

ORIGINAL

20-1591

No. 21-

FILED
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SUPREME COURT, U.S.

IN THE

Supreme Court of the United States

ASHWIN K KHOBRAGADE,

Petitioners,

v.

COVIDIEN LP,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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SUPREME COURT, U.S.

QUESTIONS

- 1. Is the Defendant Covidien LP entitled to the absolute qualified immunity? Which is luring, hiding, lying, cheating, stealing, RICO and committing fraud to and from the Govt. of United States and the Plaintiff (white collar) simultaneously, while making plaintiff work in Mexico illegally, while reporting plaintiff, on paper, to be a US Worker working in USA; and as a result, simultaneously suppressing the U.S. White Collar Citizen's hiring at 100% of the prevalent salary. Did the District Court Err? Did the Ninth Circuit Courts Err?**

- 2. Is it okay for the defendant employer Covidien LP to repeatedly relentlessly obsessively compulsively break the one and only law**

(available to a prior white collar employee), that resulted in numerous irreparable losses of significant proportion (i.e. a Total of 140+ torturous encounters on the plaintiff) deliberately causing and resulting in overwhelmingly catastrophic & financially disastrous position (defendant stealing everything, leaving only one suitcase) for the Plaintiff, Is the defendant entitled to absolute qualified immunity or should the District Courts have deter the Defendant by sanctions, and did the Southern California District Court Err? Did the Ninth Circuit Court of Appeals Err?

3. Most Importantly, The Supreme Court of the United States, *stare decisis* ruling was disrespectfully disregarded and in addition a

total of 5 different Court of Appeals (previously 2nd Circuit, 5th Circuit, 6th Circuit, 9th Circuit and 11 Circuit) *stare decisis* ruling in 11+ different cases were in addition also disregarded, and further more Federal Rule of Civil Procedure, Rule 56, 2010 amendment subdivision (e) was further more disrespectingly disregarded i.e. In Hierarchical and precedential Order, that substantially affects a rule of national application in which there is an overriding need for national uniformity, did the Southern California District Court Err? Did the Ninth Circuit Court of Appeals, Err?

PARTIES TO THE PROCEEDINGS BELOW

The Pro Se Plaintiff, Appellant and Petitioner is Mr. Ashwin K Khobragade. The Defendant, Appellee and Respondent is Covidien LP, now sold to Medtronic LP (an American company, in Ireland (a corporate tax haven), gross profiting \$5 Billion US Dollars every 3 months and \$20 Billion US Dollars annually, from a revenue of \$30 Billion US Dollars annually, approximately, year over year over year, since a very very long time, of 60+ years).

RELATED PROCEEDINGS

1. Court in question: United State District Court, Southern District of California, San Diego, CA, Case Number: 3:16-cv-00468-WQH-AGS Docket Number: 140 Case Caption for the proceeding: Khobragade v. Covidien Lp, Order on Motion for Summary Judgment. Date of entry of the judgment: February 19, 2019
2. Court in question: United State District Court, Southern District of California, San Diego, CA, Case Number: 3:16-cv-00468-WQH-AGS Docket Number: 145, 152, 155 Case Caption for the proceeding: Khobragade v. Covidien Lp, Order on Motion for Reconsideration Date of entry of the judgment: April 2, 2019.
3. Court in question: United States Court of Appeals for the Ninth Circuit, San Francisco, CA Case Number: 19-55498 Docket Number: 41 Case Caption for the proceeding: Ashwin Khobragade v. Covidien LP, Memorandum Order on Opening Brief and Reply Brief. Date of entry of the judgment: September 8, 2020.
4. Court in question: United State Court of Appeals for the Ninth Circuit, San Francisco, CA. Case Number: 19-55498 Docket Number: 44 Case Caption for the proceeding: Ashwin Khobragade v. Covidien LP, Order on Petition for *en Banc* Rehearing Date of entry of the judgment: December 8, 2020

