

19-6387

Supreme Court, U.S.
FILED

DEC 14 2017

OFFICE OF THE CLERK

Case No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

TRENT STEVEN GRIFFIN, SR., Petitioner-Appellant,

v.

AMERICAN ZURICH INSURANCE COMPANY; WALGREENS COMPANY; GREG WASSON, Chief Executive Officer; JIM REILLY, SR., Director Human Resources; CHESTER STEVENS, District Manager; JANUARI LEWIS, Pharmacy Supervisor; JERRY PADILLA, Pharmacy Supervisor; FELICIA FELTON, Store Manager; JERLINE WASHINGTON, Pharmacy Manager; VANESSA STRONG, Store Manager; MIRANDA MARTINEZ, Pharmacy Technician; DARAVANH KHANMANIVANH, Pharmacy Technician; TEXAS DEPARTMENT OF INSURANCE, Division of Workers' Compensation; RYANN BRANNAN, Texas Workers' Compensation Commissioner; ROD BORDELON, in his individual capacity; Texas Workers' Compensation Commissioner; GREG ABBOTT, Governor, State of Texas and in his individual capacity; RICK PERRY, in his individual capacity; KEN PAXTON, Attorney General; HENRY WHITMAN, JR., Commissioner C.P.S.; STEPHEN MCKENNA, Child Support Officer; MARY IVERSON, Authorized Agent; WELLS FARGO BANK, N.A.; ANDREW COLE, Designated Doctor; NICOLE BUSH, Market Scheduler; VALERIE RIVERA, Ombudsman; THOMAS HIGHT, Hearing Officer; TEXAS DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES, Respondents-Appellees.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT LOUISIANA
PETITION FOR WRIT OF CERTIORARI

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Due: October 14, 2019

Mailed: October 9, 2019

ORIGINAL

"[T]he Rules Enabling Act, is an act passed by Congress, that gave the Supreme Court the power to make rules of procedure and evidence for federal courts as long as they did not abridge, enlarge, or modify any substantive right."

When there is a total disregard to the Rules, and a lower court's not following the precedent of this Court, which may require this Court to use its supervisory power :

In *Florida v. Rodriguez*, 469 U.S. 1, 7 (1984), Justice Stevens, dissenting, stated " [] as the Court of last resort in the federal system, we have supervisory authority and therefore must occasionally perform a pure error-correcting function in federal litigation []."

In *Erickson v. Pardus*, and *Haines v. Kerner* this Court held that "[] a pro se litigant pleadings are to be liberally construed, . . . and a pro se complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers []."

In *Krupski v. Costa Crociere, S.P.A.*, this Court reversed and remanded a dismissal by the district court, clarifying Rule 15(c)(1)(C) as it pertained to identifying a party after the expiration of statute of limitation.

In *Bass v. Hoagland*, Fifth Circuit held that " a default judgment was void for lack of due process where defendant had no notice of the default judgment."

In *Celotex Corp. v. Catrett*, this Court held that " [a] party moving for summary judgment need only show that the opposing party lacks evidence sufficient to support its case[.]"

In *Adickes v. S.H. Kress & Co.*, this Court held that, "[a] private individual acts under 'color of law' if he or she is a willful participant in joint activity with the State or its agents and maybe liable under 42 U.S.C. 1983 for conspiring with State actors to deprive a citizen of their civil rights[.] "

QUESTIONS PRESENTED:

1. Rule 15(a)(3) provide the time a party must respond. Rule 55(a) authorizes the clerk to enter a default " when a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend. There is a circuit split on the issue of "plead" or "otherwise defend." Whether a party who fail to plead or otherwise defend within the time allowed by Rule, waive their rights on all claims.
2. Rule 56, provides the time a party may move for summary judgment. Whether a total disregard of the Rules and not following this Court's precedents, requires this Court to exercise its supervisory power to render judgment the lower court should have and/or to prevent enforcement of the order and mandate, and to compel its vacation by issuance of a writ of prohibition, writ of mandamus, writ of injunction or one or more of said writs.

**LIST OF PARTIES TO THE PROCEEDINGS
IN THE COURT BELOW**

The caption of the case in this court contains the names of all parties to the proceedings in the United States Court of Appeals for the Fifth Circuit. A petition for a writ of certiorari must contain a list of all parties to the proceeding in the court whose judgment is sought to be reviewed unless the names of all parties appear in the caption of the case. Supreme Court Rule 14.1(b). Also see Supreme Court Rule 29.6 for the required corporate disclosure statement.

IN THE SUPREME COURT OF THE UNITED STATES

TRENT STEVEN GRIFFIN, SR.

Petitioner - Appellant,

v.

AMERICAN ZURICH INSURANCE COMPANY; WALGREENS COMPANY; GREG WASSON, Chief Executive Officer; JIM REILLY, SR., Director Human Resources; CHESTER STEVENS, District Manager; JANUARI LEWIS, Pharmacy Supervisor; JERRY PADILLA, Pharmacy Supervisor; FELICIA FELTON, Store Manager; JERLINE WASHINGTON, Pharmacy Manager; VANESSA STRONG, Store Manager; MIRANDA MARTINEZ, Pharmacy Technician; DARAVANH KHANMANIVANH, Pharmacy Technician; TEXAS DEPARTMENT OF INSURANCE, Division of Workers' Compensation; RYANN BRANNAN, Texas Workers' Compensation Commissioner; ROD BORDELON, in his individual capacity; Texas Workers' Compensation Commissioner; GREG ABBOTT, Governor, State of Texas and in his individual capacity; RICK PERRY, in his individual capacity; KEN PAXTON, Attorney General; HENRY WHITMAN, JR., Commissioner C.P.S.; STEPHEN MCKENNA, Child Support Officer; MARY IVERSON, Authorized Agent; WELLS FARGO BANK, N.A.; ANDREW COLE, Designated Doctor; NICOLE BUSH, Market Scheduler; VALERIE RIVERA, Ombudsman; THOMAS HIGHT, Hearing Officer; TEXAS DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES,

Respondents - Appellees.

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

PETITION FOR A WRIT OF CERTIORARI

Trent Steven Griffin, Sr., the petitioner herein, respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit, entered in the above-entitled case on June 6, 2017:

OPINIONS BELOW

The June 6, 2017 (revised June 8, 2017) opinion of the court of appeals, whose judgment is herein sought to be reviewed, is reported at *Trent Steven Griffin, Sr. v. American Zurich Insurance Company, et al.*, ___ F.3d ___, ___ (5th Cir. 2017), and is reprinted in the separate Appendix A to this Petition, page 1 - 9. The prior opinion of the United States District Court for the Northern District of Texas, entered February 24, 2016, is reported at *Griffin v. American Zurich Insurance Company et al.*, 3:14-cv-02470, and is reprinted in the separate Appendix B to this Petition, page 10 - 55.

JURISDICTION

The judgment of the court of appeals was entered on June 6, 2017. A timely motion for rehearing was denied without opinion and filed July 18, 2017. On August 22, 2017, Justice Samuel Alito entered an order extending the time for the filing of this petition to and including December 15, 2017. The deputy clerk Clayton R. Higgins, pursuant Rule 14.5 returned petition for writ of certiorari, with date of correspondence letter August 13, 2019, and is not due until October 14, 2019, particularly because the due date falls on a Saturday, ergo Monday following the Saturday. The jurisdiction of this Court is invoked pursuant to 28 U.S.C.A. 1254(1).

