial Administration ("JCRJA") Chpt. 13, Rules of Professional Conduct ("URPC"), Rule 3.8, Comment [1] emphasis added. Civil servants are more than mere commercial attorneys, the Petition in the trial court asked (under Utah statutory and case law) how an AG must behave in carrying out its duties as a Debt Collector. Singson is now asking this Court to draw similar comparisons of the AG's duties to those of a prosecutor in light of persuasive federal case law holding that debt collectors who collect default judgments obtained against the wrong party commit abuse.

This petition for certiorari concerns a very important public policy that collectors of alleged governmental debts must be held to their state's own standards and not be permitted undue leverage against citizens and consumers. There is persuasive federal law holding that actions in collecting debts obtained against a misjoined party would themselves be considered abusive collection practices by a federal

court.[7] Such mode of legal pursuit allows a debt collector far too much leverage in its favor with their sophisticated arsenal of legal resources compared to those of the consumer/citizen. The Utah AG is no exception. The AG's Office has at its disposal the largest law firm in the state to use to intimidate a consumer/citizen into just giving up as it has tried to do here. However, justice should require that abusive collection practices must have a right to be heard. An AG who continues in every judicial action

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[7] Fair Debt Collection Practices Act 15 US Code § 1692 et. seq.; *Bridge v. Ocwen Federal Bank, FSB*, 681 F.3d 355 (6th Cir. 2012) "(The Fair Debt Collection Practices Act was passed to protect consumers against both abusive and mistaken collection activity.") citing to legislative history of the FDCPA, H.R.Rep. No. 131, 95th Cong. 1st Sess. 8 ("This bill also protects people who do not owe money at all. In the collector's zeal ... collections effort[s] are often aimed at the wrong person either because of mistaken identity or mistaken facts. This bill will make collectors behave responsibly towards people with whom they deal ...") emphasis added. e.g. *McDermott v. Randall S. Miller & Associates, P.C.*, 835 F.Supp.2d 362 (E.D. Mich. 2011); *Rockridge Trust v. Wells Fargo, N.A.,* 985 F.Supp.2d 1110 (N.D. Cal. 2013); *Knighten v. Palisades Collections, LLC*, 721 F.Supp.2d 1261 (S.D. Fl. 2010);); *Bodur v. Palisades Collection, LLC*, 829 F.Supp.2d 246 (S.D.N.Y. 2011); *Sykes v. Mel Harris and Associates, LLC*, 285 F.R.D. 279 (S.D.N.Y 2012); *Dutton v. Wolhar*, 809 F.Supp. 1130 (D. Del. 1992); *Rawlinson v. Law Office of William M. Rudow, LLC*, 460 Fed.Appx. 254 (4th Cir. 2012) and can be found in other federal district court level cases using search terms such as "bona fide error defense" "mistaken identity" "wrong party" etc. In the 10th circuit, if the State wished to defend its collection actions against the wrong party as "not abusive" raising the defense that it had no knowledge of the DWS order or no knowledge that the UPWA definition of "employer" did not cover Singson under the circumstances, "subjective intent can often only be shown by inferential evidence." *Johnson v. Riddle*, 443 F.3d 723 (10th Cir. 2006) citing *Wingfield v. Massie*, 122 F.3d 1329, 1333 (10th Cir. 1997).

in every court to only thwart that question from being heard should be held to accountability.

While governmental collection agencies are not subject to FDCPA authority, state debt collectors should be subject to judicial review by the state courts through extraordinary relief. The citizen/consumer should not be over-burdened with "proving the negative" of "no other plain, speedy, and adequate remedies" to a level of absurdity. Adequate pleading of no other remedies (in a state debt collection situation) should be adequate to shift the burden to the state to prove other remedies.

REASONS FOR GRANTING THE PETITION

I. THE DECISION BELOW PRESENTS ISSUES OF EXCEPTIONAL IMPORTANCE

The United States Supreme Court has yet to issue a ruling on the merits, meets and bounds of state regulation for state and local government debt collectors (or for the collection agencies hired by the state). Government collection activities across the country go after millions of Americans over unpaid taxes, ancient parking tickets and even "$1 tolls."[8] None are regulated by the FDCPA; they are regulated only by the state collection agencies themselves.

