IN THE SUPREME COURT

OF

THE UNITED STATES OF AMERICA

MONOSIJ DUTTA-ROY **Petitioner**: ***Dutta-Roy*** Counsel: *pro se* v. JYSK BED'N LINEN, D/B/A BY DESIGN **Respondent** : ***Jysk*** Counsel: *Mr. Jonathan Fain, Mr. Ashutosh Joshi*	**SUPREME COURT** ***of the*** **UNITED STATES OF AMERICA** **PETITION REHEARING: 19-8834** ***The Eleventh Circuit*:** **Civil/ Appeal: 18-14410-HH** ***On decisions from*:** ***US District Court*: *1:12-cv-03198-TWT*** ***Friday, November 20, 2020***

Petition:	**19-8834**	**Supreme Court Of The United States**
Civil/ Appeal:	**18-14410-HH**	**The Eleventh Circuit (11th Cir.)**
Original Case:	**1:12-cv-03198-TWT**	**US District Court: Northern District of Georgia (NDGA)**

Petitioner *Dutta-Roy's*

PETITION FOR REHEARING

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Table of Contents

Federal Statutes

Georgia Statutes

Federal Caselaw

Georgia Caselaw

Appendix

DOCKET REFERRED TO, BUT NOT ATTACHED			
	1:12-cv-03198-TWT	Dutta-Roy/ **DN-139/ MAR.09.2018**: First Rule 60 Motion	Referred: **DN-139**
	1:12-cv-03198-TWT	Dutta-Roy/ **DN-143-1/ APR.12.2018**: First Amendment to Counter-claims	Referred: **DN-143-1**
DISTRICT COURT (NDGA) CASE ATTACHED			
Apdx-1	1:12-cv-03198-TWT	NDGA Order: **DN-145/ JUL.23.2018**: Denying DN-139, DN-143-1	Referred: **DN-145**
Apdx-2	1:12-cv-03198-TWT	Dutta-Roy/ **DN-147/ AUG.01.2018**: Second Rule 60 Motion	Referred: **DN-147**
Apdx-3	1:12-cv-03198-TWT	NDGA Order: **DN-149/ AUG.15.2018**: Final Order (**DN-147** omitted)	Referred: **DN-149**
Apdx-4	1:12-cv-03198-TWT	Dutta-Roy/ **DN-154/ AUG.31.2018**: Rule 55(a) Default Jud. Motion	Referred: **DN-154**
Apdx-5	1:12-cv-03198-TWT	Dutta-Roy/ **DN-155/ SEP.4.2018**: Reply to DN-147 and DN-154	Referred: **DN-155**
Apdx-6	1:12-cv-03198-TWT	Dutta-Roy: **DN-157/ SEP.10.2018**: Rule 50(a)(2) JMOL.	Referred: **DN-157**
Apdx-7	1:12-cv-03198-TWT	NDGA Order: **DN-161/ OCT.04.2018**: Last Order (**DN-147** omitted)	Referred: **DN-161**
AFFIDAVIT ATTACHED (SUBMITTED BEFORE AT CERTIORARI)			
Apdx-8	1:12-cv-03198-TWT/ 18-14410-HH	Ex-BazaarWorks partner, Ashish Negandhi Affidavit.	Shows eCommerce started with express understanding with Bratengen in profit-sharing.
AFFIDAVITS REFERRED BUT NOT ATTACHED (SUBMITTED BEFORE AT CERTIORARI)			
	1:12-cv-03198-TWT	**DN-57-4**: Kjell Bratengen Aff. Submitted w. Mot. for Partial Sum. Jud.	Referred: **DN-57-4**
	1:12-cv-03198-TWT	**DN-57-5**: Shashi Sonnad Aff. Submitted w. Mot. for Partial Sum. Jud.	Referred: **DN-57-5**
	1:12-cv-03198-TWT	**DN-57-6**: Peder Sorensen Aff. Submitted w. Mot. for Partial Sum. Jud.	Referred: **DN-57-6**
	1:12-cv-03198-TWT	**DN-58-4**: Kjell Bratengen Aff. Submitted w. Mot. for Sum. Jud.	Referred: **DN-58-4**
	1:12-cv-03198-TWT	**DN-58-5**: Shashi Sonnad Aff. Submitted w. Mot. for Sum. Jud.	Referred: **DN-58-5**
	1:12-cv-03198-TWT	**DN-68-1**: Kjell Bratengen Aff. Submitted w. Reply in Oppo. To Sum. Jud.	Referred: **DN-68-1**
	1:12-cv-03198-TWT	**DN-68-2**: Shashi Sonnad Aff. Submitted w. Reply in Oppo. To Sum. Jud.	Referred: **DN-68-2**
	1:12-cv-03198-TWT	**DN-68-3**: Barry Zipperrman Aff. Submitted w. Reply in Oppo. To Sum. Jud.	Referred: **DN-68-3**

Petition for Rehearing

Petitioner Monosij Dutta-Roy (**Dutta-Roy**) files this Petition for Rehearing on his Petition of Certiorari denied on October 5, 2020, 15 days from Supreme Court of the United States (**SCOTUS**) November 5, 2020 Memorandum requesting revision, in SCOTUS Case: **19-8834**.

This Petition notes the new essential fact that Dutta-Roy's August 1, 2018 Federal Rules of Civil Procedure (**FRCivP**) **Rule 60(b) DN-147**[1] requesting Set Aside of Honorable Northern Dist. Of Georgia (**NDGA**) Order **DN-145** by fraud-on-court, not ruled upon by NDGA, neither granted by Dutta-Roy's **Rule 55(a) Motion in Default Judgment** (**DN-154**, with affidavit **DN-154-1**) filed on August 31, 2018, or in the alternative, remanded by **Rule 60(d)** for final adjudication.

DN-147, a significant Rule 60(b) motion noting perjury by Jysk officers was answered 21 days late without addressing the perjury cited, by Respondent Jysk Bed'N Linen (Jysk) on September 4, 2018, by *DN-155* – after case was closed by NDGA Final Order DN-149 on August 15, 2018. Importantly, ***DN-155* was filed only after** Dutta-Roy filed his **DN-154** in **Rule 55(a)** Def. Jud. motion.

Jysk had more than necessary time to address **DN-147**. **DN-147** was filed on August 1, 2018, two weeks before Jysk submitted a proposed final order ***DN-148*** on August 14, 2018. This proposed order was made into NDGA's Final Order DN-149 on August 15, 2018, closing the case and did not address **DN-147** in fraud-on-court and setting aside of **DN-145**. And even in their late reply by ***DN-155***, Jysk did not address the matter of the perjurious affidavits.