TABLE OF AUTHORITIES

United States Supreme Court Case Laws

1. *Alexander v. Garner-Denver Company*, 415 U.S. 36, 94 S.Ct. 1011, 39 L.Ed.2d 147 (1974).....24
2. *Celotex*, 477 U.S. at 323.....26
3. *Henry*, 983 F.2d at 949–50.4 *3.....27
4. *Eldridge*, 832 F.2d at 1136–38.....31
5. *AIDS Healthcare Foundation, Inc. v. Gilead Sciences, Inc. and Japan Tobacco Inc.*, 2018 WL 3819236(U.S), 19.....69
6. *Md Cas. Co v. Pac. Coal & Oil CO.*, 312 U.S. 270, 273 (1941),71
7. *Chambers v. NASCO, Inc.*, 501 U.S. 32, 46 (1991).....71
8. *Alyeska [Pipeline Serv. Co. v. Wilderness Soc'y*, 421 U.S. 240,] 258–259, 95 S.Ct. 1612, 44 L.Ed.2d 141 [(1975)].....74
9. *F.D. Rich Co. v. United* *545 *States ex rel. Industrial Lumber Co.*, 417 U.S. 116, 129, 94 S.Ct. 2157, 40 L.Ed.2d 703 (1974)).....74
10. *Hall v. Cole*, 412 U.S. 1, 5, 93 S.Ct. 1943, 36 L.Ed.2d 702 (1973).....74
11. *Newman v. Piggie Park Enterprises, Inc.*, 390 U.S. 400, 402, n. 4, 88 S.Ct. 964, 19 L.Ed.2d 1263 (1968).....74

12. <i>Universal Oil Products Co. v. Root Refining Co.</i> , 328 U.S. 575,] 580, 66 S.Ct. 1176, 90 L.Ed. 1447 [(1946)].....	74
13. <i>Hutto v. Finney</i> , 437 U.S. 678,] 689, n. 14, 98 S.Ct. 2565, 57 L.Ed.2d 522 [(1978)].....	75
14. <i>Chambers</i>	75
15. <i>Roadway Express, Inc. v. Piper</i> , 447 U.S. 752, 767, 100 S.Ct. 2455, 65 L.Ed.2d 488 (1980) ..	76
16. <i>Chambers</i> , Id. at 50, 111S.Ct. 2123.....	76
17. <i>Chambers</i> , 501U.S. at49, 111S.Ct. 2123.....	77
18. <i>Chambers</i> , 501 U.S. at 36, 40, 111 S.Ct. 2123.....	77
19. <i>Chambers</i> , 501U.S. at49–50, 111S.Ct. 2123.....	104
20. In <i>Bagwell</i> , Id. at 824–25, 114 S.Ct. 2552....	77
21. <i>Estate of Adams v. Fallini</i> , No. CV24539 (Nev. 5th Dist. Ct. Jan. 31,2007).....	90
22. <i>Eppes v. Snowden</i> , 656 F. Supp. 1267, 1279 (E.D. Ky. 1986).....	91
23. <i>C.B.H. Resources, Inc. v. Mars Forging Co.</i> , 98 F.R.D. 564, 569 (W.D. Pa. 1983).....	91
24. <i>Boumediene v. Bush</i> , 128 S. Ct. 2229 (2008).....	101
25. <i>Hamdan v. Rumsfeld</i> , 548 U.S. 557 (2006).....	102
26. <i>Hamdi v. Rumsfeld</i> , 542 U.S. 507 (2004).....	102
27. <i>Rochin v. 16 California</i> , 342 U.S. 165 (1952).....	81

28. <i>The Court in Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics</i> , 403 U.S. 388 (1971).....	82
29. <i>Id.</i> at 404-05.....	84
30. <i>Davis v. Passman</i> , 442 U.S. 228 (1979).....	84
31. <i>Carlson v. Green</i> , 446 U.S. 14.....	84
32. <i>Cooter & Gell v. Hartmarx Corp.</i> , 496 U.S. 384 (1990).....	85
33. <i>Adickes v. S.H.Kress & Co.</i> , 398 US. 144, 157, 90 S.Ct 1598(1970).....	34
34. <i>White motor Co. v. U.S.</i> , 372 U.S. 253, 259(1963).....	34
35. <i>MedImmune, Inc. v. Genentech, Inc.</i> , 549 U.S. 118, 127 S.Ct. 764, 166 L. Ed. 2d 604 (2007).....	35
36. <i>Maples v. Thomas</i> , 132 S. Ct. 912 (2012).....	95

United States Court of Appeals, Circuit Court

Case Law

37. <i>Jones v. Supreme Sugar Refinery, Div. of J. Aron & Co.</i> , 493 F.2d 1354, (Mem)–1355 (5th Cir. 1974).....	24
38. <i>Godfrey v. New York City Transit Auth.</i> , 258 F. App'x 353 (2d Cir. 2007).....	25
39. <i>Godfrey v. New York City Transit Auth.</i> , 258 F. App'x 353 (2d Cir. 2007).....	26
40. <i>Jacobs v. Angelone</i> , 995 F.2d 231 (9th Cir. 1993).....	27