CONSTITUTIONAL PROVISIONS

This case involves the Constitution of the United States, which provides as follows:

"First Amendment, section 1 : Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Fourth Amendment, section 1: SEE APPENDIX E

Fifth Amendment, section 1: SEE APPENDIX E

Seventh Amendment, section 1: SEE APPENDIX E

Thirteenth Amendment, section 1: SEE APPENDIX E

Fourteenth Amendment, section 1: SEE APPENDIX E"

STATE OF TEXAS CONSTITUTIONAL PROVISIONS:

This case involves the State of Texas Constitution, which provide as follows:

"Article XVI, section 50: SEE APPENDIX E

BILL OF RIGHTS, Article 1: SEE APPENDIX E"

FEDERAL REGULATIONS

This case involves **Code of Feral Regulations** which provide, in pertinent part as follows:

"12 C.F.R. 229.2(11) and 229.10: SEE APPENDIX E

31 C.F.R. 212 et seq.: SEE APPENDIX E

28 C.F.R. 42 et seq.: SEE APPENDIX E"

FEDERAL STATUTES

This case involves federal statutes, in pertinent part provide as follows:

"12 U.S.C. 4001(25) and 4002(a)(1)(B): SEE APPENDIX E

18 U.S.C.A. 1962(d): SEE APPENDIX E

28 U.S.C.A. 1367(a): SEE APPENDIX E

28 U.S.C.A. 1658(a): SEE APPENDIX E

28 U.S.C.A. 2201: SEE APPENDIX E

28 U.S.C.A. 2202: SEE APPENDIX E

29 U.S.C. 201 et seq.: SEE APPENDIX E

"Age Discrimination in Employment Act of 1967" 29 U.S.C.A. 621 et seq., more specific Prohibition of Age Discrimination, section 623 and 631: SEE APPENDIX E

29 U.S.C.A. 794: SEE APPENDIX E

29 U.S.C.S. 2601, chapter 28 Family and Medical Leave: SEE APPENDIX E

29 U.S.C.S. 2611 et seq.: SEE APPENDIX E

29 U.S.C.S. 2615 et seq.: SEE APPENDIX E

**38 U.S.C.A. 5301(a), Nonassignability and
exempt status of benefits: SEE APPENDIX E**

42 U.S.C.A. 1981, Equal rights under the law: SEE APPENDIX E

42 U.S.C.A. 1982: SEE APPENDIX E

42 U.S.C.A. 1983: SEE APPENDIX E

42 U.S.C.A. 1985(3): SEE APPENDIX E

42 U.S.C.A. 1986: SEE APPENDIX E

42 U.S.C.A. 12101 et seq.: SEE APPENDIX E

42 U.S.C.A. 12111 et seq.: SEE APPENDIX E

42 U.S.C.A. 12131 et seq.: SEE APENDIX E

42 U.S.C.A. 12202: SEE APPENDIX E

42 U.S.C.A. 2000d: SEE APPENDIX E

42 U.S.C.A. 2000d-7: SEE APPENDIX E

42 U.S.C.A. 2000e-2: SEE APPENDIX E

FEDERAL RULES

This case involves a total disregard of **Federal Rules of Civil Procedures, Appellate and of Evidence**, which provide as follows: SEE NAPPENDIX E

"Rule 4 et seq., 5 et seq., 6 et seq., 7 et seq., 8 et seq., 9 et seq., 10 et seq., 11 et seq., 12 et seq., 15 et seq., 16 et seq., 17 et seq., 18 et seq., 19 et seq., 20 et seq., 21 ey seq., 26 et seq., 37 et seq., 38 et seq., 55 et seq., 56 et seq., 57 et seq. 59 et seq., 60 et seq., 62 et seq., 62.1 et seq., 65 et seq., 83 et seq., 84 et seq.; 85 et seq., 86 et seq.; Appellate Rule 8 et seq., 25 et seq., 26 et seq., 27 et seq, 30 et seq., 31 et seq.; Rules of Evidence: Rule 201 et seq., 302 et seq., 401 et seq., 402 et seq., 602 et seq.".

STATE OF TEXAS STATUTES

This case involves **State of Texas Statutes**, which provide, in pertinent part, as follows: SEE APPENDIX E

STATE OF TEXAS RULES

This case involves **State of Texas Rules of Civil Procedure**, which provide, in pertinent part, as follows: SEE APPENDIX E

STATEMENT OF THE CASE

This is a constitutional and civil rights action under the Constitution and laws of the United States and State of Texas, brought by Trent S. Griffin, Sr., a pro se complainant or petitioner, an Army service-veteran, whom is a service-connected disabled, an African-American, Black, Negro male, over the age of 40 years with disabilities and impairments, sole conservator of his youngest daughter, the owner and title holder of his homestead residential and business property located at 724 Meandering Drive, Cedar Hill, Texas 75104, whom suffered and is suffering an ongoing and continuous violations of multiple constitutional, civil rights, statutory and work related injuries, filed this cause of action on July 10, 2014 pursuant, *inter alia*, 42 U.S.C.A. 1983, 28 U.S.C.A. 1331 and 1343, in *persona propria* against private and public actors and their entities for their actions and inactions, direct and indirect involvement in a conspiracy, with four (John Doe 1 - 4) unnamed respondents. *See Monroe v. Pape*, 365 U.S. 167 (1961); *Also see Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 90 S.Ct. 1598, 26 L. Ed. 2d 142 (1970). This Court has declared that qualified immunity protects "[a]ll but the plainly incompetent or those who knowingly violate the la[w]". *See Malley v. Briggs*, 475 U.S. 335, 341 (1986). Further, "[o]fficials are immune [unless] the law clearly proscribed the actions they too[k]". *See Anderson v. Creighton*, 483 U.S. 635, 639 (1987).

The public officials, employees or their agents were sued in their official and individual capacities pursuant 42 U.S.C. 1983 for, *inter alia*, intentional violation of First Amendment, Fourth Amendment, Fifth Amendment, Thirteenth Amendment, Fourteenth Amendment, 42 U.S.C. 1981, and other claims under Title II of the ADA, Title

VI of the CRA, Section 504 of the RA, 42 U.S.C. 1985, 42 U.S.C. 1986, and 42 U.S.C. 1988. *See Monell v. New York City Dept. of Social Services*, 436 U.S. 658, 690, n.55 (1978) (stating that official capacity suits "generally represent only another way of pleading an action against an entity of which an officer is an agent.").

On July 21, 2014, a summons was returned executed as to respondent - appellee American Zurich Insurance Company. Pursuant Fed. R. Civ. P. 4(h)(1)(A), in the manner prescribed by Rule 4(e)(1); Fed. R. Civ. P. 4(e)(1), states " following state law for serving a summons in an action brought in courts of general jurisdiction in the state where the district court is located or where service is made. . .". *See Riviera Trading Corp. v. Oakley, Inc.*, 944 F. Supp. 1150, 1155 (S.D.N.Y. 1996) (service on corporation under law of state in which service effected was proper).; *also see Wright v. City of Las Vegas*, 395 F. Supp. 2d 789, 798 (S.D. Iowa 2005) (annotation omitted). Under the due process analysis, personal jurisdiction exists if the respondent - appellee's contacts with Texas give rise to either specific jurisdiction or general jurisdiction. *Helicopteros Nacionales de Colombia v. Hall*, 466 U.S. 408, 414 nn.8, 9, 416-418, 104 S. Ct. 1868, 80 L. Ed. 2d 404 (1984). In this case, the litigation arose out of or related to the respondent - appellee's American Zurich contacts with Texas, specific jurisdiction . *See Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472-474, 105 S. Ct. 2174, 85 L. Ed. 2d 528 (1985).

On September 24, 2014, an amended complaint was filed, and summons issued as to the newly named respondents, replacing the John Doe (1 - 4). Petitioner had each newly named respondents served with the amended complaint and summons under

the provisions of Rule 4.[Fed. R. Civ. P. 4 et seq.]. The four newly named Respondents, "State respondents", Valerie Rivera, Andrew Cole, Thomas Hight and "Walgreens Defendant Employee", Nicole Bush, failed to plead or otherwise defend against the suit. Fed. R. Civ. P. 12(a)(1)(A)(i); Fed. R. Civ. P. 55(a); *City of New York v. Mickalis Pawn Shop, LLC* 645 F.3d 114, 129-30 (2d Cir. 2011); *United States v. \$23,000 in U.S. Currency*, 356 F.3d 157, 163 (1st Cir. 2004).

