No. 19-1470

In the Supreme Court of the United States

SAMUEL AMBROSIO GURROLA,

Petitioner,

v.

WALGREEN COMPANY,

Respondent.

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

REPLY BRIEF OF PETITIONER

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RESTATEMENT PURSUANT TO RULE 29.6

Petitioner is an individual Pro Se litigant and has no listings of a corporate nature to file pursuant to Rule 29.6.

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INTRODUCTION

In *Husky International Electronics, Inc. v. Ritz*, 136 S.Ct. 1581 (2016), this Court held that in actual fraud, a necessary element is misrepresentation, thus anything that counts as fraud and is done with wrongful intent is "actual fraud"—Defendant sent a rogue, an imposter, posing as a Walgreen's District Manager whom Petitioner relied on to turn over vital information[1] who used an alias, insisted on complete secrecy and always called to make sure no one was around at 9:00 p.m. one hour after the Petitioner closed his store. Initially, a Ms. Angela Moore, from Walgreen's acquisition department, in Ohio called in the first days of September 2014 to make an offer of one million five hundred thousand dollars, with eight hundred thousand dollars as initial payment. Plaintiff complied with all the prerequisites, including making a partial delivery. Ms. Moore sent the supposed Walgreen District Manager in the first days of October after Petitioner supplied and gave the Walgreen Company the right to access the patient profiles as was the agreement, inventory records, narcotic physical audit counts taken by the impersonator himself. Plaintiff complied with all requirements and on or about October 8, 2020, Mr. Saenz, the impersonator, at 9:00 p.m. walked into the back of the pharmacy and shook Petitioner's hand, telling Petitioner that the Walgreen

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[1] The impersonator' name is Michael Saenz, though he went by the name of Mark he was never a district manager anywhere, a fact defendant said was true by their silence. Mr. Saenz is in fact a University Medical Center Pharmacy Supervisor there, 6600 N. Desert Blvd., El Paso Texas (915) 790-5700

Company will buy the Petitioner's store, or pharmacy. Two days later again at 9:00 p.m. Mr. Saenz walked in and confronted Petitioner with the Texas State Board of Pharmacy suspending Petitioner for 3 months, starting November, 2014. Petitioner replied that the suspension would not affect the pharmacy operations especially because Petitioner had already contracted a pharmacist, Mr. Jay Yasgour to be the interim pharmacist and anyhow the Walgreen Company already knew this as Mr. Yasgour was promised employment after the store closing, there would be no interruption in service[2]. The suspension notice was posted on May, 2014 which means that if the impersonator had copies of the suspension, then the Walgreen Company had the copies as well, then why would Walgreen make an offer it was not going to keep. The answer is that that is why they withdrew the offer, after they drew copies of the files and Petitioner's business plummeted 92 percent. Thus satisfying this Court's two elements of actual fraud. First, Mr. Saenz was never a district manager, certainly no one at the Walgreen Company ever heard of him when Ms. Jackson tried to serve him deposition papers there. Second, the Walgreen Company knew that the appellant was going to be suspended and the offer of a million five hundred thousand dollars was false. Walgreens used it as an opportunity to pick the bones, and withdraw the offer after they got what they wanted. The Walgreen Company did not count on that the Petitioner had hired two pharmacists to keep the operation solvent.

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[2] 2014-May 134785 SAMUEL A. GURROLA ABO (Agreed Board Order) No. B1300za

The Walgreen Company saw a chance to steal a million or more and it did just that, unjust enrichment. Contrary to Defendant's defense not only did it attempt to commit fraud, it committed actual fraud.

A. Respondent Claims It Did Not Commit Any Constitutional Violations.

The State says it did, under the Texas Law of Parties[3] complicity, wherein the Respondent was party to Amendment 4, amendment 5, and amendment 14 and the equal protection in those respective amendments. Gay Dodson, Texas employee, Executive Secretary and Chief Executive Officer for the Texas State Board of Pharmacy, and a driving force in aiding the Walgreen Company, already the planet's largest retail pharmacy chain have a monopoly in the disputed area. With only two pharmacies left in the disputed area, Petitioner's business went down 92 percent since the Walgreen Company took the 92 percent by actual fraud. Ms. Dodson used the stolen medical documents of one Hector Galindo to prosecute Petitioner immediately after his Return from suspension provided by La Clinica de Familia who has exclusionary dealings with Respondent giving monopoly power to the Walgreen Company. Separately Ms. Doson used the illegal search warrants obtained through the false testimony of Lorenzo Ureno to obtain video and audio surveillance to track Petitioner. Ms. Dodson openly boasted of her abilities in the use of search warrants in trying to intimidate Petitioner to close his pharmacy and give control Walgreen Company, the use of sound equipment installation obtained by