41. <i>United States v. One Piece of Real Prop.</i> Located at 5800 SW 74th Ave., Miami, Fla., 363 F.3d 1099 (11th Cir. 2004).....	28
42. <i>Trustees of Cent. Pension Fund of Int'l Union of Operating Engineers & Participating Employers v. Wolf Crane Serv., Inc.</i> , 374 F.3d 1035 (11th Cir. 2004).....	28
43. <i>Stough v. Mayville Cnty. Sch.</i> , 138 F.3d 612 (6th Cir. 1998).....	29
44. <i>Heinemann v. Satterberg</i> , 731 F.3d 914 (9th Cir. 2013).....	30
45. <i>Garcia v. Knapp</i> , 936 F.2d 577 (9th Cir. 1991).....	31
46. <i>Smith v. Haan</i> , 199 F. App'x 594 (9th Cir. 2006).....	32
47. <i>Landon v. Hunt</i> , 938 F.2d 450, 454 (3d Cir. 1991).....	77
48. <i>Martinez-Aguerro v. Gonzalez</i> , 459 F.3d 618 (5th Cir. 2006).....	84
49. <i>Cale v. Johnson</i> , 861 F.2d 943 (6th Cir. 1988).....	84
50. <i>Bagola v. Kindt</i> , 131 F.3d 632 (7th Cir. 1997).....	84
51. <i>Magluta v. Samples</i> , 375 F.3d 1269 (11th Cir. 2004).....	85

United States District Court Case Law

- 52. *Breezvale Ltd. v. Dickinson*, 759 A.2d 627, 641 (D.C. 2000).....71
- 53. *Sun World, Inc. v. Olivarria*, 144 F.R.D. 384 (E.D. Cal. 1992).....72
- 54. *Alexsam, Inc. v. Wildcard Systems, Inc.*, 2018 WL 4069093.....71
- 55. *Mancia v. Mayflower Textile Servs. Co.*, 253 F.R.D. 354, 362 (D. Md. 2008).....100

Authorities : Constitution, Supreme Court Rules And Federal Rules.

- 56. United States Constitution, Article 4, Clause 2.....12
- 57. United States Constitution, Bill of Rights 4th Amendments.....13, 22
- 58. United States Constitution, Bill of Rights 5th Amendments.....13, 23
- 59. United States Constitution, Bill of Rights 7th Amendments.....14, 23
- 60. United States Constitution, Bill of Rights 8th Amendments.....14, 23
- 61. United States Constitution, Bill of Rights 14th Amendments.....14, 23

62. Supreme Court of the United States, Rule 10 (c).....	17
63. Supreme Court of the United States, Rule 10 (a).....	19
64. Federal Rule of Civil Procedure, Rule 45....	72
65. Federal Rules of Civil Procedure, Rule 60(d) (3).....	78, 90, 93, 94
66. Federal Rule of Civil Procedure, Rule 56, 2010 Amendment, Subdivision (e).....	18, 20, 24, 32, 33
67. Fed. R. Civ. P, Rule 26(g).....	85, 95, 97
68. Fed. R. Civ. P, Rule 37.....	85
69. Federal Rule of Civil Procedure, Rule 11.....	77, 86
70. FRCP Rule 11 Notes of Advisory Committee on Rules-1993 Amendment subdivision (b) and (c).....	85
71. FRCP Rule 11 Notes of Advisory Committee on Rules-1993 Amendment subdivision (d).....	85

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
PARTIES TO THE PROCEEDINGS BELOW.....	iv
RELATED PROCEEDINGS	v
TABLE OF AUTHORITIES.....	vi
TABLE OF CONTENT.....	xii
INTRODUCTION.....	1
OPINIONS AND ORDERS BELOW.....	8
JURISDICTION	12
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.....	12
STATEMENT OF THE CASE	15
REASONS FOR GRANTING THE PETITION	17

CONCLUSION 40

APPENDIX A 42

Order of the Lower Ninth Circuit
Court of Appeals on the Appeals.

APPENDIX B 60

Order of the Lower Ninth Circuit
Court of Appeals on Petition for
Rehearing En Banc.

APPENDIX C 63

Facts in accordance with Laws for
Imposing Sanction on Defendant
Covidien LP, now Medtronic LP.