On September 29, 2014, a request for entry of default, then default judgment for liquidated damages against American Zurich Insurance Company, "Zurich" for its failure to plead or otherwise defend against the suit. Fed. R. Civ. P. 55(a); Fed. R. Civ. P. 55(b) (1); *Franchise Holding II, LLC v. Huntington Rests. Grp., Inc.*, 375 F.3d 922, 927 (9th Cir. 2004);

On October 2, 2014, "State respondents" and "Walgreens respondents" in response to an amended complaint, filed a motions to strike, as each failed to plead or otherwise defend against an amended complaint and summons served within the time limits of Rule 4(m). Respondents, Valerie Rivera, Andrew Cole, Thomas Hight and Nicole Bush failed to plead or otherwise defend within 21-day time limit of Rule 12(a)(1)(A)(i). Fed. R. Civ. P. 4 et seq.; Fed. R. Civ. P. 12(a)(1)(A)(i); *Franchise Holding II, LLC v. Huntington Rests. Grp., Inc.*, 375 F.3d 922, 927 (9th Cir. 2004).

On October 6, 2014, American Zurich Insurance Company, respondent, filed a motion to set aside default, without leave of court or consent from the petitioner. Even so, the attorney's were located in Austin, Texas, outside of the local counsel

requirements for the Northern District of Texas, Dallas. Local Rule 83.10(a). As a consequence, the district court dismissed the case against respondent "Zurich" on the grounds of *res judicata*.

Further, respondent "Zurich" was sued in an action with State respondents. Ergo, *res judicata* is inapplicable on the basis the State court's judgment was a *Judicial Review*, that required exhaustion of administrative procedures. See *Patsy v. Board of Regents of Florida*, 467 U.S. 486 (1982); Also see *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 90 S.Ct. 1598, 26 L. Ed. 2d 142 (1970); *Exxon Mobile Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 293 - 294, 125 S.Ct. 1517, 161 L.Ed.2d 454 (2005) (because federal suit was filed "well before any judgment in State court, *Rooker-Feldman* did not prevent the District Court from exercising jurisdiction when Exxon Mobile filed the federal action, and it did not emerge to vanquish jurisdiction after Exxon Mobile prevailed in Delaware courts."); *Key W. Life Ins. Co. v. Texas State Bd. of Ins.*, 163 Tex. 11, 350 S.W.2d 839, 847 (1961); *Am. Diver. Mut. Life v. Tex. St. Bd. of Ins.*, 631 S.W.2d 805, 809 (Tex. App.--- Austin 1982, ref n.r.e.) (de novo review permitted for quasi-judicial actions of agency, but not for legislative actions of agency); See *Tex. Gov't Code* 2001.171 et seq.; *Howell v. Texas Workers' Compensation Comm'n*, 143 S.W.3d 416 (Tex. App.--- Austin 2004, pet. denied)

Ergo, respondent "Zurich" willfully chose a strategy when it intentionally or the willful act to not plead or otherwise defend against the suit under specific jurisdiction, which prejudiced the petitioner. See *Strackbein v. Prewitt*, 671 S.W.2d 37, 38 (Tex. 1984);

On October 17, 2014, it sought to file a motion to dismiss 12(b)(1) and (6), that was untimely and not within 14-day time limit to file a response as provided by Rule 15(a)(3) as it pertained to September 24, 2014 amended complaint. Fed. R. Civ. P. 15(a)(3). Alternatively, it did not file within the 21-day time limit of Rule 12(a)(1)(A)(i). Ergo, the motion was not legally before the district court. Fed. R. Civ. P. 12(a)(1)(A)(i).

On October 30, 2014, petitioner Griffin sought a second default against respondent "Zurich" on the basis the motion 12(b)(1) and (6) was untimely, and failed to seek leave of court to file a responsive pleading. Fed. R. Civ. P. 12(a)(1)(A)(i); Fed. R. Civ. P. 15(a)(3); Fed. R. Civ. P. 55(a).

On November 20, 2014, another amended complaint was filed in response to an order by the district court, to respond to respondent "Zurich's" untimely motion to dismiss, wherein a request for default was requested for its untimeliness.

On December 5, 2014, petitioner Griffin filed a motion for summary judgment brief and memorandum in support, notice and appendix in support against respondent Walgreens Company. This Court held, " [t]hat a party moving for summary judgment need only show that the opposing party lacks evidence sufficient to support its case. *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986).

On December 9, 2014, "State respondents" filed a motion to Strike outside the time limits of Rule 15(a)(3) and in violation of Rule 12(h). Rule 12(f) does not provide for striking an entire pleading, particularly when Rule 15 allows for an amendment, when justice so requires. Fed. R. Civ. P. 12 et seq.; Fed. R. Civ. P. 15 et seq..

On December 23, 2014, Respondent "Walgreens Company" filed for an expedited motion to object and extend time to repond to petitioner's summary judgment motion, or in the alternatively, its brief response to the motion, stating " filing was premature and requests that the Court defer consideration of the motion to a later date dependent on its motion to dismiss and strike, and after parties have had adequate time for discovery". Ergo, respondent Walgreens Company, On October 15, 2014, filed a motion to stay discovery in avoidance or delay of petitioner's rights provided by law. As a consequence, the motion was denied. This goes against this Court's precedent. See Fed. R. Civ. P. 56 et seq.; *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986); *Scott v. Harris*, 550 U.S. 372, 380 (2007).

On January 28, 2015, petitioner filed a second motion for summary judgment, brief/memoranda, appendix in support, affidavit and notice to respondents "State respondents" and "Wells Fargo Bank, N.A." whom did not have to file a response, and it was denied for the same reasons provided above. On October 14, and 16, 2014, "State respondents" and "Wells Fargo Bank, N.A." both request to stay discovery, respectively. Their intentional joint actions clearly violated clearly established law. *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 90 S.Ct. 1598, 26 L. Ed. 2d 142 (1970); See Fed. R. Civ. P. 56(a); *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986); *Scott v. Harris*, 550 U.S. 372, 380 (2007); Also see *Malley v. Briggs*, 475 U.S. 335, 341 (1086).

On January 29, 2015, petitioner requested an expedited motion for preliminary injunction against respondent "State respondents" and "Wells Fargo Bank, N.A." to

enjoin the defedants, their agents and representatives to forstall future violations. *See United States v. Oregon Med. Soc'y*, 343 U.S. 326, 333m 72 S.Ct. 690, 96 L.Ed 978 (1952) (function of injunctive relief is to forstal future violations); *also see United States v. W.T. Grant Co.*, 345 U.S. 629, 633 73 S.Ct. 894, 97 L.Ed. 1303 (1953) (party moving for injunctive relief need not show past wrongs). As a consequence, the motion was denied as moot and there are more violations of constitutional, civil and statutory rights that were extrinsic, and in the furtherance of a conspiracy.

On February 3, 2015, petitioner attempted to confer with respondents attorneys by phone, then by letter in an effort to conference pursuant the provisions of 26(f) and to settle. As a consequence, respondent Wells Fargo Bank, N.A. sought inappropriate sanctions, ergo increasing judicial economy, petitioner's cost, delay and prejudiced him. Fed. R. Civ. P. 11 et seq..

On March 12, 2015, petitioner requested the district court to compel conference. Fed. R. Civ. P. 26(f)(1); *see Clinton v. Jones*, 520 U.S. 681, 707 - 708 (U.S. 1997) ("delaying trial would increas the danger of prejudice, resulting from the loss of evidence, including the inability of a witness to recall specific facts, or the possible death of a party").

On February 6, 2015, petitioner requested default against respondent Valeria Rivera, whom has intentionally evaded the suit with the assistance of the State agents or employees. Fed. R. Civ. P. 55(a); *also see* Fed. R. Civ. P. 4 et seq.; Fed. R. Civ. P. 12(a)(1)(A)(i); *Franchise Holding II, LLC v. Huntington Rests. Grp., Inc.*, 375 F.3d 922, 927 (9th Cir.

2004).

On April 24, 2015, petitioner filed an amended complaint *as a matter of course* under the provisions of 15(a)(1)(B), an order by (Ret.) Honorable Jorge Solis, and an order to extend time to file.

Petitioner, Trent S. Griffin, Sr., in his amended complaint 15(a)(1)(B), sought equitable estoppel, continuing violation doctrine, declaratory and injunctive relief, equitable tolling, compensatory and punitive damages, pecuniary and nonpecuniary relief, back pay and front pay.