These aspects were comprehensively, but briefly, noted in Dutta-Roy's Eleventh Circuit (**11th Cir.**) Appeal (**Dutta-Roy's Initial Brief: Sec-I: pages 1, 5, 6; Sec-II: 1, 16, 36**), citing the aspects of perjury and fraud-on-court, arguing that the outstanding **DN-147** was never ruled upon by the NDGA, in the significant aspect of fraud-on-court in perjurious affidavits.

This Petition for Rehearing details the facts surrounding the fraud-on-court **Rule 60 DN-147**, then Def. Jud. **Rule 55(a) DN-154**, and even a subsequent **Rule 50(a)(2)** Judgment As A Matter of Law (JMOL) in **DN-157**, pertaining to final NDGA Orders **DN-145**, **DN-149**, **DN-161**, appealed. Thus, this Petition reemphasizes what the initial Petition for Certiorari already stated – fraud-on-court has not been addressed by the Honorable 11th Cir. upholding the NDGA Sum. Jud. (**DN-69**) and subsequent NDGA Orders appealed. With **DN-147** is still outstanding, never addressed in NDGA Final Order **DN-149**, or even **DN-161**, Dutta-Roy please requests this Court to address this significant issue in NDGA judgments in necessary measures.

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1 Please Note: Court Order Docket Nos listed in **Bold Underline** (eg. **DN-149**), Dutta-Roy's filings in **Bold** (eg. **DN-147**), Jysk filings in ***Bold Italic*** (eg. ***DN-148***).

pro se Dutta-Roy understands it is exceedingly rare for this Honorable Court to grant a rehearing. However, this filing again shows, with **Rule 9(b)** particularity, the multiple counts of fraud-on-court by Jysk by **Rule 60(b)**, in seeking that the Motion **DN-154** (Def. Jud. By **Rule 55(a)**), **and subsequent DN-157** in **Rule 50(a)** JMOL motion – be allowed to stand in granting fraud by **DN-147**, setting aside NDGA Order **DN-145**.

Perhaps *pro se* Dutta-Roy made a grave procedural error in not submitting the February 5, 2019 11th Cir. Appeal as a Writ of Mandamus (Or Error) for **DN-147** to be ruled upon, to show cause why **Rule 55(a) DN-154 (and subsequent DN-157** in **Rule 50(a)** JMOL motion) should not be granted. Instead his Appeal focused on the issues of his counter-claims in fraud, fiduciary duty, quantum meruit, antitrust restraint, unjust enrichment, legal malpractice that also were not adjudicated upon in light of arguments presented.

Dutta-Roy thus requests this Court to issue the necessary writs (of Mandamus or Error) by the authority of **28 U.S. Code § 1651 or Rule 60(d)** to make the Default Judgment (**DN-154** and/ or **DN-157**) stand, vacating NDGA's Orders **DN-145**, **DN-149** and **DN-161**, which denied Dutta-Roy's **DN-154** and **DN-157** and Amended Claims in **DN-143-1**, for no valid reason. **Rule 55(a)** and **Rule 50(a)(2)** are clear on the scopes in Def. Jud. And JMOL that are argued forthwith:

> **Rule 55. Default; Default Judgment**
> (a) Entering a Default. When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party's default.
>
> **Rule 50. Judgment as a Matter of Law in a Jury Trial; Related Motion for a New Trial; Conditional Ruling**
> (a) Judgment as a Matter of Law.
> (2) Motion. A motion for judgment as a matter of law may be made at any time before the case is submitted to the jury. The motion must specify the judgment sought and the law and facts that entitle the movant to the judgment.

1. Essential Ground: Multiple Rule 60(b) Motions (DN-139/ DN-147) Not Defended

This petition requests an adjudication on Dutta-Roy's August 1, 2018 Motion by **Rule 60**(b) titled: 'MOTION TO SET ASIDE ORDER (**DN-145**) AND RECONSIDERATION OF PRIOR **Rule 60**(b) MOTION IN - 'FRAUD ON COURT' – HEARING REQUESTED' – **DN-147, still outstanding, and for which a Def. Jud. By Rule 55(a) DN-154 was filed August 31, 2018, two weeks after case was closed by Final Order DN-149 on August 15, 2018. Incidentally, Rule 55(a) DN-154 was filed even before Jysk's response on September 4, 2018. DN-147** noted:

Dutta-Roy files this Motion on the basis that this matter of Fraud on the Court by perjurious affidavits in summary judgment has not been adequately addressed, and overlooked, by Court from his prior **Rule 60**(b) motion submitted March 9, 2018.

Upon Dutta-Roy's filing of the **DN-147**, Jysk had more than necessary time to file their Reply/ Oppose to Dutta-Roy's essential **Rule 60** Motion to Set aside NDGA Order **DN-145** as to why fraud-on-court was not addressed, whether by Jysk or by NDGA – making Order **DN-145** an ***inconsistent***[2] judgment. However Jysk did not reply or oppose this essential **Rule 60** motion **DN-147** in until September 4, 2018, more than two weeks late in reply needed by August 15, 2018.

Instead, on August 14, 2018, Jysk submitted a proposed order ***DN-148***, requested by NDGA Order **DN-145**. ***DN-148*** detailed all the motions that Dutta-Roy and Jysk filed, diligently noting all denied for Dutta-Roy while all granted for Jysk. Further, proposed order ***DN-148*** **was never served to Dutta-Roy**, further invalidating **DN-149**.

Crucially, ***DN-148*** did not address Dutta-Roy's **Rule 60 DN-147** and NDGA executed ***DN-148*** verbatim, by Final Order **DN-149** closing the case. Dutta-Roy filed for a **Rule 55** default judgment on **DN-147** two weeks after the Final Order DN-149 on August 31, 2018. Jysk eventual combined Reply ***DN-155*** to Dutta-Roy's **Rule 60 DN-147** and Rule 55(b) **DN-154** on September 4, 2018, again never addressed the perjurious affidavits.

A synopsis in the filing/ execution of motions, also found on docket, is noted below.