APPENDIX D 108

Order of the Lower District Court,
Couldn't be attached, because the
Pacer.gov did not allow access to the
Order.

INTRODUCTION

**Introduction of the Pro se, Appellant, Petitioner,
Plaintiff, Mr. Ashwin K Khobragade,**

1. Awarded in the year 2002 Merit Scholarship, and
a Master in Bioengineering, an advanced degree
holder from then Top 50th Ranked University of
the United States of America, Syracuse
University, Syracuse, NY, 13210, in the year
2005. Syracuse University, the Alma Mater of our
Current 46th President of the United States of
America, Honorable Mr. President Joe Biden.
The alumni and affiliates includes founder of The
New York Times, 3 Nobel Prize Winner, 1 Field
Medalist, 33 Olympic Medalists, numerous
Pulitzer Prize recipients, Academy Award
winners, Rhodes Scholars, Marshall Scholars,
Various Governors, Members of the U.S. Senate

and House of Representatives. Plaintiff Mr. Ashwin K Khobragade also earned a Bachelor's in Mechanical Engineering, in the year 2002. Who once even got Accepted, Invited and Interviewed at the Top 15th ranked United States University, Ross School of Business, University of Michigan, Ann Arbor, Michigan for a Master in Business Administration Program in year 2008, who even got selected, Accepted and Invited and Interviewed by the Top #1 University of the World, for a Master in Business Administration Program, at University of Oxford's, Saïd Business School, Oxford, UK in year 2015. Mr. Ashwin K Khobragade, is a highly Advanced Degree skilled and trained professional with exceptional ability, with great experience who has worked gainfully in USA, for approximately 8 years and 3 months, in a Fortune 2000 Company, in a Fortune 1000

company, in a Fortune 500 company, Global Fortune 200 Company, and in once coined the longest startup company.

2. Is and since termination, the plaintiff has not only tried to mitigate the pain of the situation, by taking the GMAT examination numerous times but also has taken the LSAT examination many times, for admission into Top Business school and or Law school respectively. And similarly since termination, applied for jobs not only in his areas of degrees of education and experience, but also in different industries, like consulting, software, mechanical, finance, medical not only in California, but in the entire United States, not only in United States but also in Europe, North America and Asia, where applicable.

Simultaneously since termination, the plaintiff has started his business, with growing his

businesses up into 15 different areas of specialty, field, sector and or industry, with more than a dozen of product patent pending position till date. And since the prior attorney's withdrawal due to plaintiffs lack of capability of paying attorneys steady legal fee, the plaintiff had, been self-focusing on the legal proceedings of the Federal Court, Ninth Circuit Court and the Supreme Court of the United States, facing a tough and dangerous non-stop fight from the defendants, their past and or present guilty employees, the guilty employee's guilty friends/family/relative, their guilty law firm/s and their far reaching guilty authorities. Knowing the firsthand experience gained, the plaintiff was offered \$5 Million for his first book writing.

3. It is, Not only that the defendant Covidien LP, now Medtronic LP obstructed, thwarted and

damaged the plaintiffs GMAT and LSAT examination multiple times, while preparing, and during taking the exams in Southern California District and multiple places in North East Coast Towns/cities, but also the defendant Covidien LP, now Medtronic LP blocked, obstructed and thwarted the funding for the plaintiffs business of many business ideas, twice in New York City on Dec 2017 at corner of 41st street & 5th Ave and on Jan/Feb/Mar 2017 in person offered \$25 Million, in a Library in the neighborhoods of Columbia University, New York, NY. Not only that, but the defendant Covidien LP, now Medtronic LP also screwed up my business school admission personal interview to the #1 ranked University in the world, University of Oxford, Oxford, UK.

For this case, the plaintiff has even had a chance and fortune for 1.5 year in 2016 & 2017, visiting multiple times, with help from New York Public Library's Stephen A. Schwarzmans Building, to Study Law specifically to prepare for this Court Case, at the New York University(NYU), School of Law, in the Law Library ranked Top 5 Law schools in the World with including many past and present faculty and alumni of 38 Nobel Laureates, 8 Turing Award winners, 5 Field Medalists, 31 MacArthur Fellow, 26 Pulitzer Prize winner, 3 Heads of State, a U.S. Supreme Court Justice, 5 U.S. Governor, 4 mayors of New York City, 12 U.S. Senators, 58 members of the House of Representatives, two Federal Reserve Chairman, 37 Academy Award Winner, 30 Emmy award winner, 25 Tony award winner, 12 Grammy Award winner, 17

billionaires and seven Olympic medalists, Six Rhodes Scholars, three Marshall Scholars, 29 Schwarzman Scholar and one Mitchell Scholar.