Petitioner brought this cause of action under the Constitutions and laws of the United States and State of Texas pursuant 42 U.S.C.A. 1983 for intentional discrimination in violation of: First Amendment relief for "right to travel", "freedom of speech in retaliation", "invasion of privacy", "freedom of speech"; Fourth Amendment relief for "search and seizure" and "right to privacy"; Fifth Amendment relief for "due process" and "right to privacy"; Thirteenth Amendment relief for "free from badges of slavery", "involuntary servitude" and "right to travel"; Fourteenth Amendment relief for "due process" and "equal protection" of the law.

Further, relief was sought under the provisions of:

42 U.S.C. 1981 for "make and enforce contract" [under an Act of Congress, a four-year statute of limitation for Federal civil actions was enacted December 1, 1990, 28 U.S.C.A. 1658(a)]; "full and equal benefits of the laws", "full and equal benefits of all proceedings", "like punishment, pains, penalties, taxes, licenses and exactions of every

kind" and "protection against impairment", impairment by nongovernmental by discrimination, disparate treatment, harassment in hostile work environment, tangible employment actions and no tangible employment actions, and retaliation.

38 U.S.C.A. 5301(a) for "garnishment of protective benefits", "exempt of creditors claim", "exempt status to attachment, levy, or seizure", and "nonassignability of benefits".

State of Texas Constitution and laws for deprivation of rights, privileges, immunities, life, liberty and property enforceable pursuant Article I: Bill of Rights for intentional discrimination in violation of and for:

Section 3: Equal Rights; Section 3a: Equality Under the Law; Section 8: Freedom of Speech; Section 9: Search and Seizure; Section 19: Deprivation of Life, Liberty, ETC; Due Course of Law;

United States Constitution and Laws for deprivation of rights, privileges, immunities, life, liberty and property enforceable pursuant:

42 U.S.C.A. 1985(3) for intentional discrimination of and for civil conspiracy, directly or indirectly of the equal protection of the laws; directly or indirectly of the equal privileges under the laws; any act of furtherance of the object of such conspiracy, whereby another is injured in his person or property, deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators; Thirteenth Amendment for

"civil conspiracy" and "right to travel".

42 U.S.C.A. 1986 for intentional discrimination in violation of and for "prevention of civil conspiracy."

42 U.S.C.A. 1981a for intentional discrimination of and for unlawful intentional discrimination, no an employment practice of disparate impact; deprivation of employment privileges by acts against a qualified individual on the basis of his race, color, sex, or national origin by limiting, segregating or classifying in a way that adversely affects opportunities or status because of his disabilities; no reasonable accommodations; and no good faith effort enforceable under the provisions of 42 U.S.C.A. 12111 et. seq.

42 U.S.C.A. 1988 for vindication of civil rights and attorney's fees.

Title I of the ADA of 1990 for retaliation, failure to accommodate, failure to afford a qualified individual with a disability a opportunity to participate in or benefit from the aid, benefit or services that is not equal to that afforded others; no reasonable accommodations in modifying work schedules, acquisitioning or modifying equipment or devices, reassignment to vacant position, or other similar accommodations for an individual with disabilities enforceable under the provisions of 42 U.S.C.A. 12101 et seq., 42 U.S.C.A. 12111, and 42 U.S.C.A. 2000e-5.

Title II of the ADA of 1990 for failure to afford a qualified individual with a disability an opportunity to participate in or benefit from gthe services, programs or activities of a public entity. Otherwise, limit a qualified individual with a disability in the enjoyment

of any right, privilege, advantage or opportunity enjoyed by others receiving the aid, benefit or service enforceable under the provisions of 42 U.S.C.A. 12101 et seq., 42 U.S.C.A. 12131 et seq. and 42 U.S.C.A. 12202.

Section 504 of the RA of 1973 for failure to provide a qualified individual with a disability from participation in or be denied the benefits of services, programs, or activities of a public entity, or be subjected to discrimination by any such entity; Otherwise, limit a qualified individual with a disability in the enjoyment of any right, privilege, advantage or opportunity enjoyed by others receiving the aid, benefit or service enforceable under the provisions of 29 U.S.C. 794, 42 U.S.C.A. 12101 et seq., 42 U.S.C.A. 12131 et seq., 42 U.S.C.A. 12202; Title VI of the CRA of 1964 (42 U.S.C. 2000d - 2000d-7); 28 C.F.R. 42; 42 U.S.C.A. 603.

Title VI of the CRA of 1964 for intentional discrimination on the grounds of race, color or national origin by programs or activities receiving receiving Federal financial assistance, such as Department of Family and Protective Services, Texas Department of Insurance-Division of Workers' Compensation and Office of the Attorney General.

Age Discrimination in Employment Act of 1967 for intentional discrimination of an employee above age 40; retaliation of employee above age 40; denied promotion of employee above age 40; employee above age 40 status adversely affected by denying a position that was vacant he was qualified to perform; inclusive provisions of the Fair Standard Labor Act (FSLA) enforceable under the provision of 29 U.S.C. 201 et seq.; and 29 U.S.C. 621 et seq..

Family and Medical Leave Act of 1993 for intentional discrimination in restraining to grant a request, denied a lateral promotion from Pharmacy manager's position of a non-24 hour store to Pharmacy managers position of a 24-hour store, transferred to a staff position (demotion), and other reasons enforceable under the provisions of 29 U.S.C. 2615.

Title VII of the CRA of 1964 for intentional discrimination on the basis of race, color sex and national origin; retaliation; harassment "hostile environment"; intentional infliction of emotional distress adversely affecting status of employee; deprivation of employment opportunities; deprivation of employment compensation enforceable under the provisions of 42 U.S.C. 2000e et seq.

RICO Act under the provisions of 18 U.S.C. 1962.

Other Federal and State related Torts which includes:

Money Had & Received; Conversion, Deceptive Trade Practice Act; Breach of Fiduciary Duty; Common-Law Fraud; Statutory Fraud; Late Payment of Claims; Breach of Duty and Good Faith and Fair Dealing; Intentional Infliction of Emotional Distress; Theft of Property; Conspiracy; Invasion of Privacy; Intentional Infliction Exposure of Employee to Hazardous Conditions in Work Place; Conduct for injury or Death of Employee; Conduct for Workers' Compensation Benefits for Injury Resulting from Aggravation, or Acceleration of or Flare-up of, or Combination with Preexisting Condition; Defamation; Conduct for Injury or Death Resulting from Negligent Hiring, Supervising, or Retention of Employee; Conduct for Loss of Parental Consortium; Breach of Contract Arising from

a Bank's Failure to Act in Good Faith; wrongful foreclosure; severe mental anguish.

On April 27, 2015, petitioner asked the Court to Withdraw and **Replace** the pleading that had the incorrect numbering on file. On April 28, 2015, the Court Granted the motion and ordered the Clerk of Court to file the corrected amended complaint on same day to prevent confusion. According to Merriam -Webster Dictionary, the term "**replace**" meaning is to restore to a former place or position. Though the amended complaint was ordered to be filed on April 28, 2015, the correct filing date is April 24, 2015, ergo each defendant filed untimely motions to dismiss in violation of the Court order, Rule 15(a)(3) and 5(b)(2)(C). Respondent Walgreens Company and Employees or agents, is not a minor or incompetent person. Respondents are not in the military *See* Fed. R. Civ. P. 15(a)(3); Fed. R. Civ. P. 5(b)(2)(C); Fed. R. Civ. P. 55(a) and (b)(2); 50 U.S.C. app. 521(b)(1); *also see U.S. v. Topeka Livestock Auction, Inc.*, D.C. Ind. 1975, 392 F. Supp. 944, 950 citing *Wright & Miller; Franchise Holding II, LLC v. Huntington Rests. Grp., Inc.*, 375 F.3d 922, 927 (9th Cir. 2004).