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[3] Texas law of parties, Penal Code Title 2, Chapter 7, Subchapter A. *Complicity.*

false testimony to intimidate Petitioner violateed free speech, the first amendment and because Ms. Dodson uses this play, she bans free speech and replaces free speech with fear and violates the Civil Rights Act of 1871 also known as the Ku Klux Klan Act of 1871, in which the Walgreen Company shares the spoils by shutting down plaintiff and obtaining all the business. It is an accomplice under the forum State law of parties. In doing so the Respondent's share of the market went from 10% in 2010 of the market in the disputed area to 92% in 2015 to 99.9% in 2017 to 100% in 2018. The Walgreen Company had monopoly fever during that time frame. It acquired the east coast Rite-Aid chain pharmacy group, and on the 31st of December 2014 it acquired the global pharmacy, industrial pharmaceutical UK and Switzerland based concern of Boots Alliance for the remaining 55% Walgreen did not already own. Respondent attempts to portray the Walgreen Company as a subsidiary of the Boots Alliance concern while it is actually the other way around.

B. Respondent Equivocally States Promissory Estoppel Was Not Argued Before the Fifth Circuit Court of Appeals.

Nothing could be further from the truth. Petitioner on a Court ordered meeting to which Respondent refused to attend, advised Respondent that plaintiff wanted to amend his claim of breach of contract to promissory estoppel, emphasis added, furthermore it is on the record, Record on Appeal (ROA) 65 to Record on Appeal (ROA) 72 on June 2nd, 2014. Because of Mr. Aldo Lopez refusal to confer as ordered, Petitioner filed a motion for entry of default because Mr. Aldo Lopez, of Ray, McChristian, and Jeans, refused to com-

ment on Promissory Estoppel, Record on Appeal (ROA) 74, on June 7, 2014. The Fifth Circuit Court had the record on their hands.

C. Respondent Ignores the Trauma Inflicted by Its Employees and Others During the Case Proceedings.

Respondent's employees, Mr. Castaneda, Richard, Judy and another lady pharmacist were going in person or in the case of Judy calling and threatening Petitioner. Dogs killed were left at the pharmacies doorsteps during the time of the appeal. When Petitioner asked for police help he was told that this was a case for INTERPOL and that they could not help. Petitioner was working under trauma, to the extent that he had to submit Court papers written by hand, Record on Appeal (ROA) 290 and 291 because the Petitioner's typewriters were being destroyed. Petitioner can provide records of this, obstruction.

D. District Court Did Not Allow Petitioner to Submit Evidence Within the Time Frame Ordered.

1. District Court ordered discovery to be completed by November 28, 2014.

2. District Court dismissed the case on November 15, 2014.

3. Plaintiff was confused as to why no one at the Walgreen Company knew who Mr. Saenz, was and process server was told the District Manager was someone else on November 16.

4. On or about November 17, 2014 Petitioner process server became aware Mr. Saenz was using an alias.

5. Mr. Saenz real name was Michael not Mark, and he was not a Walgreen District Manager

6. District Court did not allow the depositions of Mr. Alfred Chew, Mr. Jay Yasgour, Mr. Lorenzo Ureno, Mrs. Maria Alvarez or Mr. Saenz, the rogue District Manager.

7. District Court did not consider admissible evidence that Walgreen had 99.9% of the disputed corridor market it discounted *United States v. Grinnell Corp.*, 384 U.S. 563 (1966) where this Court held that:

> The existence of monopoly power may be inferred from the predominant share of the market, and where Grinnell and its affiliates have 87% of accredited central station business, there is no doubt they have monopoly power.

8. Coupled with 7 and the fact that the State of Texas, through Ms. Dodson unlawfully aided through amendments 1, 4, 5 and 14 of the Federal Constitution violations gain its predominant market share.