4. Introduction of Plaintiff is to bring to the Supreme Courts of the United States' notice, the plaintiffs recent past and current state, for pleadings.

When the lower court decided cases differently, it can lead to confusion. As the "Court of Last resort", the Supreme Court of United States can and does make decisions that all the courts must follow, establishing a precedent; a legal example which will be followed in all similar cases in the future. This guarantees that the laws are applied equally to all people, no matter where they live. And sincerely, in this case, so far, it has not been that case, since the District and Circuit Court caused

confusion, as shown vividly, as none of my motion ever got granted, except for time extension, in the entire history of legal proceedings till date, contrarily, when the abundances of proof of evidences, was shown to both the Courts. Hence the Petition for a Writ of Certiorari is appealed to the United States Supreme Court, as the absolute necessary last resort, for remedy, for the defendants increasing intensity of horrific tortures and Claims, since the last 11 years, even after termination, so that the remedy and justice be granted to the plaintiff.

OPINIONS AND ORDERS

"TASHIMA, SILVERMAN, and OWENS, Circuit Judges. "We do not consider arguments and allegations raised for the first time on appeal. See Padgett v. Wright, 587 F.3d 983, 985 n.2 (9th Cir.

2009).” The three lower court Judges attaching to the Memorandum Order, see APPENDIX A, below;

“B. Purpose (Rehearing En Banc) • A party should seek en banc rehearing only if one or more of the following grounds exist: ► Consideration by the full Court is necessary to secure or maintain uniformity of the Court’s decisions; . . . ► The opinion directly conflicts with an existing opinion by another court of appeals or the Supreme Court and substantially affects a rule of national application in which there is an overriding need for national uniformity.”

However, the Petition for Rehearing en Banc was not even reviewed, please see in attached CM/ECF 44 in Appendix B.

“TASHIMA, SILVERMAN, and OWENS, Circuit Judges. “We reject as unsupported by the record Khobragade’s contention that the district court did not address his last motion for an extension of time to file a summary judgment opposition.””

The facts can't be rejected only because the 3 judges chooses to, because, there is still no record and or order, yet to date, that the last motion for extension of time to file a summary judgment was approved or denied. Because the plaintiff never got an email and or letter mail stating approval or denial nor there is a Docket Entry as such, for the last motion for extension of time to file a summary judgment opposition, denied or granted.

"TASHIMA, SILVERMAN, and OWENS, Circuit Judges. "The district court did not abuse its discretion in denying Khobragade's motions to reopen discovery, for sanctions, for reconstruction of electronic data, and for a protective order because Khobragade presented no basis for the requested discovery or sanctions".

The plaintiff presented hundreds and thousands of pages of proof of evidences in documents, medical reports, police reports and other reports in the opening brief, reply brief and motions and also in CM/ECF #152 Attachment for Motion for Reconsideration; defendants totally evasive response to all discovery request in Reply Briefs CM/ECF#39-3, page 120, pleadings for sanction, in the motions submitted to the District Court and to the Ninth Circuit Appeals Court. Even for pattern recognitions i.e. the fact pattern speaks boldly and loudly without a reason of doubt, that the defendant is guilty and must be imposed with sanction on the defendant Covidien LP, now Medtronic LP, with certainty.

District Court Judge Hayes ruled the final judgment, against plaintiff, saying plaintiff does not have evidence. However, see plaintiffs CM/ECF # 152

has 393 pages (attached in opening brief Exhibit 22 also), overwhelmingly filled with evidences, that will prove the case, and even more evidences in opening briefs and reply briefs, in plaintiffs favor.

JURISDICTION

The judgment of the Ninth Circuit, Court of Appeals was entered on September 8, 2020. The Petition for rehearing *en banc* was denied on December 8, 2020. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY

PROVISIONS INVOLVED

- **United States Constitution Article VI, Clause 2.**
Supremacy Clause of the Constitution of the United States provides:

“This Constitution, and the laws of the United States which shall be made in

pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding."