Moreover, dismissal is appropriate only if, "[f]actual allegations are not enough to raise a right to relief above the speculative level, on the assumption that all the allegations in the complaint are true, even if doubtful in fact." *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, 127 S. Ct. 1955, 1965, 167, L. Ed. 2d 929 (2007). Pursuant and in light of *Federal Rule of Civil Procedures* 8(a)(2), "[s]pecific facts are not necessary; the factual allegations need only give the defendant fair notice of what the claim is and grounds upon which it rest. *See Erickson v. Pardus*, 551 U.S. 89, 93 127 S.Ct.

2197, 2200, 167 L. Ed. 2d 1081 (2007) (per curiam) (quoting *Twombly*, 550 U.S. at 555, 127 S. Ct. at 1964). More recently, in *Ashcroft v. Iqbal*, the Supreme Court expounded upon *Twombly* standard, reasoning that "[t]o survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, 'state a claim to relief that is plausible on its face.'" See *Ashcroft v. Iqbal*, ---U.S.---, 129 S. Ct. 1937, 1949, 173 L. Ed. 2d 868 (2009) (quoting *Twombly*, 550 U.S. at 570, 127 S. Ct. at 1974). [A] claim has facial plausibility when the petitioner pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. *Ashcroft*, ---U.S.---, 129 S. Ct. at 1950 [quoting Fed. R. Civ. P. 8(a)(2)]. When considering a 12(b)(6) motion to dismiss, the Court's task is limited to deciding whether the petitioner is entitled to offer evidence in support of his or her claims, not whether the petitioner will eventually prevail. *Id.* at 563, 1969 n.8 (citing *Scheuer v. Rhodes*, 416 U.S. 232, 236, 94 S. Ct. 1683, 40 L. Ed. 2d 90, (1974)).

On May 11, 2015, Wells Fargo Bank, N.A. filed an answer that failed to plead any affirmative defenses under Rule 8(c) or motion 12(b). On May 19, 2015, it filed a motion to dismiss without leave of court that violated the Court's order, Rule 12(b) and Rule 15(a)(3). Then, in attempt to correct, filed a motion for leave to file Second Amended Answer. Fed. R. Civ. P. 8(c); Fed. R. Civ. P. 12(b);

On October 27, 2015, petitioner filed a Motion for Leave to Set Aside Foreclosure Sale that was not ruled on by the trial court. As a consequence, petitioner has been homeless with child because of an illegal foreclosure, extrinsic fraud, theft of property

and/or other reasons as it pertained to a homestead residential and business property. See Tex. Prop. Code, Chapter 41 et seq.; Tex. Const. Art. XVI sect. 50; *Fairfield Financial Grp. v. Synnott*, 300 S.W.3d 316, 320; *Chase Manhattan Mortg. Corp. v. Cook*, 141 S.W.3d 709, 713-714 (Tex. App.--- Eastland 2004, no pet.) (when underlying note was extinguished by payment, loan that purported to be refinancing of note could not be secured by deed of trust lien against a homestead); also see *Wilcox v. Marriott*, 103 S.W.3d 469, 473 (Tex. App.---San Antonio 2003, pet. denied) (same); *Cadle Co. v. Harvey*, 46 S.W.3d 282, 285 (Tex. App.---Fort Worth 2001, pet. denied)(same); also see *Floreys v. Estate of McConnell*, 212 S.W.3d 439, 445-447 (Tex. App.---Austin 2006, pet. denied) (lien affixed to homestead to secure payment of attorney's fees in criminal action was void because not within any constitutional exception; lien claimant failed to establish that debtor had abandoned homestead prior to fixing of lien on property). More importantly, the only way for petitioner to lose his homestead is by abandonment, voluntary conveyance or death, wherein neither occurred. *Patterson v. First Nat'l Bank*, 921 S.W.2d 240, 246 (Tex. App.---Houston [14th Dist.] 1996, no writ).

On February 24, 2016, district court dismissed all petitioner's claims against all respondents. A timely Notice of Appeal was perfected after a request for new trial pursuant Rule 59. On April 25, 2016, district court denied each Motion for New Trial on the basis there is no legitimate basis for a new trial or the reopening of the case.

On May 24, 2016, a Notice of Appeal was filed as to a Final Judgment to the Fifth Circuit. On Appeal, On July 22, 2016, a motion for injunction was served and filed in the

Fifth Circuit that was denied without opinion. As a consequence to the denial, the petitioner has suffered irreparable injury. Appellant filed his initial brief on September 12, 2016. The appellees filed their briefs on or about November 10, 2016.

On December 9, 2016, Appellant/Petitioner filed a Motion to Take Judicial Notice with a Reply Brief Attached to the Motion. Ergo, the Fifth Circuit did not take action as it pertained to the Reply Brief. The requested relief was denied without opinion. As a consequence, State continues to deny petitioner rights, American Zurich Insurance Company is defending against the Judicial Review actively in State Court, that refuses to act on a motion for summary judgment submitted by the petitioner. Walgreens Company continues its intentional discriminatory acts with cherry picking 1% of the factual allegations that was erroneous or violation of consent decree and Wells Fargo Bank, N.A. ability to Granish Federally- Protected Benefits to pay itself, foreclose on petitioner's business and residential property and other statutory consequences.

On June 6, 2017, the Fifth Circuit Affirmed the district court's dismissal. The Court sanctioned the lower court's abuse of discretion and failed to follow this Court's mandates.

On July 18, 2017, a denial of Motion for Rehearing without an opinion was filed by the Fifth Circuit, and then mandate issued to district court on a unlawful order.

As a consequence, there's furthering of the violations, *inter alia*, the petitioner's race, color, sex, national origin, age, related work injuries, disabilities and impairments, credibility, financial disabilities and other injuries. Moreover, a continuation of the

violations ensued, furthering the deprivation of rights, as a consequence, resulted in subsequent work related injuries, illegal garnishment of federally protected benefits, illegal foreclosure, illegal car repossession, homelessness, and other irreparable harms furthering the deprivation pursuant to, *inter alia*, 38 U.S.C.A. 5301, 42 U.S.C.A. 1981, 1983, 1985, 1986, ADEA, FMLA, section 504 of the RA, Titles I of the ADA, Title II of the ADA, Title VI of the CRA, Title VII of the CRA, 1st, 4th, 5th, 13th, and 14 amendments, "arising under" Article III Section 2 of the United States Constitution and laws, 28 U.S.C.A. 1331 and 1343, State of Texas Constitution and laws. This case sought declaratory and injunctive relief, compensatory damages, punitive damages, pecuniary and nonpecuniary relief, back pay and front pay for intentional deprivation of rights, immunities, privileges, life, liberty, and/or property by State and private actors conspiring to deprive rights of petitioner because of the reasons provided above. The public and private entities with their agents or employees were and is the driving force behind the deprivation of the petitioner's rights. *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 90 S.Ct. 1598, 26 L. Ed. 2d 142 (1970).

The petitioner provides additional statement of the case, for other supportive basis that may have omitted by mistake or error, or even repeated for reinforcement, as stated against each respondent-appellee and their co-conspirators:

The fact in that, *inter alia*, the acts or omissions of the State actors assisted appellee "Zurich" and use the force or power of the Agency to intentionally deprive petitioner-appellant of his workers' comp. benefits because he is an African-American, Black,

Negro male over the age of 40 with disabilities or impairments that happens to be a Pharmacist. *See Texas Workers' Compensation Act; Lugar v. Edmonson Oil Co.*, 457 U.S. 922, 939-42 (1982).

The fact in that, *inter alia*, there was no final judgment in a State court, particularly when a motion to take judicial notice that established Fifth Court of Appeals at Dallas dismissed the appeal for want of jurisdiction because there was no final order.

The fact in that, *inter alia*, the operative facts are similar, the nature and cause of action is for civil and constitutional deprivation, particularly when state officials acts or omissions were egregious or reprehensible and intentional. *See United Mine Workers v. Gibbs*, 383 U.S. 715, 725 (1966); *see also Dennis v. Sparks*, 449 U.S. 24, 28 (1980) (holding that private parties who corruptly conspired with a state judge acted "under color of law").

Under the provisions of the Texas Constitutional Bill of Rights, *inter alia*, the fact in that Walgreens Company benefits from all withholdings of child support, particularly when it continued to garnish child support for more than two years after an order abating child support or withholdings pursuant a devoid court order or removing his two children from his insurance plan amounts to deprivation of life, liberty and property in the furthering of the conspiracy.