Dt/ Apdx	**Filing**	**Content**
MAR.09.2018	**DN-139/** Rule60(b)/ **Dutta-Roy**	Extensive 40 page **Rule 60** Motion detailing fraud, fiduciary breach, antitrust restraint, legal malpractice, & supplemental issues in state court garnishments.
APR.12.2018	**DN-143-1/** Amended Complaint/ **Dutta-Roy**	Detailing initial issues of quantum meruit, breach of contract, fiduciary duty, unjust enrich, equit. acct., then adding issues of fraud, antitrust issues, trade-secret, security interest, supplemental issues in state court garnishment actions while in Appeal.
MAR.19.2018	***DN-140/*** Oppo. To **DN-139/ Jysk**	Does not address the issues of perjurious affidavits of Bratengen, Sonnad, GC Zipperman shown by emails cited.
JUL.23.2018 ***Apdx-1***	**DN-145/** Order/ NDGA	Denying **DN-139**, **DN-143-1** ← ***Inconsistent, void*** Order Outlined Below.
JUL.24.2018	DN-146/ Amended Complaint/ Jysk	Drops Lanham Act dilution violations against Dutta-Roy after six years of litigation. Adds in Dutta-Roy's registration of three domain in April 2012, to conform to 11th Cir.'s ***GeorgiaCarry.Org***.

2 Verdict must conform to pleadings and must not be ***inconsistent***. ***Miller v. Ray***, 84 Ga. App. 251, 65 S.E.2d 923 (1951).

DT/ APDX	FILING	CONTENT
AUG.01.2018 ***Apdx-2***	**DN-147**/ Dutta-Roy	**Rule 60(b)** Motion to Set Aside Order ***DN-145*** in inconsistency, especially not addressing fraud. ← NOT ADDRESSED by NDGA
AUG.14.2018	***DN-148***/ Jysk	Proposed Final Order, does not address **DN-147, word fraud does not appear, never served to Dutta-Roy.**
AUG.15.2018 ***Apdx-3***	**DN-149**/ Final Order/ NDGA	***DN-148*** verbatim, does not address **Rule 60 DN-147**. Grants Jysk's Amended Complaint, adding in the issues of the three surrounding domains, to amend the issues of Summary Jud. without having Amended Complaint to begin with – thus retroactively fixing an ***voidity*** of **DN-69** by 11th Cir.'s opinion in ***GeorgiaCarry.Org***.
AUG.31.2018 ***Apdx-4***	**DN-154**/ Rule 55(a) Def. Jud./ Dutta-Roy	Requesting vacate of Order ***DN-149***, again by consistency issues and Default Jud on **DN-147, Rule 60** fraud-on-court, not yet replied by Jysk since filing on AUG.01.2018.
SEP.04.2018 ***Apdx-5***	***DN-155***/ Oppo. To DN-**147, 154**/ Jysk	Jysk responds to **DN-147** (**35 days later, 21 days late**) and **DN-154**. Addresses fraud theoretically, does not address perjurious affidavits.
SEP.10.2018 ***Apdx-6***	**DN-157**/ Rule 50(a)(2) JMOL/ Dutta-Roy	Judgment As A Matter of Law on pleadings by Jysk's not only very late but did not address perjurious affidavits – and after case closed w/o Leave of Court.
OCT.04.2018 ***Apdx-7***	**DN-161**/ Order/ NDGA	Final Supplemental Order dismissing again DN-154, DN-157, but not DN-147. Also dismissals without reason. ← ***Inconsistent, void*** cited again.

Surely, Jysk had ample opportunity to address the perjurious affidavits whether by addressing **DN-147**, or even befoe **DN-147** in Dutta-Roy's **Rule 60 DN-139**. Surely Jysk should have filed a Leave from the Court, in being late in addressing the significant fraud motion in **DN-147** after case was closed. Jysk did neither and only filed a reply on September 4, 2018 by ***DN-155***, after Dutta-Roy filed the **Rule 55(a)** Default Jud. By **DN-154** on August 31, 2018.

To be sure, there are at least two instances by which Dutta-Roy should have gotten Def. Jud., and both were noted in **DN-154**. In Dutta-Roy's first **Rule 60** motion, **DN-139**, Jysk's responses did not address and '*failed to defend*' the serious issue of perjurious affidavits shown. Instead Jysk amended its claims by ***DN 146*** – which fails to note the issue of fraud cited by perjurious affidavits in comparison by emails. By **Rule 55(a)**'s clear statement that '*When a party against whom a judgment for affirmative relief is sought has **failed to plead or otherwise defend**, and **that failure is shown by affidavit or otherwise**, the clerk must enter the party's default*' – is now humblly requested to be entered.

NDGA denied Dutta-Roy's **Rule 60 DN-139, DN-143** (Amended Claims) by **DN-145**. Then Court should have entered a Def. Jud. by **DN-154** filed, with affidavit **DN-154-1**. Instead it denied **DN-154**, then **DN-157** by **DN-161** – with **DN-147** never having been ruled upon, and Jysk answering it only after Dutta-Roy filed for a **Rule 55 (a)** Default Judgment on **DN-147** by **DN-154**.

NDGA has not only ignored fraud-on-court, and related arguments in fiduciary and contract, but has allowed Jysk to act as **Plaintiff**, **Judge**, **Jury** and **Executor** of decisions in this case. By its **DN-145** Order NDGA allowed Jysk to amend its complaini to drop Lanham Act charges against Dutta-Roy, for which there has never been any basis. By its note in **DN-145** to Jysk in '*Counsel for the Plaintiff are directed to submit a proposed final judgment in favor of the Plaintiff consistent with the prior Orders of the Court and the Court of Appeals.*', it has also asked Jysk to essentially address the proposed order to conform to 11th Cir.'s ruling in ***GeorgiaCarry.Org***.[3]

Regardless, in the process, while there has been a pattern of repeated ***inconsistent*** orders in not addressing fraud, fiduciary issues – the fact is **DN-147 is still pending** and Dutta-Roy sees no reason why **DN-154** in Def. Jud by **Rule 55(a)**, **DN-157**, in JMOL by **Rule 50(a)(2)** should not now be granted by the multiplicity of ***inconsistent*** and ***void judgments*** noted and cited forthwith.