- **United States Constitution, Bill Of Rights**

Amendment IV

"Protects citizens from unreasonable search and seizure. The government may not conduct any searches without a warrant and such warrants must be issued by a judge and based on a probable cause"

- **United States Constitution, Bill of Rights**

Amendment V

"Nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law;

nor shall private property be taken for public use,
without just compensation."

- **United States Constitution, Bill of Rights**
Amendment VII

"provides that civil cases preserve the right to trial by jury"

- **United States Constitution, Bill of Rights**
Amendment VIII

"Prohibits ...cruel and unusual punishments"

- **United States Constitution, Bill of Rights**
Amendment XIV

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person

within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASES

The defendant Covidien LP, now Medtronic LP lured, lied, cheated and stole while hiding it, not only to and from the USCIS, DOL etc, Government of the United States of America, but also to and from the Plaintiff and not only that but using the Plaintiff to fill their own pockets and or their employees pocket with plaintiffs money, which in turn made more money for the defendant, while forcing plaintiff to work very hard, illegally, out of the country, stressed, exhausted and depleting plaintiffs cash, and even planned to chop plaintiffs salary, furthermore in half, as shown with proof of evidences, in the Index in the Exhibits 61 of Reply Brief CM/ECF 39 and Exhibit 22 of Opening Brief CM/ECF 11 to the Ninth Circuit Court and in the Exhibits of Motion for

Reconsideration, CM/ECF # 152 to the United States District Court of Southern California. (see, Charts in APPENDIX C) Even for pattern recognitions i.e. the fact pattern, speaks boldly and loudly, without a reason of doubt, the defendant is guilty of all the allegations and Supreme Court of the United States, must enforce and imposed a sanction immediately on the defendant. And along with inductive and deductive reasoning for logic, the defendant must be sanctioned, and this case must be reversed and remanded to the United States District Court of Southern California, for trials. The Southern California District Court failed to acknowledge, the abundance of evidences, moreover absolutely ignored it. Upon retrospection, it was the dismissal of the case, with abuse of discretion. Similarly, the Ninth Circuit, not only absolutely ignored the proof of evidences, but also disrespectfully disregarded the

33 case laws of the Supreme Court of the United States and other Circuit Courts and disregards the 7 scholarly books and or scholarly articles, quotations, and Federal Rule of Civil Procedure Rule 56, as listed in, FER Reply Brief Exhibit 62, CM/ECF 39.

REASONS FOR GRANTING THE PETITION

The Supreme Court should grant petition for a writ of certiorari for the following reasons:

A. This Case that will resolve a clear conflicts or law:

Supreme Court, Rule 10, (c) Considerations Governing Review on Certiorari,

“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,” and “has decided an important federal question in a way that conflicts with relevant decisions of this Court.”

The lower courts issuing conflicting and
contradictory decisions, to all other U.S. Courts,

1. District Court, upon unopposed (MSJ) motion, (defendant arms controlling me), contradicted, the Fed. R. Civ. P. Rule 56, 2010 amendment subdivision (e).
2. Similarly contradicting, the Forged evidence rule submitted by the defendant to the federal lower Court and the circuit court overlooked it or disrespected it or disregarded the laws for it.
3. And the defendant Covidien LP repeated obsessively compulsively violation of "Retaliation", One and only law available to a, prior employee; with US Advanced Degree from Syracuse University, A Top 50th Ranked US University, which also is the Current Honorable Mr. Presidents Joe Biden's Alma Mater, however

the Lower Court and Circuit Court overlooked it,
disrespected it and or disregarded the law for it.

4. The Circuit Court absolutely ignored the
precedence of 30 + case laws with 7 books and or
article listed in Reply Briefs, along with the
Federal Rules of Civil Procedure.

B. Because this case is important and unique:

C. Because in this case, in which the Lower Courts
disregards the Supreme Court:

Supreme Court, Rule 10, (a) Considerations
Governing Review on Certiorari,

“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;”

When the lower court blatantly ignores a previous Supreme Court ruling, the Supreme Court may decide to hear a case to correct or simply override the lower court's ruling. Most Importantly, A Supreme Court's *stare decisis* ruling was disregarded and in addition a total of 5 different additional Circuit Courts *stare decisis* ruling in 10 Different Circuit Court Cases were in addition also disregarded, further more importantly Fed. R. Civ. P. Rule 56, 2010 Amendment subdivision (e) was also disregarded. Furthermore, FER Reply Brief Exhibit 62 shows 33 Case Laws, with 7 books and article quote). The existing *stare decisis*, opinion of decision and judgments, Especially by The Supreme Court of the United States, along with Different other Circuit Court of Appeals (previously 2nd Circuit, 5th Circuit, 6th Circuit, 11 Circuit, also lot of cases in their own

9th Circuit), and Further more Federal Rule of Civil Procedure i.e. I repeat, In Hierarchal Order, The Supreme Court of The United States and 5 Different Circuit Court of Appeals, i.e. a Total of 6 Court of Appeals as listed below in this Petition for a Writ of Certiorari, that substantially affects a rule of national application in which there is an overriding need for national uniformity.