In an industry already known for abuses, government debt collectors that do not have to work within the confines of consumer protection laws —

[8] Ellis, Blake, and Hicken, Melanie, CNN Money Investigation, The Secret World of Government Debt Collection, AT&T WanerMedia, (Feb. 2015) https://money.cnn.com/interactive/pf/debt-collector/government-agencies/index.html

create an open season for exorbitant penalties, attorneys fees, and more aggressive tactics.

II. THE UTAH SUPREME COURT RULING PRESENTS AN ISSUE THAT GOES DIRECTLY TO THE NATURE AND EXTENT OF THE U.S. SUPREME COURT'S JURISDICTION AS THE ONLY FEDERAL COURT THAT CAN REVIEW A STATE'S OWN ABUSIVE COLLECTION PRACTICES.

The "plain, speedy, and adequate" hurdle to meritorious claims for abusive practices performed by a state governmental debt collector —is a jurisdictional hurdle. Jurisdictional hurdles are not meant to be dismissed over fact analysis at the pleading stage. Jurisdictional hurdles are traversed through pleading statements, and cannot be a pleading stage burden of proof. Such an impassible jurisdictional hurdle could be meant only to prevent cases from ever being heard on the merits. A harmed citizen/consumer cannot be arbitrarily forced to prove the negative in order to be heard on the merits. To prove that something is impossible, is usually much harder than the opposite task. As long as a harmed plaintiff presents the necessary legal theory of the abusive practice, and presents a cognizable cause of action in a pleading, making plausible allegations that "no other plain, speedy and adequate remedies" are available, then the burden for showing that there are other remedies must fall back to the state.

Evidence of absence (or proof of the impossibility) cannot be wielded as an argument for ignorance. In this case, the state's head law enforcement agency, the state AG, alleges it did not know Singson was an

improper party. Under the circumstances, a plain statement in the pleading that there are no "plain, speedy, and adequate" remedies should have allowed Singson's case to be heard on the merits. As this case stands, unless the U.S. Supreme Court steps up to the plate as the only federal court with jurisdiction over abusive collection practices committed by a state, under this Court's jurisdictional powers to review law from a state's highest court, our government has condoned theft of money by an AG, with no redress to challenge such activities.

There are state standards which disallow this type of behavior (which would constitute an abusive collection practice by a state attorney general or agent thereof) but Utah has refused to hear the case on the merits or to offer any remedy for enforcement of standards for reasons which amount to a constitutional abuse of power. Correction from this Court is the only way in which the state court's error may be rectified.

CONCLUSION

In summary, this case creates an artificial division among the various states in the federal circuits as to the significance of the FDCPA when it comes to governmental debts. This Court has previously made clear that the FDCPA does not apply to governmental debts. Yet, if not for the federal courts ability to step in where a state unconstitutionally refuses to step in, how does an aggrieved party seek redress for abusive collection practices? If not through his own state court justice system, then where? This Court is the only federal court with original jurisdiction to answer these questions.

The present case presents the perfect scenario to address a state created division of opinion over the persuasive significance of the FDCPA as applied to a state's regulation of its own debt collections. The state, in this case Utah, has forced the jurisdictional question of other plain, speedy and adequate remedies to be answered only by a federal court. And, since a claim in the federal district court under the FDCPA is proscribed, the exercise of jurisdiction by this Court is proper. Once this Court answers in the positive, that all states do have a duty to police their own debt collections in a manner which cannot force aggrieved parties to have to prove the negative of all other possible remedies, other state courts will have law to follow. Such direction is necessary in this case which is more than a mere advisory opinion.

In the present case, the U.S. Supreme Court may hear appeals from a state supreme court over questions of law under the United States Constitution. This type of appeal is within this Court's sole discretion to be heard (the jurisdictional hurdle of plain, speedy adequate remedies in the special case of abuses by state debt collectors). This case is a call for direct exercise of this Court's supervisory power.

For the foregoing reasons, this Court should grant the Petition for Writ of Certiorari.

Respectfully submitted,

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APPENDIX A

The Order of the Court is stated below:
Dated: June 22, 2018 /s/ Thomas R. Lee
12:19:03 PM Associate Chief Justice

IN THE SUPREME COURT OF THE STATE OF UTAH
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Kevin Singson Petitioner, v. Utah Attorney General Respondent.	ORDER Supreme Court No. 20180264-SC Court of Appeals No. 20170220-CA Trial Court No. 160905810

----ooOoo----

This matter is before the Court upon a Petition for Writ of Certiorari, filed on April 6, 2018.