Dutta-Roy's **DN-154** was very clear by **Rule 60(d)** in emphasizing why NDGA Order **DN-149** is ***void*** and ***inconsistent***. The essential arguments from page 2 of Dutta-Roy's **Rule 55(a)** motion **DN-154** noted:

> 1. A **Rule 60**(b) Motion pending (**DN-147**/ AUG.1) showing Fraud on Court by perjury by Claimant Jysk Bed'N Linen, was never addressed by Court prior to Final Order ***DN-149***/ AUG.15., thus making Final Order ***DN-149 void***, and must be vacated.
> 2. The **DN-147** motion of Fraud on Court, was also never addressed by Jysk, from **DN-147** and from previous **Rule 60**(b) **DN-139**, and thus this fraud and perjury ruling must now be considered a Default againt Jysk, its officers and counsel.
> 3. Dutta-Roy was not, and still has not been, properly served Jysk's proposed Order ***DN-148***/ AUG.14.2018 and only got a copy from Court's Pacer system, an additional issue of ***void*** judgment of Final Order ***DN-149***.

Thus Dutta-Roy is requesting again a vacate of NDGA Final Order **DN-149** (thus vacating Sum. Jud, **DN-69**), requesting an entry of default by **Rule 55(a)** in **DN-154**, and JMOL by **DN-157**, on Dutta-Roy's **Rule 60(b) DN-147**. In the process, Dutta-Roy first **Rule 60**, **DN-139**, then Dutta-Roy's amended complaints by **DN-143-1**, submitted with an affidavit **DN-143-2** should be allowed to stand by these comprehensive issues of inconsistency, thus allowing his arguments in fiduciary, antitrust restraint, unjust enrichment, legal malpractice, noted in detail.

Or as noted already, in the alternative, this Court is requested to please issue the necessary writ to resolve the outstanding **DN-147** in fraud-on-court. Again, Dutta-Roy humbly notes that he should have perhaps requested the necessary writ on this matter from the 11th Cir. And appreciates the consideration of SCOTUS in this matter.

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3 The issues of ***void judgment*** relating to Sum. Jud. **DN-69** as pertaining to ***GeorgiaCarry.Org*** is cited in next section.

2. Necessary Adjudication of Rule 60 DN-147, then Rule 55(a) DN-154, Rule 50(a)(2) JMOL

As stated already **DN-149** did not address Dutta-Roy's essential **Rule 60 DN-147** motion in fraud and should be granted by **Rule 55(a) DN-154**. But NDGA's Order **DN-161** on October 4, 2018, noted below, dismissing Dutta-Roy's **DN-154** and **DN-157** was also at once ***inconsistent*** on several factors:

> This is an action for cyber squatting. It is before the Court on the *pro se* Defendant's Motion to Vacate Order [Doc. 154]. The judgment entered in this case is not ***void*** because the Court did not address all of the Plaintiff's frivolous and absurd arguments. The *pro se* Defendant's Motion to Vacate Order [Doc. 154] is DENIED. The Defendant's Motions for Default Judgment [Doc. 157 & 158] are DENIED. Final Judgment has been entered in this case and the case is closed. The Clerk is directed to file any papers received from the *pro se* Defendant but not to docket anything other than a Notice of Appeal as a motion requiring action by the Court or a response by the Plaintiff without the permission of the undersigned.

NDGA does not explain why are Dutta-Roy's motions '*frivolous and absurd*' when clear issues of fraud-on-court has been outlined in Jysk's Bratengen's email to Dutta-Roy, stating there was an agreement, but then denying it by affidavit to Court?

> ***RE: Servers | Wednesday, March 9, 2005 9:05 AM From: "Kjell Bratengen" <kb@bydesignfurniture.com>***
> There is nothing to talk about. I will go out and buy a server and at the same time ask my attorney to handle the matter. It is obvious that you have no intentions to give me back the equipment as I have asked for it for over a year. You can call me on my cel phone if you want to discuss it with me otherwise you can discuss it with my attorney, Barry Zipperman.
> **Ps. I also have a copy of your agreement and so does my attorney so bring it on.**
> Kjell

Brategen's denial of any agreement by sworn affidavits ***DN-57*** and ***DN-58*** is fraud, shown severally by **Rule 9(b)** particularity. This crucial fact has not been defended by Jysk and NDGA has not challenged this.

BRATENGEN's AFFIDAVIT: DN-57-4/ DN-58-4		
DN-57-4/para-17: That per our discussions Defendant's employer [**BazaarWorks**] was to develop a virtual shopping mall in which Plaintiff was to operate [a] virtual store.	*DN-58-4/para-5*: That I nor anyone on behalf of Plaintiff ever executed any written agreement with Defendant and/ or BazaarWorks, LLC, and specifically never executed any 'partnership agreement.'	*DN-58-4/para-6*: That, there was never any verbal agreement between Plaintiff, Defendant and/or BazaarWorks, LLC regarding compensation for work related to the development of the website for the Plaintiff

At this point, should Default Order **DN-154** not be granted, allowing **DN-147** to set aside **DN-145** in denying Dutta-Roy's first **Rule 60 DN-139** and Amended Complaint **DN-143-1**? Especially when **DN-139**, and then **DN-147**, both **Rule 60** fraud motion has '*not been pleaded] or otherwise defend[ed] [by Jysk], and that failure is shown by affidavit [Dutta-Roy's **DN-154-1**, DN-158-1] or otherwise*'? Surely this clear issue of contract denied when email shows there was

a contract is not '*frivolous and absurd*' which surely goes against all evidentiary principles of this Court.

While NDGA Order **DN-149** was issued as a Final Judgment and closed the case after **DN-147** was filed and served, **Rule 60** Motions cannot be denied as moot and closure of a case does not prohibit addressing issues of fraud motions under **Rule 60**:

> ***United States v. 6575 Meade Court***, 599 F. App'x 824, 3 n.3 (10th Cir. 2014) ("The district court denied the **Rule 60** motions because the case was closed. The court's summary treatment was understandable: Mr. Zapata-Hernandez filed a number of motions out of the blue six years after the entry of a forfeiture order. But, a motion to reopen under **Rule 60** cannot be denied on the ground that the case is closed. In proceedings under **Rule 60**, the movant is necessarily trying to reopen a matter that had been considered "closed." But, we can affirm on grounds supported by the record even if not relied on by the district court. See ***D.A. Osguthorpe Family Partnership v. ASC Utah, Inc.***, 705 F.3d 1223, 1231 (10th Cir. 2013).")

Additionally, regardless of the closure of the case the timing aspects were met under **Rule 60(c)**:

> **Rule 60(c)** Timing and Effect of the Motion.
> (1) Timing. A motion under **Rule 60**(b) must be made within a reasonable time—and for reasons (1), (2), and (3) no more than a year after the entry of the judgment or order or the date of the proceeding.