Under the provisions of the United States Constitution, First Amendment, *inter alia*, Walgreens Company and its employees are regulated by contract to do business in the State of Texas which serves public interest, ergo they are state actors. More

importantly, it was, at the time of its intentional discrimination, "under a consent decree that is federal." The State has a significant measure of control over Walgreens Company, and its employees conduct, particularly licensure to operate pharmacies within the boundaries of the State, including other respondents-appellees.

Under the provisions of the United States Constitution, thirteenth amendment, *inter alia*, Walgreens failure to pay petitioner-appellant wages after many attempts to collect after he earned them or force him attend compulsory meetings and training sessions on his days off without pay or forcing him back to work with a serious injury without providing FMLA or risk termination.

Under the provisions of Title VII of the CRA 1964, Title I of the ADA, ADEA and FLSA, *inter alia*, petitioner-appellant is an African-American, Black, Negro Male over the age of 40, that has disabilities and impairments, whom was intentionally discriminated against because of his race, sex, age, color, national origin and disabilities in violation of his civil and ,constitutional rights particularly by Walgreens Company and Walgreens Companys' supervisory or management employees that had operational control over Walgreens Company and employment status over petitioner-appellant.

Under the provisions of FMLA, *inter alia*, the fact in that, Walgreens Company restrained (interference) in granting FMLA while forcing the petitioner-appellant back to work and it denied the second request for FMLA after being removed from work by his treating physician, particularly when he suffered a subsequent injury or aggravation on or about November 27, 2013.

Under the provisions of 42 U.S.C. 1981, 1985 and 1986, *inter alia*, the fact in that, Walgreens Company and Walgreens Company Employees or Agents intentionally discriminated against the petitioner-appellant because of his race, particular when it did not afford him the full and equal benefits of employment privileges as it does for white employees. Additionally, a section 1981 supports a claim for section 1985.

Under the Texas Workers' Compensation Act, *inter alia*, the fact in that, the petitioner-appellant suffered an aggravation, acceleration, flare-up of or combination with his February 21, 2012 injury, particularly on more than one occasion because of Walgreens Company's no good faith accommodations, specifically suffering a subsequent injury on or about November 27, 2013 that prompted petitioner-appellant's removal from work. Negligence is still within the two-year prescriptive period allowed by the State of Texas. Even so, equitable tolling was plead and uncontested.

Under the supplemental jurisdiction provisions, the fact in that, petitioner-appellant other claims that were pleaded, *inter alia*, particular breach of fiduciary duty, common law fraud, intentional infliction of emotional distress, theft of property, intentional exposure of employee to hazardous conditions in a work place, conduct for injury to or death of an employee, conduct for workers' compensation benefits for injury resulting from aggravation or acceleration of or flare-up of, or combination with preexisting conditions, dafamation, conduct for injury or death resulting from negligent hiring, supervising, or retention of employee, conduct for loss of parental consortium that

went uncontroverted or contested.

It is believed that Walgreens Company, *inter alia*, is contracted with the federal government and it receives federal financial assistance in hiring Veterans that have disabilities or Section 504 of the RA 1973, particularly when it has a record of the petitioner-appellant as being disabled.

Under the provisions of 42 U.S.C. 5301(a), the fact in that, *inter alia*, the "Bank" garnished V.A. Benefits monthly for more than a year to pay a creditor (WFB).

Additionally, the petitioner-appellant did not provide the "Bank" any agreement or contract to garnish his electronically transferred V.A. Disability Benefits, but he did trust that his funds would be available upon receipt.

Further, in an action with the State actors, the "Bank" is acting for or on behalf of the State, ergo it failed the prerequisite notice as well as the State in violation of the petitioner-appellant's procedural due process. *See Adickes v. Kress & Co.*, 398 U.S. 144, 152 (1970) (stating that action is "under color" if person is a "wilful participant in joint activity with the State or its agents"); *see also Jackson v. Metropolitan Edison Co.*, 419 U.S. 345, 353 (1974).

These acts or omissions were in furthering the conspiracy to deprive petitioner-appellant, *inter alia*, of his V.A. benefits, his homestead, while IIED and severe mental anguish, particularly because he is an African-American, Black, Negro male with disabilities and impairments over the age of 40.

Under the provisions of 28 U.S.C. 1367, supplemental jurisdiction, *inter alia*, the

claims against Wells Fargo Bank, N.A., particularly Texas Constitution Article XVI section 50, statutory fraud, common-law fraud, breach of contract arising from bank's failure to act in good faith, intentional infliction of emotional distress, theft of property, defamation and conversion. In the alternative, the "Bank's" RESPA violations, particularly when it failed to inform petitioner-appellant it was the servicer of a loan for his homestead, failure to provide a loan modification because of the conspiracy to take his homestead. Even so, it could not prove it had a valid deed of trust, that shows any one or more ways to acquire a homestead business and residential property.

Under the provisions of 42 U.S.C. 1983, *inter alia*, State actors in their official and individual capacity does not have sovereign or qualified immunity, particularly when the acts or omissions of the state violate its own Constitution and their acts are intentional or callous or reckless, particularly when it violates a substantive right. For example, *inter alia*, due process or equal protection of law, specifically depriving the petitioner-appellant of life, liberty or property. See *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 435-36 (1982).

Petitioner-Appellant's substantive rights were violated when the Office of Attorney General placed a lien on his service-connected benefits, particularly when it intentionally failed to provide prior notice, because of the conspiracy to force petitioner-appellant back to work by garnishing his only source of income. " There is no law federal or state that provide for garnishing V.A. Benefits or income tax return to pre-pay child support that is not due, particularly when the petitioner-appellant is not

in the arrears for child support." *See Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 541 (1985). *See e.g. Paul v. Davis*, 424 U.S. 693, 712 (1976) (holding that "the interest in reputation asserted in this case is neither 'liberty' nor 'property' guaranteed against state deprivation without due process of law").

Under the provisions of Title VI of the CRA, *inter alia*, provide in that, it "[p]rohibits discrimination on the grounds of race, color, or national origin by programs or activities receiving federal financial assistance[.]"

The fact, *inter alia*, in that the Office of the Attorney General, Department of Family Protective Services, and Texas Department of Insurance-Division of Workers' Compensation are recipients of those funds and the factual allegations included the acts or omissions of the State actors employed by each of these instrumentalities, whom intentionally deprived the petitioner-appellant of his rights, privileges, immunities, life, liberty and/or property because he is an African-American, Black, Negro male with disabilities or impairments over the age of 40 by using the force or power of the Agencies behind its deprivation.

The fact in that, *inter alia*, State and its agents, prohibited petitioner-appellant's ability to protect his daughter from abuse/neglect because of their intentional or reckless acts or omissions to obtain child support. *See Albright v. Oliver*, 510 U.S. 266, 272 (1994); *see also e.g. Estate of Stevens v. City of Green Bay*, 105 F.3d 1169, 1177 (7th Cir. 1997) (citation omitted).

Petitioner-appellant applied for an injunction in the district court against all

respondents-appellees, and applied for a injunction in the court of appeals and it was denied on the basis that, a motion to stay must be applied for in the district court. Even so, the motion was denied by a Justice that should have recused himself from the appeal, particularly when he was a panel justice for an appeal against the City of New Orleans, et al.

The request for a preliminary and/or a permanent injunction was based on, *inter alia*, (1) the petitioner-appellant will suffer irreparable harm, (2) there is no adequate remedy at law, (3) there is substantial likelihood that the petitioner will prevail on the merits, (4) the harm faced by petitioner-appellant outweighs the harm that would be sustained by defendant if preliminary injunction were granted, (5) Issuance of a preliminary injunction would not adversely affect the public interest. *See Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008) ; *United States v. Oregon Med. Soc'y*, 343 U.S. 326, 333m 72 S. Ct. 690, 96 L. Ed. 978 (1952) (function of injunctive relief is to forestall future violations).