IT IS HEREBY ORDERED that the Petition for Writ of Certiorari is denied.

End of Order - Signature at the Top of the First Page

APPENDIX B

IN THE UTAH COURT OF APPEALS

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	)	
	)	ORDER
KEVIN SINGSON	)	
Appellant,	)	Case No. 20170220-CA
	)	
v.	)	
	)	
UTAH ATTORNEY	)	
GENERAL, ET AL,	)	
Appellees	)	

Before Judges Toomey, Pohlman, and Hagen.

Kevin Singson appeals the district court's order dismissing his petition for Extraordinary relief.

The district court dismissed Singson's petition for extraordinary relief after determining that Singson was not entitled to such relief because Singson had failed to avail himself of plain, adequate and speedy remedies. See Utah R. Civ. P. 65B(a) (allowing for the filing of a petition for extraordinary relief where no plain, adequate and speedy remedy exits). In so deciding, the district court did not reach the merits of the claims raised in Singson's petition. However, on appeal, Singson fails to adequately address the district court's reasoning for dismissing the petition.[1] Instead, Singson reargues the merits of his

[1] While Singson makes passing references in his opening brief as to whether he ever had a plain adequate and speedy remedy, such references were insufficient to carry his burden of challenging the basis of the district court's ruling.

petition. When an appellant fails to address the basis of the district court's ruling, we reject the challenge. See *iDrive Logistics LLC v. IntegraCore LLC*, 2017 UT App 228, ¶79; *Wing v. Still Standing Stable LLC*, 2016 UT App 229, ¶ 19, 387 P.3d 60S, cert. denied sub nom. *Wing v. Still Standing*, 390 P.3d 722 (Utah 2017); Golden Meadows Properties, LC v. Strand, 2010 UT App 257, ¶17, 241 P.3d 375. Accordingly, because Singson failed to adequately address the district court's determination that he was not entitled to extraordinary relief because he had failed to utilize other plain, adequate and speedy remedies, we reject his challenge to the district court's order.

IT IS HEREBY ORDERED that the order dismissing the petition for extraordinary relief is affirmed.

Dated this 8th day of March, 2018.
FOR THE COURT:
Jill M. Pohlman, Judge

* * * * *

APPENDIX C

THIRD JUDICIAL DISTRICT COURT
SALT LAKE COUNTY, STATE OF UTAH
WEST JORDAN DEPARTMENT

KEVIN SINGSON,	**MEMORANDUM**
Petitioner,	**DECISION**
vs.	**Case No. 160905810**
UTAH ATTORNEY GENERAL, et al.,	**Judge James D. Gardner**
Respondents.	

TH1S MATTER is before the Court on Petitioner Kevin Singson's Petition for Extraordinary Relief (petition). Following an initial review of the Petition, the Court raised concerns about a potential procedural bar to the Petition and invited the parties to brief the issue. The parties did so and the Court heard argument on January 6, 2017. At the hearing, Respondents raised an issue that was not addressed in the parties' briefing. The Court invited the parties to file supplemental briefs on the issue and that briefing is now complete.[1] Having carefully reviewed the record

[1] Singson objected to the Court considering Respondents' newly-raised argument. But the Court has discretion to consider matters that would otherwise be untimely. See *Pratt v. Nelson,* 2005 UT App 541, ¶12, 127 P.3d 1256 ("'[A]s a matter of judicial economy. where there is no prejudice (i.e., where the opposing party is able to respond) and where the issues could be raised simply by filing a motion to dismiss, the trial court has discretion to consider arguments raised for the first time in a reply

and considered the arguments of counsel, the Court now issues the following Memorandum Decision.