9. Coupled with item 7 and 8, the fact that Petitioner relied on Mr. Saenz being a Walgreens District Manager, which he never was, give rise to violation of Sherman Act Section 2: it is illegal to:

> "monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations"

When Ms. Dodson solicited the theft of medical documents of Hector Galindo, a patient of Clinica La

Familia, New Mexico, that brought in the other state, besides Texas.

10. When lines 7, 8, and 9 are coupled, that brings in relief under Section 7 of the Clayton Act:

> Any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws may sue therefor in any court of the United States in the district in which defendant resides or is found or has an agent, without respect to the amount in controversy and shall recover three fold the damages by him sustained. . . .

ARGUMENT

I. THE DISTRICT COURT INEXPLICABLY DISMISSED THE CASE BEFORE PETITIONER COULD ENTER HIS EVIDENCE.

The district Court inexplicably dismissed the case before Petitioner could prove actual fraud. In doing so, the District Court vindicated the willful acquisition by fraud of Petitioner's pharmacy, giving rise to unjust and unlawful enrichment.

A. The District Court's Decision Mistakenly Held that Fraud Is a Form of Superior Technology and Superior Business Acumen.

Fraud is a form of deceit, a form of theft, a form of unjust enrichment.

B. Monopolization.

The Respondent, being the largest pharmacy chain in the world, and controlling 99.9% of the disputed Texas-New Mexico corridor, obtained that power in the area, augmented its monopoly by deceitful means, using a rogue imposter posing as a Walgreen's District Manager to steal Petitioner's business to increase its monopoly, monopolization, emphasis added, started charging 800% above the competition, in part by enjoying the fruits of monopolization.

C. Conspiracy in Restraint of Trade.

The forum State, Texas's anti-monopoly laws are found in Texas Business and Commerce Code Chapter 15, Monopolies, Trusts and Conspiracies in Restraint of Trade, wherein Section 15.05(b): It is unlawful for any person to monopolize, attempt to monopolize, or conspire to monopolize any part of trade or commerce.

The rogue misrepresenting himself as the Walgreen Pharmacy District Manager, Michael Saenz, his real name, Ms. Gay Dodson who ordered medical records stolen for malicious prosecution. Ms. Angela Moore who called Petitioner to offer one and a half million dollars, knowing that once the customer lists, inventories, logistics needed to supply those customers were obtained she would take the offer off the table, once the Walgreen monopoly was established, all, without exception violated this code.

D. *United States v. Grinnell Corp.*, 384 U.S. 563 (1966).

The District Court erred in not considering *United States v. Grinnell* as the basis of Petitioner's complaint.

The Walgreen Company already had 99.9% of the market in the disputed Texas-New Mexico corridor, which Petitioner filed on May 17, 2014. This Court held that 87% of the relevant market share constitutes monopoly power.

E. Res Judicata.

Res Judicata, Fifth Circuit Court of Appeals, is manifest injustice. The fraud would be vindicated, the conspiracy actors would be justified for their acts. The people who can least afford it, the cotton field workers, the onion field workers working knee deep in mud in temperatures reaching 112 degrees Fahrenheit with not a cloud in the sky, the pecan or hard workers, they do this to bring food to the table can ill afford the price gouging of 800% by the Walgreen Company facilitated then by its monopolization of the corridor. Res Judicata would forever entomb that fraud, those acts.

CONCLUSION

The District Court erred in not upholding *United States v. Grinnell Corp.*, it erred in not allowing the subpoena of the Federal Trade Commission's records of its investigation of Walgreen's buy-out of the east coast retail pharmacy concern, Rite-Aid which would show the impetus, the vector's direction and strength, the monopoly fever the Walgreen Company had at the time. The District Court erred in not allowing a Temporary Protective Order to prevent Walgreen's employees from assailing Petitioner, from those actors leaving dead dogs at Petitioner's doorsteps, from those

facilitating the civil rights abuses of Ms. Gay Dodson's cohorts installing cameras and sound equipment and destroying Petitioner's abilities to represent himself by destroying his typewriters. It is wrong, this Court should Reverse the District Court's Decision, its unjust enrichment, Res Judicata is manifest injustice.

Respectfully submitted,

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