Under the provisions of the 28 U.S.C. 2201 and 2202, Fed. R. Civ. P. 57, *inter alia*, the fact that the district court did not determine the rights of respondent-appellee "Zurich" or the petitioner-appellant without awarding anything be done or damages.

Respondent-appellee Valerie Rivera was sued in her official and individual capacity. Office of the Injured Employee Counsel had knowledge of the suit, particularly because the Ombudsman is attached to the Texas Department of Insurance-Division of Workers' Compensation. Even so, the service of a summons and amended complaint was served

to the state agency where she worked and to the Chief Clerk of Proceedings for the State of Texas. *See* Texas Lab. Code 404.001 et seq.

Even so, defendant-appellant Valerie Rivera or State of Texas or OIEC should have known she was a party to the cause of action, but for a mistake concerning her identity. *See Krupski v. Costa Crociere SpA*, 560 U.S. 538, 553, 130 S. Ct. 2485, 177 L. Ed. 2d 48 (2010) ("The Rule plainly sets forth an exclusive list of requirements for relation back, and the amending party's diligence is not among them.").

G. OTHER CASES OF PRECEDENT

Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 576-577, 106 S. Ct. 1348, 89 L. Ed. 2d 538 (1986); *also see* *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249-252, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986); and *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986). *See* Fed. R. Civ. P. 11(b)(1), (c)(1); Fed. R. Civ. P. 11(b)(2)-(b)(4), (c)(1); *also see* Fed. R. Civ. P. 26 and Northern District of Texas Local Rule 26.

REASONS FOR GRANTING THE WRIT

Pursuant an enactment of Congress, the provisions of 28 U.S.C. 1254(1), authorizes the Supreme Court to review cases in the court of appeals by writ of certiorari granted upon petition of any party to any civil or criminal case, before or after rendition of decree. " To justify granting of any such writ, the petition must show compelling reasons." The following, although neither controlling nor fully measuring the Court's discretion, indicate the character of the reasons the Court considers, *inter alia*, (a) A

United States Court of Appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power; (b) a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals; (c) a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

The Supreme Court has the prime responsibility for the proper functioning of the federal judiciary system for jurisdiction, practice, procedures and direct conflict with this Court's decisions. In this case, a total disregard to the proceedings, sanctioned by the court of appeals, calls for this Court's supervisory power. A "departure" from the usual course of judicial proceedings in this case, as a direct consequence, led to direct conflict with other court of appeals decisions, State court of last resort or court of appeals decisions, and inconsistency among the court of appeals or the Supreme Court rulings. See *Oklahoma Tax Comm'n v. Citizen Band Potawatomi Indian Tribe*, 498 U.S. 505, 509 (1991) (certiorari granted "to resolve an apparent conflict with this Court's precedents"); *Lugar v. Edmonson Oil Co.*, 457 U.S. 922, 926 (1982) (lower court opinion

"appears to be inconsistent with prior decisions of this Court"); *Also see Turner v. Roger*, 131 S. Ct. 2507 (2011); *Johnson v. California*, 545 U.S. 162, 164 (2005); *Florida v. White*, 526 U.S. 559, 563 (1999); *United States v. Estate of Romani*, 523 U.S. 517, 521-22 (1998); *Hagen v. Utah*, 510 U.S. 399, 409 (1994); *Baldwin v. Alabama*, 472 U.S. 372, 374 (1985); *Lakeside v. Oregon*, 435 U.S. 333, 336 & n.3 (1978); *Andresen v. Maryland*, 427 U.S. 463, 470 n.5 (1976).

To justify a grant of certiorari, the conflict must truly be direct and must be readily apparent from the lower court's rationale or result. *See e.g. United States v. Bass*, 536 U.S. 862, 864 (2002) (granting certiorari because "[t]he Sixth Circuit's decision is contrary to [*United States v. Armstrong*, 517 U.S. 456 (1996)]").

In the alternative, and/or the reasons relied for allowance of writ for mandamus, and/or writ of prohibition, or writ of injunction or one or more of said writs, the issues involved in the present proceedings are of exceptional character and of great public importance in that after this Court has reviewed the decisions of the lower courts on appeal or certiorari, a writ of mandamus and/or prohibition or writ of injunction may be issued to vacate the order entered by the district judge or mandate by court of appeals, and to direct other appropriate action, unless there is a remedy by appeal or certiorari. *See Stratton v. St. Louis Southwestern Ry. Co.*, 282 U.S. 10, 51 S. Ct. 8, 75 L.Ed. 135 (1930).

Additionally, to justify the granting of an extraordinary writ under 28 U.S.C.A. 1651 (a), it must be shown that the writ will be in aid of this Court's appellate jurisdiction,

that there are exceptional circumstances warranting the exercise of the court's discretionary powers, and that adequate relief cannot be obtained in any form or from any other court. Sup. Ct. R. 20.1; *U.S. Alkali Export Ass'n v. United States*, 325 U.S. 196, 201-02 (1945); *De Beers Consol. Mines, Ltd. v. United States*, 325 U.S. 212, 217 (1945).

In this case the Court of Appeals for the Fifth Circuit, Southern Division sanctioned the total disregard of the Federal Rules and undermined this Court's precedent. The ongoing violations of the petitioner's constitutional and civil rights tethered with continuous extrinsic fraud, and deprivation of rights, privileges, immunities, life, liberty and/or property, as a direct consequence created an exceptional circumstance that warrant mandamus and/or prohibition review.

This Court may grant a petition for mandamus in its discretion, so long as it has jurisdiction over the matter. As the Court described in *Cheney v. U.S. Dist. Court for the District of Columbia*, 542 U.S. 367, 380 (2004).

[Mandamus] is a "drastic and extraordinary" remedy "reserved for really extraordinary causes." *Ex parte Fahey*, 332 U.S. 258, 259-260, 67 S. Ct. 1558, 91 L.Ed. 2041 (1947). "The traditional use of the writ in aid of appellate jurisdiction both at common law and in the Federal courts has been to confine [the court against which mandamus is sought] to a lawful exercise of its prescribed jurisdiction." *Roche v. Evaporated Milk Assn.*, 319 U.S. 21, 26, 63, S. Ct. 938, 87 L.Ed. 1185 (1943). Although courts have not "confined themselves to an arbitrary and technical definition of 'jurisdiction,' " *Will v. United States*, 389 U.S. 90, 95, 88 S.Ct. 269, 19 L.Ed.2d 305 (1967), " only exceptional circumstances amounting to a judicial 'usurpation of power,' " *ibid.*, or a "clear abuse of discretion," *Bankers Life & Casualty Co. v. Holland*, 346 U.S. 379, 383, 74 S.

Ct. 145, 98 L.Ed. 106 (1953), "will justify invocation of this extraordinary remedy," *Will*, 389 U.S. at 95, 88 S. Ct. 269.

The Court in *Cheney* made clear that three conditions must be satisfied before such an extraordinary writ must issue: (1) the party must have no other adequate means to attain the relief he deserves, (2) the party must satisfy the burden of showing that his right to issuance of the writ is clear and indisputable, and (3) the issuing court, must be satisfied that the writ is appropriate under the circumstances. *Id* at 380-81. Petitioner Trent Steven Griffin, Sr. satisfies the three conditions set out in *Cheney*.

I. Trent Steven Griffin, Sr. cannot obtain relief from any other court or forum. The Court will not grant an extraordinary writ if another avenue of relief remains available.. Sup. Ct. R. 20.1. However, the relief Trent S. Griffin, Sr. seeks, a writ vacating the unlawful Fifth Circuit order and mandate, cannot be granted by any other court. A total disregard or a departure from the accepted and usual course of judicial proceedings, and sanctioned by the court of appeals, as to call for this Court's supervisory power. *See U.S. Alkali Export Ass'n*, 325 U.S. at 202 (finding that a writ in aid of appellate jurisdiction must be to the Supreme Court wher it has sole appellate jurisdiction).

II. The district court sanctioned by the Fifth Circuit, and on its own authority, amounting to abuse of discretion by granting untimely motions proscribed by the Federal rules, in favor of respondents-appellees and against petitioner-appellant, as a consequence prejudiced petitioner, amounting to injustice, failure of the Federal judicial system on the basis of "equal protection" or "due process" of the laws in a

conspiracy case that is ongoing. The district court or court of appeals did not have the power to render the unlawful orders.