BACKGROUND

1. In March 2006, Gordon Brack filed a wage claim with the Utah Labor Commission (ULC) against GB Printing, Inc., Geoff Behrmann and Singson, alleging unpaid wages in the amount of $4,860.
2. In April 2006, the ULC entered an Order on Default and Order to Pay (ULC Order). In the ULC Order, the ULC stated that "[tlhe Respondent admitted the underlying claim by indicating $4,860.00 is owed to the Claimant." Based on this admission, the ULC ordered that "the Respondent, Geoff Behrmann dba Maasai Printing, and GB Printing, Inc. and Kevin Singson and Geoff Behrmann, pay the Claimant, Gordon Brack, $4,860,00 in gross wages."[2]
3, Singson claims he was never properly served with Brack's wage claim or the ULC Order and, thus, never had any notice of the ULC proceeding,[3]

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memorandum. " (quoting *Trillium USA, Inc. v. Board of County Comm'rs*, 2001 UT 101, ¶17 n. 3, 37 P.3d 1093)). Here. because Respondents could simply raise the issue in a subsequent motion to dismiss, the Court elected to consider the argument in the interests of judicial economy. Any potential prejudice to Singson has been ameliorated by the Court allowing him to respond to the argument in a supplemental brief.

[2] The ULC Order does not indicate which respondent admitted the liabiity or why the other respondents were seemingly bound by the admission,

[3] The Certificate of Mailing on the ULC Order reflects that the ULC Order was mailed to Singson at GB Printing, Inc.'s place of business; not to Singson's home address.

4, Further, Singson claims that he was not a proper party to Brack's wage claim in any event because he no longer worked for GS Printing, Inc, and, even when he did work there, he was simply a manager and not a director.[4]

5. In December 2013, the Utah Attorney General's Office on behalf of the Office of State Debt Collection filed an Abstract of Final Award in the Third District Court, Case No. 136947936 (the Judgment Action). The Honorable Paul Maughan was assigned to the Judgment Action.

6. The Judgment Information Statement filed in the Judgment Action identifies the ULC as the judgment creditor and GB Printing d/b/a Maasai Printing and Singson as the judgment debtors. The amount of judgment is listed as $12,960.

7. On January 10, 2014, the Office of State Debt Collection mailed a Notice of Entry of Judgment to Singson at his home address. Singson contends that this was the first time that he received any notice of the underlying wage claim.

8. The Office of State Debt Collection began garnishment proceedings in the Judgment Action and Singson objected. In an Order Re Garnishment entered on November 24, 2014, Judge Maughan overruled Singson's objection, concluding that "[t]he merits of the underlying agency order are not properly before the Court at this time" and that "Defendant

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[4] Singson alleges that he was terminated from GB Printing, Inc, in April 2005 and that he was listed as a director of GB Printing, Inc, without his knowledge or consent. Further, Singson avers that the ULC had constructive notice of his termination from GB Printing, Inc, based on an unemployment insurance benefits proceeding brought by Singson in April 2005,

has failed to assert a valid legal objection to the garnishment in this case."

9. On December 5, 2014, Singson filed a Motion for Relief from or to Set Aside Judgment (Motion to Set Aside). The Motion to Set Aside cited Rule 60(b) of the Utah Rules of Civil Procedure and was supported by a memorandum and an affidavit. Among the grounds for relief set forth in the Motion to Set Aside, Singson averred that the judgment was void because he "was given no notice of any of the proceedings by the [ULC]."

10. In a Minute Entry entered January 12,2015, Judge Maughan denied Singson's Motion to Set Aside. Judge Maughan concluded that "the Court does not have jurisdiction to review the validity or set aside the underlying judgment" and that Singson should have sought "judicial review of the Final Award being abstracted under the Administrative Procedures Act and more specifically under Utah Code Ann. § 63G-4-401.'[5]

11 . Singson filed a Request to Reconsider Motion for Relief from or to Set Aside Judgment, which Judge Maughan summarily denied in a Minute Entry entered February 17, 2015.

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[5] Utah Code Ann. § 63G-4 ·401 does provide a mechanism for seeking judicial review of a final agency action. However, a petition for judicial review under that section must be filed "within 30 days after the date that the order constituting the final agency action is issued or is considered to have been issued under Subsection 63G-4 ·302(3)(b)." Utah Code Ann. § 630-4 ·401(3)(a). Because Singsan alleges that he did not know about the underlying agency action until years after the ULC Order issued, he could not have sought judicial review in the manner suggested in the January 12, 2015 Minute Entry.

12. On February 12, 2015, Singson filed a Notice of Appeal from the denial of his Motion to Set Aside. The Utah Court of Appeals determined that Singson's appeal was untimely and, therefore, that it lacked jurisdiction to consider it. The appellate court dismissed the appeal in an Order of Summary Dismissal entered June 29, 2015, without considering the merits of the appeal.