Indeed these short, unexplained NDGA rulings are also ***inconsistent*** in that they do not provide for meaningful Appellate review thus necessary for remand by 11th Cir.'s opinions by ***Arugu***:

> ***Arugu v. City of Plantation***, 446 F. App'x 229, 5 (11th Cir. 2011) ("When ruling on a motion for attorney's fees or sanctions, the district court must provide an explanation of the basis for its ruling that is sufficient to allow for meaningful appellate review. See ***Thompson v. RelationServe Media, Inc.***, 610 F.3d 628, 637 (11th Cir. 2010) ("In this case, however, the district court's conclusory Rule 11 analysis is not sufficient to permit meaningful appellate review" because "its one paragraph order provides no explanation of the basis for its ruling . . . ."); ***Tilton v. Playboy Entm't Group, Inc.***, 554 F.3d 1371, 1378-79 (11th Cir. 2009)

These issues are at once a travesty of justice against Dutta-Roy, a double and triple manifest injustice in law in that these are **Rule 60, Rule 55, Rule 50** motions – significant motions by which the case should have decided for Dutta-Roy two years ago. These have yet to be addressed by any Court. Here Dutta-Roy has no other recourse but to request this Hon. Court to enforce these Orders by necessary writs pursuant to **28 U.S. Code § 1651**:

> (a) The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.
> (b) An alternative writ or rule nisi may be issued by a justice or judge of a court which has jurisdiction.

3. Pattern of Repeated *Void* Judgments

While NDGA's opinion in **DN-161** that '*The judgment entered in this case is not* ***void*** *because the Court did not address all of the Plaintiff's frivolous and absurd arguments.*' does not validate against a simple application of legal principles, in that Dutta-Roy has shown that there was not one but several ***void judgments***.

In chronological order, first it was shown that NDGA's Sum. Jud. **DN-69** was ***void*** because it ruled on whether there was a contract or not, whether there was a fiduciary duty or not, whether in fact Dutta-Roy had met his burden as part of the agreement – **without a jury**. These aspects are at once a violation of not one but several Official Code of Georgia Annotated (**O.C.G.A.**) laws in *prima facie* fiduciary duty by the profit-sharing partnership by **O.C.G.A. § 14-8-7(4)**, where NDGA's (**DN–69**) Order misaddresses 10 year fiduciary statute of limitations by **O.C.G.A. 9-3-27**, and even ignores by **novation** of contract by keeping the domain operational for Jysk's joint-venture (J/V), partnership agreement (P/A) use, as late as 2012. Importantly, **O.C.G.A. § 23-2-58**: ***The existence of a confidential relationship is a question for the jury*** – Dutta-Roy's request for jury in counter-claims filed October 10, 2012, was ignored.

DN-69 was also shown to be ***void*** because Dutta-Roy requested specifically that if not a jury, **The Georgia Revised Uniform Limited Partnership Act (RULPA)**.[45] should have been applied in ascertaining whether there was a P/A or not. That Bratengen encouraged Dutta-Roy to develop the eCommerce while in **back-door negotiations** to sell **By Design** is **intentional malice**, plain and simple. "*A superior financial interest*[6] *in the subject matter of the alleged interference*" cannot be claimed by Bratengen, because Dutta-Roy's domain and eCommerce, **much enlarged the geographic market for By Design**.

DN-69 is also ***void*** because it is unconstitutional in having ACPA being retroactively applied. Dutta-Roy never violated the ACPA and had kept ***bydesignfurniture.com*** continuously registered in his name. NDGA's opinion that he registered it again in 2012 is plain error and plain wrong as it retroactively applied the ACPA, with NDGA confusing ***renewal*** with ***registration***. Dutta-Roy has severally stated that he renewed ***bydesignfurniture.com*** on April 2012, and **did not register** or **re-register** it.

4 **O.C.G.A. § 14-9-100 et seq.**

5 **O.C.G.A. § 14-9-1201(a).**

6 ***Chapman v. Crown Glass Corp.***, 557 N.E.2d 256, 262 (Ill. App. Ct. 1990). [...] in some instances an actor's conduct may protect an interest that the law deems of greater importance than the plaintiffs rights.

> **DN-69/ page-11/ para-2**: Here, the Defendant contends he used the ***bydesignfurniture.com*** domain name under the **Partnership Agreement between BazaarWorks and the Plaintiff**. However, **whatever relationship** existed concerning the 1999 and 2001registrations of ***bydesignfurniture.com***, the Defendant cannot avail himself of the safe harbor provision of the ACPA with respect to the 2012 registrations, where the Defendant's bad faith is readily apparent.

In entertaining these egregious issues of fraud-on-court, ignoring the clear issues of unjust enrichment, NDGA and the 11th Cir. have retroactively applied the ACPA. There **is/ was/ have been NO basis for the ACPA and Lanham Act against Dutta-Roy**, in Dutta-Roy's continuous ownership of domain and allowing its unhindered use to Jysk since 2002, in establishing the **extended US geographic market in pursuance of the J/V, P/A**. If the United States Congress intended the ACPA to be applied retroactively, that would have been part of its clause.

It was also plain error as NDGA found Dutta-Roy's registration of three additional surrounding domains as bad-faith when he was being pursuant to the J/V P/A he had sought to defend in the 4000+ hours over five years he has spent developing the eCommerce, as noted already by ***GeorgiaCarry.Org***. Indeed NDGA in allowing Jysk to be Plaintiff, Judge, Jury and Executor, allowed Jysk to not only Amend Complaint by DN-146 to drop their dilution claims against Dutta-Roy, after six years of litigation **but allow conformance to NDGA's judgment of bad faith against Dutta-Roy by adding in** Dutta-Roy's registration of three domains in 2012, thus forcing conformance to 11th Cir. Opinion in ***GeorgiaCarry.Org, Inc***:

> The 11th Cir. has already held that "*we refuse to consider ... additional facts*" not alleged in the complaint even though "*[t]he defendants d[o] not object*" and "*the district court ... appear[s] to have considered the additional facts as if they had been alleged in the complaint*") (citing ***GeorgiaCarry.Org, Inc. v. Georgia***, 687 F.3d 1244, 1258 n.27 (11th Cir. 2012)).

Following **DN-69**, Order **DN-88**, assigning damages to Jysk for $4,000, is ***void*** not just because **DN-69** was ***void***, but also because **15 U.S.C. 1117** does not allow penalties on registrations prior to enactment of the ACPA – even if the question of penalty by cybersquatting were to arise. But again this penalty clause does not apply also because Dutta-Roy kept domain always registered in his name, and pursuant to the J/V P/A agreement.