III. A writ of mandamus may issue when "exceptional circumstances warrant the exercise of the Court's discretionary powers." Sup. Ct. R. 20.1. There are no formal bounds to what constitutes an exceptional circumstance; the Court's mandamus discretion is quite broad. See Steven Wisotsky, *Extraordinary Wits: "Appeal" by Other Means*, 26 Am. J. Trial Advoc. 577, 583 (2003); James E. Pfander, *Jurisdiction-Stripping and the Supreme's Court's Power to Supervise Inferior Tribunals*, 78 Tex. L. Rev. 1433, 1494-97 (2000). Mandamus is also appropriate where the case presents an "issue of first impression" involving a "basic and undecided problem," especially on an important issue like constitutional and civil rights violations that the lower courts undermine this Court's precedence, as a consequence, an ongoing process that continues to elude and plague the justice system in the United States, rendering orders and mandates that are unlawful.

This case involves a continuous and controversial topic surrounding private and public actions or inactions in joint activity, conspiring under the RICO Act, under the provisions of 18 U.S.C.A. 1962 et seq., or 42 U.S.C.A. 1985 wherein Americans, particularly African-Americans, Black, Negro males has suffered at the hands of White Supremacy for hundreds of years under a purported equal rights and justice for all theory, that is not in practice.

This case involves a Consent Decree against Respondent Walgreens Company, which

avoided admission of racial discrimination, by settling with the *Equal Employment Opportunity Commission* for twenty-four million dollars. As a result for their intolerable intentional acts, it continued its ongoing practice, depriving petitioner on the basis of his race, color, national origin, sex, age, disabilities, and impairments, in connection with the State of Alabama, State of Georgia, State of Louisiana and State of Texas. See Appendix

In a joint activity, within the borders of the United States of America, there is collusion amongst the respondents-appellees, Walgreens Company, American Zurich Insurance Company, Wells Fargo Bank, N.A., State of Texas with their affiliates, agents and employees. An order allowing these respondents-appellees to continue their organization or enterprise within the United States is unconstitutional and criminal. "Due process" was provided to each, and their willful act, *inter alia*, to : (1) not answer the complaint, or (2) otherwise defend, or (3) filing untimely motions, or (4) signing pleadings, motions or other papers; representation to the Court; Sanctions that are proscribed by the Federal Rules, or (5) requiring the petitioner to respond/object to such pleadings, motions or other papers, or (6) purposeful delay, or (7) abuse of judicial economy, or (8) ongoing constitutional and civil rights violations, or (9) no relief in any other Court, but this Court.

This case involves Repondent-Appellee "Walgreens Company and its Employees" cherry picking less than 1% of the amended complaint, filed and served April 24, 2015, in its motion to dismiss for failure to state a claim that was filed May 19, 2015, that is

proscribed by Rule 12. Additionally, it did not plead or file an answer for nearly one year, after its motion to dismiss or prior to dismissal, that is proscribed by Rule 15. See Fed. R. Civ. P. 12 et seq.; Fed. R. Civ. P. 15 et seq.; Fed. R. Civ. P. 55(a), (b)(1), and (b)(2). Further, this case involves a motion for summary judgment, filed against Respondent Walgreens Company, who did not present, not even a scintilla of evidence to contravert the hundreds of pages of probative evidence against it, including a consent decree imposed by the E.E.O.C.. Furthermore, this case involves, continuing violation doctrine, which typically arises in the context of employment discrimination, permits employees to recover discriminatory acts, not limited but, such acts as harassment or promotion denials, that fall outside the limitation period, as long as part of a "continuing violation" is within the period. Moreover, respondents have established their admission by not filing an answer or otherwise defend, ergo waiving their rights to contest any claim.

This case involves Respondent-Appellee "State respondents" as stated in the above paragraph. Respondents-Appellees filed a motion to dismiss on May 19, 2015, in response to an amended complaint, *as a matter of course*, filed and served on April 24, 2015 that is proscribed by Rule 12. Additionally, they did not plead or file an answer prior to the dismissal by the district court, same as their above co-conspirators. *Id.* More importantly, Respondent "State respondents" must plead "sovereign immunity" or "qualified immunity", which was not before the court legally, ergo, it waived its rights to immunity. Even so, the conspirators acts or omissions were intentional, reckless or callous indifferent to the petitioner's rights. Respondents malicious attack with its co-

conspirators is unlawful and criminal in violation of the United States and State of Texas Constitutions and laws. *See* Fed. R. Civ. P. 12 et seq.; Fed. R. Civ. P. 15 et seq.; Fed. R. Civ. P. 55(a), (b)(1) and (b)(2). A motion for summary judgment was filed against respondents "State respondents" and as a consequence, it was denied without one scintilla of evidence to contravert hundreds of pages of evidence against the respondents.

This case involves Respondent-Appellee Wells Fargo Bank, N.A., filed a motion to dismiss that is proscribed by Rule 12. On May 11, 2015, it filed an answer to an amended complaint, but did not present one affirmative defense or motion 12(b). A motion for summary judgment was filed against it, as a consequence, it was denied for the same reasons as premature, dependent on other motions disposition that is proscribed by Rule 56. This case involves the continuing taking of the petitioner's earnings by Wells Fargo Bank, N.A. to satisfy a bank loan for two in direct violation of 38 U.S.C.A. 5301(a). Respondent Wells Fargo Bank, N.A., in connection with Respondents "Walgreens and Walgreens Employees", "American Zurich Insurance Company", "State respondents" seized petitioner's VA benefits while he was out of state on other business, purporting he owed back child support without notice, ergo denying "due process" and "equal protection", furthering the conspiracy to force back to work the petitioner when he requested FMLA, that was once restrained from on June 15, 2012, then denied on or about January 23, 2014 after a subsequent injury. *See* 38 U.S.C. 5301 (a); *also see* Fed. R. Civ. P. 12 et seq.; Fed. R. Civ. P. 15; Fed. R. Civ. P. 55(a), (b)(1), and

(b)(2); Fed. R. Civ. P. 56 et seq..

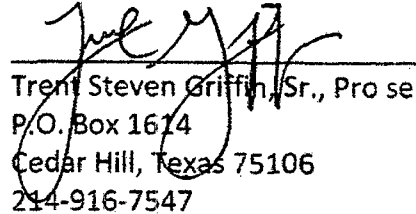
This case involves Respondent "American Zurich Insurance Company", willful act to not plead or otherwise defend against the lawsuit. A default and default judgment was sought against the respondent. Clerk of Court entered the default, but failed to enter default judgment for liquidated damages. The district court set aside the default, but the respondent failed to provide "good cause" of why it failed to "plead" or "otherwise defend" against the petitioner's lawsuit. Even so, respondent, attempted to file a motion to set aside that was not legally before the court, without requesting leave, and choosing to retain legal representation in Austin, Texas instead of continuing with the legal representation it already had for more than two years involving judicial review of one of its co-conspirators, respondent Texas Department of Insurance - Division of Workers' Compensation and its agents or employees. As a consequence, on the basis of *res judicata*, the court dismissed the case. The district did not have the authority to dismiss the case on the grounds of a state court's decision or judgment, particularly when it was a review of an "agency's" decision in accordance with the Texas Workers' Compensation Act and Texas Government Code 2001.171 et seq.. Petitioner filed his lawsuit in under the provisions of Article III, section 2 of the United States Constitution, enforceable under, *inter alia*, the provisions of 42 U.S.C.A. 1983, 42 U.S.C.A. 1985, 18 U.S.C.A. 1962, 28 U.S.C.A. 1331 and 1334.

All of the above reasons provided, are exceptional circumstances warranting mandamus, that was sanctioned by the court of appeals as provided in *Cheney*.

CONCLUSION

For the foregoing reasons, the petitioner respectfully prays that its petition for a writ of certiorari be granted and/or alternatively, grant petition for writ of mandamus and/or prohibition or writ of injunction or one or more of said writs.

Respectfully submitted,



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