13. On May 26, 2016, the Office of State Debt Collection filed a Satisfaction of Judgment, indicating that the judgment had been satisfied.

14. In June 2016, Singson filed a petition seeking extraordinary relief with the Utah Court of Appeals. In an Order entered June 16,2016, the appellate court noted that the petition "does not contain the required statement demonstrating why it was not filed in the district court." Accordingly, the appellate court dismissed the petition "without prejudice to the refilling [sic] of a petition fully compliant with rule 65B in the district court."

15. On June 28, 2016, Singson filed a Rule 65B(d) Petition for Extraordinary Relief, Rule 65A Temporary Relief, and Cross Claim Petitions for Dismissal and Return of Garnishments in the Judgment Action.

16. In a Minute Entry entered July 18,2016, Judge Maughan determined that Singson had "improperly filed his Petition in an abstract of judgment case" and that "the merits of the Petition, and the State's Opposition thereto, will not be addressed by this Court."

17. Unable to obtain the desired relief in the Judgment Action or with the appellate court, Singson initiated the instant action in September 2016.

18. In the Petition, Singson seeks to undo the ULC Order and recoup the money garnished in the Judgment Action. Specifically. the Petition's Prayer for

Relief asks the Court, inter alia, to "[o]ver[r]ule. reverse. and/or vacate the [ULC Order]" and to "[oJrder the State of Utah to return all wage and tax return garnishments taken from [Singson] currently in the amount of$13,000."

19. In the Petition, Singson named the following Respondents: the Utah Attorney General, the ULC, the Utah Department of Commerce, the Office of State Debt Collection, the Utah Judiciary and Judge Maughan.

20. Respondents moved to quash the summons issued by Singson and the Court held a hearing on November 16, 2016. At the hearing, Singson agreed to voluntarily dismiss his claims against the Utah Judiciary and Judge Maughan. With respect to the arguments related to the motions to quash filed by the other Respondents, the Court indicated that it was inclined to allow the Petition to proceed, at least to consider whether extraordinary relief was available in this instance, but noted that it would consider Respondents' argument that service need be effected by the Court. However, Respondents agreed to submit to the Court's jurisdiction without separate service by the Court. Accordingly, the Court denied the motions to quash as moot.

21. During the hearing on the motions to quash, the Court discussed with the parties the threshold issue of whether Singson had other plain, speedy and adequate remedies available. That issue has been thoroughly briefed and argued and is now ripe for decision.

STANDARD

Rule 65B(d) of the Utah Rules of Civil Procedure authorizes a court to provide extraordinary relief in the following situations:

> (A) where an inferior court, administrative agency, or officer exercising judicial functions has exceeded its jurisdiction or abused its discretion; (B) where an inferior court, administrative agency, corporation or person has failed to perform an act required by law as a duty of office, trust or station; (e) where an inferior court, administrative agency, corporation or person has refused the petitioner the use or enjoyment of a right or office to which the petitioner is entitled; or (D) where the Board of Pardons and Parole has exceeded its jurisdiction or failed to perform an act required by constitutional or statutory law.

Utah R. Civ. P. 65B(d)(2). But relief is available only "[w]here no other plain, speedy and adequate remedy is available[.]" Utah R. Civ. P. 65B(a); see also *State v. Rees*, 2005 UT 69, ¶ 16, 125 P.3d 874 (holding that a petitioner "is not entitled to secure extraordinary relief" where he has "an adequate remedy at law"). Thus, "[w]hen evaluating a petition for extraordinary relief, [courts] must first determine whether the petitioner had available to [him] a remedy other than the current petition." *Gordon v. Maughan*, 2009 UT App 25, ¶ 5, 204 P.3d 189.

DISCUSSION

Respondents argue that Singson had other remedies available to challenge the ULC Order and the resulting Judgment entered in the Judgment Action and that his failure to pursue those remedies operates as a bar to his Petition in this action. The Court agrees.

With respect to the ULC Order, Utah's Administrative Procedures Act (UAPA) provides a mechanism for a defaulted party to set aside a default order entered by an administrative agency. See Utah Code Ann. § 63G-4-209(a) ("A defaulted party may seek to have the agency set aside the default order, and any order in the adjudicative proceeding issued subsequent to the default order[.],,). UAPA utilizes the same procedures "outlined in the Utah Rules of Civil Procedure." ld. Thus, a party to an administrative proceeding who is subject to a default order may move to set aside the default order pursuant to Rule 60(b) of the Utah Rules of Civil Procedure by filing a motion to set aside with the presiding officer.