> ...damages under subsection (a) or (d) of section 35 of the Trademark Act of 1946 (15 U.S.C. 1117) [e.g. the provision of the ACPA that Plaintiff alleges Defendant violated] ... shall not be available with respect to the registration, trafficking, or use of a domain name that occurs before the date of the enactment of this Act [emphasis added].

NDGA Orders **DN-149** and **DN-161** are also ***inconsistent*** in that Court ignored Dutta-Roy's quasi-contract claims in '***benefits conferred***' upon Jysk in the **distinctive trade-secret** in ***bydesignfurniture.com***. NDGA, then the 11thCir. is adverse to its own opinion in unjust enrichment claims that:

> *"(1) the plaintiff has conferred a benefit on the defendant; (2) the defendant voluntarily accepted and retained that benefit; and (3) the circumstances are such that it would be inequitable for the defendant[ ] to retain it without paying the value thereof."* ***Virgilio v. Ryland Grp., Inc.***, 680 F.3d 1329, 1337 (11thCir. 2012).

Damages in trade-secret misappropriation also argued **O.C.G.A. § 10-1-762(d)**: *In no event shall a contract be required in order to maintain an action or to obtain injunctive relief for misappropriation of a trade secret* and **O.C.G.A. § 10-1-763(a)**: *In addition to or in lieu of the relief provided by* ***Code Section 10-1-762****, a person is entitled to recover damages for misappropriation* – was never addressed by NDGA or the 11th Cir.

The unconstitutional attacks by Jysk in garnishing Dutta-Roy's rental properties in violation of are torts on personalty and property, by ***void judgments*** and matters already in appeal by **FRAP Rules 12.1/ 62.1**, **O.C.G.A. § 5-3-7**. By **28 U.S.C. 1367(a)** '*so related to claims in the action within such original jurisdiction*' by collateral attacks in ***void*** judgments argued, these issues should have been added to the original litigation by **28 U.S.C. §§ 1331**, **1338**, in damages by unfair competition and antitrust restraint by the foreign corporation Jysk. These issues, requested to addressed by amended complaint **DN-143-1**, but ignored by **DN-145**, **DN-149**, then **DN-161** must make them ***void*** as well.

4. Restated: Fraud On Court by Bratengen, Sonnad, GC Zipperman Affidavits

Regardless of the procedural and legal principles cited above, the fact remains that Jysk's perjury, shown now again by Rule 9 particularity, still did not address the perjury and fraud-on-court which has caused him significant losses in his entrepreneurial ventures in ***bydesignfurniture.com*** and then Royz-Dutta, LLC.

Dutta-Roy has stated that **there was a written agreement, not only a verbal agreement**, by which he was engaged to and spent 4000+ hours, of software engineering in over four+ years, designing and **developing the eCommerce solution as a profit-sharing partnership with Jysk**, then Quick Ship DBA **By Design**. This agreement was between then Quick Ship's sole-owner Bratengen and BazaarWorks, a partnership formed between Dutta-Roy, Ashish Negandhi (**Negandhi**), Sonnad (now an employee of Jysk) and Devashish Worah (**Worah**). Dutta-Roy took over the assets and obligations of BazaarWorks after the four person BazaarWorks partnership fell apart about 2002.

Bratengen's affidavit above has been refuted, and the Court has not addressed the fact that the eCommerce was a J/V partnership between Quick Ship and BazaarWorks, that this was a J/V in

profit-sharing from sales from the eCommerce site, **and** that there was at least a verbal agreement, has been shown by Negandhi's affidavit attached (**Apdx-8**), excerpted:

> This letter is to state that I, Ashish Negandhi, confirm that the purpose of BazaarWorks was to design and build a virtual eCommerce platform or on-line shopping mall on the Internet and there was a verbal agreement between BazaarWorks and Kjell Bratengen [...]. This verbal agreement helped start the development of the eCommerce site, on or about July 2000 at no cost to By Design This agreement indicated that BazaarWorks would be compensated **through a percentage of future sales of By Design furniture products from the eCommerce site**.

Dutta-Roy continued the eCommerce development to completion based on the initial understanding between Bratengen and BazaarWorks. The continuation of the initial partnership agreement has been **shown by email** exchanges below between Dutta-Roy and Bratengen.

BRATENGEN → DUTTA-ROY	
Sunday, February 15 2004	**Monday, February 16, 2004**
Hi Monosij, I am ready and motivated to get started again. Let's get going. Kjell	O boy...should I get him to correct this or can we take care of this. I will start on giving you the additional product information if you can take care of the other items. Kjell

That there was a written agreement between Bratengen and BazaarWorks, **and** that GC Zipperman knew about the eCommerce agreement, has **also** been shown by the email (above under Sec. 2) from Bratengen. Thus for Bratengen to refute the fact that there was no agreement by ***DN-57/ DN-58*** shown above must be clear issues of fraud and perjury.

Dutta-Roy then argued that not only had he met his part of the consideration for the no cost development and completion of the eCommerce, but that it was verified to be functional by **By Design** manager Mr. Scott Bell (**Bell**), in the eCommerce running on Dutta-Roy's home-office servers. Bell then, in 2003, proceeded to order the three servers in preparation for full deployment. This fact is confirmed by Sonnad's affidavit (**DN–58–5**) that clearly states that the servers were actually for eCommerce:

SONNAD'S AFFIDAVIT: DN-58-5	
DN–58–5/ para–7: That all of the servers to host the virtual shopping mall were purchased by Plaintiff.	*DN–58–5/ para–8*: That, BazaarWorks LLC provided the specifications for the servers, which were then purchased by the Plaintiff.

Then again, Bratengen stated (Aff. **DN-68-1**), that the servers were '***wholly unrelated***' to eCommerce, and gave no explanation why three servers were purchased by Bell or why Dutta-Roy had the servers in his possession.

> *DN–68-1/ paras–5&6: para–5*: 'agreement being discussed was wholly unrelated to the present matter and concerned servers and an agreement by and between an individual named Scott Bell, an employee of By Design

Furniture and Defendant.' ***para–6***: [And that the servers purchased by Mr. Scott Bell were] 'a portion of a large discussion concerning servers, and the agreement referenced therein refers to an agreement between Defendant and Scott Bell, an employee of By Design Furniture concerning servers ...'

By this evidence alone, there must be no doubt that significant perjury were committed by Bratengen and Sonnad to state that there was no agreement by which Dutta-Roy spent 4000+ hrs to develop the eCommerce and get it ready for deployment.