Here, the ULC Order is unquestionably a default order entered by an administrative agency and, therefore, is subject to challenge under section 630-4-209 of UAPA Singson could have challenged the ULC Order by filing a motion to set aside with the ULC's presiding officer. There, Singson could have argued that the ULC Order was void as to him because he never received proper notice of the proceeding. See *Judson v. Wheeler RV Las Vegas, L.L.C.*, 2012 VT 6,¶18, 270 P.3d 456 ("A judgment is void under rule 60(b)(4) 'if the court that rendered it lacked jurisdiction of the subject matter, or parties' or the judgment was entered without the notice required by due process."); see also *Republic Outdoor Advert., Le v. Utah*

Dep't of Transp., Div. II, 2011 UT App 198, ¶ 23, 258 P.3d 619 ("Notice to those directly affected by an administrative proceeding is not only required by statute ... but comports with a broader requirement of due process that 'affected parties must receive adequate notice[.J'"). And because Singson's arguments go directly to the validity of the ULC Order, he could have brought a motion to set aside at any time. See *Migliore v. Livingston Fin., LLC*, 2015 UT 9, ¶24,347 P.3d 394 (stating that "where the judgment is void ... the time limitations of [r]ule 60(b) have no application") (citations omitted); see olso *Wood v. Weenig*, 736 P.2d 1053, 1054 (Utah 1987) ("Where service is invalid, the time limitation of 60(b). as to when relief must be sought. has no application. ").

To the extent Singson proved successful in setting aside the ULC Order, but money had already been garnished in the Judgment Action, Singson would have available a claim for restitution. See Restatement (Third) of Restitution and Unjust Enrichment § 18 ("A transfer or taking of property, in compliance with or otherwise in consequence of a judgment that is subsequently reversed or avoided. gives the disadvantaged party a claim in restitution as necessary to avoid unjust enrichment."). Thus, Singson had an avenue available for complete relief. But Singson has never sought to set aside the ULC Order by filing an appropriate motion with the ULC. Singson's failure to exhaust his administrative remedies precludes him from seeking extraordinary relief in this action. See *Ziegler v. Mililren*, 583 P.2d 1175, 1176 (Utah 1978) (a petitioner must have "exhausted his administrative remedies, before seeking [extraordinary] relief from the courts"); *Utah County v. Alexanderson*, 2005 UT 67, ¶ 6, 123 P.3d 414 (holding that the op-

portunity to pursue an administrative remedy "constitutes a plain, speedy and adequate remedy").

In addition to the Court's determination that Singson had an available remedy under UAPA, the Court notes that- with respect to the Judgment entered in the Judgment Action— Rule 60(b) of the Utah Rules of Civil Procedure may provide an avenue for relief. That rule authorizes a court to "relieve a party ... from a judgment, order, or proceeding" upon anyone of six enumerated grotmds, including "fraud ... misrepresentation or other misconduct of an opposing party," where "the judgment is void," or "any other reason that justifies relief." Nothing in Rule 60(b) indicates that it is unavailable in an abstract of judgment proceeding. The rule's plain language applies without limitation to "a judgment, order, or proceeding"[6] And even in other situations where Rule 60(b) relief is typically not available, an exception is made where the judgment is void. *Cf Data Management Systems, Inc. v. EDP Corp.*, 709 P.2d 377 (Utah 1985) (holding that Rule 60(b) may be used to attack a foreign judgment recorded in this State, but only on "a showing of fraud or the lack of jurisdiction or due process in the rendering state" and only where the issue has not been "fully and fairly litigated in and rejected by our sister state").

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[6] Moreover, the rules of civil procedure expressly "govern the procedure in the courts of the state of Utah in all actions of a civil nature, whether cognizable at law or in equity, and in all statutory proceedings, except as governed by other rules promulgated by this court or statutes enacted by the Legislature and except as stated in Rule 81." Utah R. Civ. P. I (emphasis added). The Court is aware of no statute or rule that exempts abstract of judgment proceedings from application of the rules of civil procedure.

The Court is mindful that Singson sought relief under Rule 60(b) in the Judgment Action and that Judge Maughan denied his request to set aside the Judgment. In a Minute Entry entered January 12, 2015, Judge Maughan explained that the court's role in an abstract of judgment case is "limited." He then concluded-without citation to authority-that "the Court does not have jurisdiction to review the validity or set aside the underlying judgment." This Court is in no position to undo Judge Maughan's decision through an extraordinary writ, see Utah R. Civ. P. 65B(d)(2) (providing that "[aJppropriate relief may he granted" only as to "an inferior court") (emphasis added), or otherwise, see *State v. Bero*, 645 P.2d 44, 46 (Utah 1982) ("Generally one district judge cannot ovenule another district judge having identical authority and stature."). The Court notes only that whether Rule 60(b) provides an avenue for relief in this type of situation remains an open question.[7] And if Rule 60(b) does provide a remedy. then Singson's failure to timely appeal the denial of his Rule 60(b) motion in the Judgment Action would preclude him from seeking extraordinary relief in the instant action. See *Anderson v. Baker*, 296 P.2d 283, 286 (Utah 1956) ("If there was once an adequate remedy by an

[7] Singson attempts to "concede" in this action that Judge Maughan lacked jurisdiction to consider Singson's Rule 60(b) motion in the Judgment Action. The desired effect of this purported concession, of course, is to establish that Singson did not have an available remedy in the Judgment Action, thereby removing an obstacle to his current Petition. But aside from mischaracterizing a contention as a concession, Singson has failed to demonstrate that Judge Maughan truly lacked jurisdiction to consider Singson's Rule 60(b) motion. Singson cannot establish an element necessary to his position by mislabeling it a "concession."

appeal and the party permits it to lapse, he does so at his peril"); see also *Crist v. Mapleton City*, 497 P.2d 633, 634 (Utah 1972) ("By ignoring a plain, speedy. and adequate remedy at law, the plaintiffs placed themselves out of reach of the extraordinary writ []. A writ ... is not a substitute for and cannot be used in civil proceedings to serve the purpose of appeal, certiorari, or writ of error."). But because the Court has already determined that Singson had another adequate remedy under UAPA, the Court need not determine whether any other remedy existed.

Singson devotes much of his effort to arguing the merits of his Petition, emphasizing the perceived injustice committed by Respondents. But the Court is unable to reach the merits of the Petition where the Court detennines that Singson had available another "plain, speedy and adequate remedy." Utah R. Civ. P. 65B(a). No level of injustice can compensate for a party's failure to pursue other available remedies. See *Gordon*, 2009 UT App 25 at ¶ 5 (stating that "[w]hen evaluating a petition for extraordinary relief, [courts] mustfirsl detennine whether the petitioner had available to [him] a remedy other than the current petition" (emphasis added)). Accordingly, the Court expressly does not reach the underlying merits of the Petition. Nor does the Court offer an opinion as to whether any of the remedies discussed above remain available to Singson as that issue is not before the Court. See *Baird v. State,* 574 P.2d 713, 715 (Utah 1978) ("The courts are not a forum for hearing academic contentions or rendering advisory opinions."). It is sufficient for present purposes that Singson had another remedy available that he failed to pursue.

CONCLUSION

Based on the foregoing, the Court concludes that Singson had another "plain, speedy and adequate remedy" available and that his failure to pursue that remedy bars the instant action. Accordingly, the Petition is hereby DISMISSED.

DATED this 7th day of February, 2017.

BY THE COURT:
James D. Gardner
District Judge

APPENDIX D

28 U.S.C. § 1257(a)
"Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States."

28 U.S.C. § 1331
"The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States."

U.C.A. § 34-28-2 (1)(c)(i) [effective 5/9/2017]
"'Employer' means the same as that term is defined in 29 U.S.C. Sec. 203."

U.C.A. § 34-28-2(1)(c)(i) [superseded 5/9/2017]
"'Employer' includes every person, firm, partnership, association, corporation, receiver or other officer of a court of this state, and any agent or officer of any of the above-mentioned classes, employing any person in this state."

U.C.A. § 34-28-2 (1)(c) [effective 5/8/2018]
“(i) "Employer" means the same as that term is defined in 29 U.S.C. Sec. 203.
(ii) "Employer" does not include an individual who is not:
(A)an officer;
(B) a manager of a manager-managed limited liability company;
(C) a member of a member-managed limited liability company;
(D) a general partner of a limited partnership; or
(E) a partner of a partnership.