And by the above, Sonnad's assertion that there was no contract with BazaarWorks, '*written or otherwise*,' to develop the eCommerce, when she herself was a part of BazaarWorks, must not only be fraud-on-court, but absurd?

SONNAD'S AFFIDAVIT: DN–57–5/ DN–58–5

DN–57–5/para–6: That the purpose of BazaarWorks was to build a virtual shopping mall on the internet.	***DN–58–5/para–4***: That, since the organization of BazaarWorks, LLC, up to the dissolution thereof by the Georgia Secretary of State, Dev Worah, Ashish Negandhi, Monosij Dutta-Roy and I were the only employees and members of BazaarWorks, LLC	***DN-58–5/para–12***: That, despite the aforementioned conversations [i.e. conversations regarding the development of an on line shopping mall], there was never any contract (written or otherwise) reached between Plaintiff and BazaarWorks, LLC **[now Petitioner Dutta-Roy]** to become an online retailer within the virtual shopping mall on the internet.

GC Zipperman's **scienter** and **perjury** has also been shown by the above email references from Bratengen. GC Zipperman noting no '*personal recollection*' on eCommerce, clearly shows fraudulent misrepresentation of the facts:

DN-68–3/para–3: I have no personal recollection of reviewing or commenting to the alleged Partnership Agreement, a copy of which is attached hereto as Attachment "A", in my capacity as general counsel for Quick Ship Holding, Inc. and have no personal recollection of ever seeing said agreement outside of becoming aware of the assertions of the Defendant with reference to said agreement in the above-captioned litigation.

Please contrast this with Bratengen's email above noting '***I also have a copy of your agreement and so does my attorney so bring it on***.'

Then from GC Zipperman's affidavit below, negligence, aiding and abetting of fiduciary duty, fraudulent misrepresentation, thus legal malpractice, *sui generis*, was cited for GC Zipperman's actions, 11th Cir. opinion in ***Lucky Capital Mgmt., LLC v. Miller & Martin, PLLC,*** No. 16-16161 (11th Cir. July 3, 2018) (***Lucky***) and by **O.C.G.A. §§ 9-15-7/ 51-1-6/ 9-15-13**.

DN–68–3/para–2: I am a member of the State Bar of Georgia. I, together with my law firm, Davis, Zipperman, Kirschenbaum & Lotito, LLC, have represented Kjell Bratengen together with various companies in which he has held an ownership interest, including but not limited to Quick Ship Holding, Inc., and have served as general counsel for said companies from 1998 through the present. Specifically, I was general counsel for Quick Ship Holding, Inc. during calendar year 2000.

But for GC Zipperman's ***1)*** *wrongful conduct,* ***2)*** *with knowledge* in Bratengen partnership, ***3)*** ending eCommerce and *misappropriating* Dutta-Roy's *fiduciary* stake, *enabling sale* of **By Design** and ***bydesignfurniture.com***, ***4)*** destroying any hope for Dutta-Roy's recovery in his *enormous futures investment* in early-stage eCommerce – must be *ipso facto* in evidence showing **both Bratengen, GC Zipperman having copies of P/A**. GC Zipperman's affidavit (**DN-68-3.para-2**) is clear about his and his firm Davis, ipperman, Kirschenbaum, Lotito's (**DZKL**) relationship to Bratengen '*from 1998 to present, specifically [..] year 2000.*' These were the prime years of the development of the eCommerce on ***bydesignfurniture.com***.

5. Misplaced Issue of Bad-Faith on Dutta-Roy

Beyond the procedural issues and the clear affidavit discrepancies of Bratengen, Sonnad and GC Zipperman in there not being a contract, the fact is NDGA's Summary Jud. **DN-69** agrees there was a partnership agreement (**P/A**) as well. However, it does not delve into what happened with the P/A especially when servers were purchased, but instead opines that Dutta-Roy showed bad-faith when he '**registered**' the domain ***bydesignfurniture.com*** at the request of Jysk in April 2012.

> **DN-69/ page-11/ para-2**: Here, the Defendant contends he used the ***bydesignfurniture.com*** domain name under the Partnership Agreement between BazaarWorks and the Plaintiff. However, whatever relationship existed concerning the 1999 and 2001 registrations of ***bydesignfurniture.com***, the Defendant cannot avail himself of the safe harbor provision of the ACPA with respect to the 2012 registrations, where the Defendant's bad faith is readily apparent. And the Partnership Agreement does not authorize the Defendant to take the Plaintiff's trademark hostage even if the Defendant was due payment under the agreement.

Neither the NDGA, nor the 11th Cir. has addressed how it is bad-faith by Dutta-Roy when he had a valid (even if verbal) contract and has spent 4000+ hours developing the eCommerce to completion, then canceled by Bratengen after servers were purchased to go-live, which would have would have allowed him to earn a percentage of the sales for his four+ years effort. It does not also address Dutta-Roy's plausibility arguments in restraint, aiding and abetting of a fiduciary duty, when facts clearly show that **Bratengen kept Dutta-Roy engaged through 2004 in developing the eCommerce as he made back-door negotiations to sell Quick Ship DBA By Design to Jysk**, in sale completed mid-2006.

These egregious torts against Dutta-Roy notwithstanding, NDGA's **DN-69** opinion also misaddresses that Dutta-Roy '**registered**' ***bydesignfurniture.com*** in 2012. He **did not register or re-register *bydesignfurniture.com* in his name**, he has held it continuously since April 9, 1999. Dutta-Roy **renewed** the domain on April 10, 2012 when Jysk manager Mr. Peder Sorensen (**Sorensen**) let him know that the registration lapsed. Dutta-Roy's renewal of domain by payment

of fees reactivated the domain in the partnership usage with Jysk, which they had been granted use since October 2002, in pursuance of the P/A. The **consideration** shown by Dutta-Roy, then of **novation** of contract, indeed Dutta-Roy's fiduciary duty are dismissed in **DN-69/** ***page-16/ para-1***: by '*Even assuming he is a successor in interest to BazaarWorks, there is no discussion of why the Defendant himself has purportedly been maintaining a website for the Plaintiff for over seven years without compensation and apparently without the Plaintiff's knowledge*.'

Bratengen has never shown that this agreement (P/A) was ever rescinded or Dutta-Roy did not meet his contractual obligations. His persistent claim that there was '*no contract*' is clear perjury **by not one, but several of his statements**. NDGA did not verify the status of the P/A by which servers were purchased or why Dutta-Roy has ***been maintaining a website for the Plaintiff for over seven years without compensation***.' The clear facts show it was **not** '***without the Plaintiff's [or counsel's] knowledge***.' Surely Dutta-Roy must be '***due payment under the agreement?***'

In refusing to let Dutta-Roy participate in the 100+ billion US furniture market by the J/V, P/A he developed the eCommerce for, in zero consideration for the '***benefits conferred***' in uninterrupted usage of ***bydesignfurniture.com***, the temporary website and email addresses – the bad-faith of Jysk must be certain. That their perjury extends to their filing as ***By Design Furniture***, when their DBA name is **By Design** is also a travesty of law that are requested to be remedied.

6. Supreme Court's Review in *Void*, Unconstitutional Judgments

The fact is, fraud has not been ruled upon and is shown beyond a reasonable doubt Jysk's perjury just in comparison of he affidavits. The facts clearly show that the Court and previous proceedings herein has been corrupted by the "*intentional, fallacious and perjurious statements of [Respondent], its officers and employees*," ***Bulloch v. United States***, 763 F.2d 1115, 1121 (10th Cir. 1985). There is no valid reason anymore for fraud-on-court to be not granted, but more importantly, for the default judgment requested by **DN-154** and/ or JMOL by **DN-157** to be withheld. Not allowing that judgment would essentially amount to all rules cited in this case, but especially the sum of **Rule 60**, **Rule 55** and **Rule 50** to have no meaning.

Dutta-Roy understands that that Default Judgments are usually not favored by courts and the 11th Cir. has noted that "*a court should keep in mind that the law strongly disfavors default judgments, preferring the resolution of genuine disputes on the merits, and thus, should consider whether the defendant has a meritorious defense and whether extraordinary circumstances exist.*" ***Saperstein v. Palestinian Authority***, 2008 WL 4467535, *11 (S.D. Fla. Sept. 29, 2008) (citing ***Jackson v. People's Republic of China***, 794 F.2 1490, 1496 (11th Cir. 1986)).

In this case, however, Jysk now has had several chances to answer the issues of not only fraud, but also issues as a consequence of the fraud and fraud-on-court – in unjust enrichment and equitable accounting arguments put forth in Dutta-Roy's Appeals and Motions at the 11th Cir. Jysk has not responded to them either. **DN-154** and **DN-157** show a comprehensive list of issues, beyond fraud, Jysk have failed to answer, plead or defend.

Indeed they do not need to. The matter must be clear. Bratengen, Sonnad and GC Zipperman encouraged Dutta-Roy to continue to develop the eCommerce, while making back-door deal to sell Quick Ship DBA By Design to Jysk in 2006. Dutta-Roy can only speculate that since Quick Ship failed to convey the domain name, ***bydesignfurniture.com*** to Jysk when Jysk purchased Quick Ship (*a fact confirmed in a phone coversation between Jysk's Danish manager Eigil Mathieson and Dutta-Roy*), Bratengen, Sonnad, GC Zipperman, Sorensen, counsels Mr. Jonathan Fain (**Fain**) and Mr. Ashutosh Joshi (**Joshi**), conspired and lied to the court to bring a quick end to Jysk's legal expenses in obtaining the domain name for Jysk. There was, after all, the USD 100 billion+ per year US furniture market at stake.

In the **totality of the seven litigations**, Jysk and counsels "*blatantly lying' to secure default judgment against the non-client*"[7][8] Dutta-Roy in misappropriation of **By Design** and ***bydesignfurniture.com***. It must be *ipso facto* in civil conspiracy, fraudulent concealment and aiding/ abetting of fiduciary duty by ***Lucky*** to also allow for legal malpractice against GC Zipperman and counsels by **O.C.G.A. § 13-6-11**, in **Rule 9(b)** particularity in ***scienter*** in that "***[m]alice, intent, knowledge, and other conditions of a person's mind may be alleged generally***."

WHEREFORE, Dutta-Roy prays for a rehearing in addressing his substantial rights, further requesting this Honorable Court:

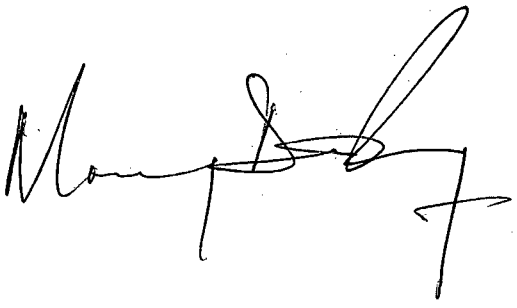
1) Issuing necessary writs as allowed by to adjudicate on his motions in **Rule 60 DN-147**, **Rule 55(a)** Def. Jud. **DN-154** and **Rule 55(a)(2)** JMOL **DN-157** in necessary adjudication for fraud-on-court and related amended counterclaims;
2) In the alternative, issue a remand on NDGA Orders and Final orders already shown by ***void*** and ***inconsistent*** judgments;
3) In the process allow the necessary remedies Dutta-Roy desperately needs in these difficult times and especially by eight years of litigation as a *pro se* Appellant.

7 ***Perk v. Worden***, 475 F. Supp. 2d 565, 570 (E.n. Va. 2007).

8 *Alex B. Long*, **LAWYERS INTENTIONALLY INFLICTING EMOTIONAL DISTRESS**, 42 Seton Hall L. Rev. 55, 89 (2012).

Respectfully submitted,

*This **Friday, November 20, 2020**.*



By:

Petitioner

MONOSIJ DUTTA-ROY

P.O. Box 1241

Decatur, GA 30031–1241

Mobile: +1 (404) 664-3605

Email: ***monosij.legal@gmail.com***

CERTIFICATE OF COMPLIANCE

This Petition for Rehearing is prepared under **Rule 33.2**, and within the 15 page limit.

By conditions stated in **Rule 44**, the Petition is presented in good faith and not for delay.

The grounds are limited to intervening circumstances of a substantial or controlling effect or to *other substantial grounds not previously presented* (here specifically noting Dutta-Roy's **Rule 60(b) DN-147** still outstanding at NDGA, with related Default Judgment by **DN-154**).

By **Rule 44**, this Petition originally submitted, October 30, 2020, within 25 days from Petition for Certiorari denied on October 5, 2020, and resubmitted on November 20, 2020, within 15 days of necessary curing requested by SCOTUS in letter dated November 5, 2020.