D. Because this cases is interesting not just because I am saying it nor because it's my case. But because it has many facts of such interesting nature, that makes it a very interesting case.

Being human, the Supreme Court Justices should sometimes choose to hear a case simply because it involves their favorite area of law.

Not only that the defendant have broken the one and only law repeatedly, repetitively,

redundantly, overwhelmingly, compulsively and offensively, but also while doing so, they have caused numerous irreparable losses of significant proportion and irreparable damages of overwhelmingly catastrophic & financially disastrous proportion to the Plaintiff (that plaintiff is left only with one suitcase, who once had \$100,000+ in savings in cash until FY2013 and the defendant stole everything and some more), that as being human, the Supreme Court Justices would ought to choose, to hear this case.

There is no word of “Citizen” in the First 10 amendments, Bill of Rights, in the United States Constitution. It is often written as “The rights of the people...”. The Bill of Rights protects everyone, including the undocumented immigrants, to exercise

free speech, religion, assembly, and to be free from the unlawful government interference.

- The defendant violated the plaintiff's 4th amendment Bill of Rights, US Constitution, "protection against unreasonable search & seizure" for stealing everything from plaintiff, leaving only one suitcase.
- The defendant violated the Plaintiff's 5th amendment Bill of Rights, US Constitutions, "protection against property seizure."
- The defendant violated the plaintiffs 7th amendment, US Constitutions, Bill of Rights "Rights to trial by Jury".
- The defendant violated the plaintiff's 8th amendment, US Constitution, Bill of Rights, for the plaintiff's tremendous sufferings for 6+ years "protection against..cruel & unusual punishment"

- The defendant violated the plaintiff's 14th amendment, US Constitution, Bill of Rights, protection against depriving any person of life, liberty or property and equal protection of laws.

The reasons for granting the petition for a writ of certiorari, is the monumental *stare decisis* cases along with vital Federal Rule, in 10 different Circuit Court Cases in 5 different Circuit Courts, that are similar and or the same, to this case, are as listed below and along with the Federal Rule, the Fed. R. Civ. Pro. Rule 56 2010 amendment Subdivision (e), respectively, are listed below with clarity & accuracy;

1. Because this is a Case with merits;

"Upon consideration of the appellant's unopposed motion for summary reversal of the district court's order granting the motion of the appellee for summary judgment, it is our conclusion that the *1355 motion is meritorious. Accordingly, the order of the district court granting

summary judgment is vacated and this case is remanded to the district court for further proceedings consistent with *Alexander v. Garner-Denver Company*, 415 U.S. 36, 94 S.Ct. 1011, 39 L.Ed.2d 147 (1974). Vacated and remanded." *Jones v. Supreme Sugar Refinery, Div. of J. Aron & Co.*, 493 F.2d 1354, (Mem)-1355 (5th Cir. 1974).

Therefore based on decision and judgment quoted above, which is the case law, and becomes a Supreme Court precedential mandatory case law, the final judgment, must be reversed and remanded and the defendant must be sanctioned.

2. Similarly or same, A Mandatory case law,

"Summary judgment granted in favor of employer, in employment discrimination action, would be vacated and remanded, where District Court deemed the summary judgment motion unopposed based on employee's attorney's failure to timely file opposition papers, employee requested that the District Court reconsider decision to deem the motion unopposed, District Court did not grant summary judgment until 10 months after motion was deemed unopposed,.....and there was no showing that employer would be prejudiced by additional delay, in allowing new counsel to file opposition

papers.” *Godfrey v. New York City Transit Auth.*, 258 F. App’x 353 (2d Cir. 2007).

Therefore based on decision and judgment quoted above, is the case law, and becomes a mandatory case law, and therefore the final judgment, must be reversed and defendant, must be sanctioned, see APPENDIX C.

3. Similarly or same, A Mandatory case law,

“Holding: The Court of Appeals held that summary judgment granted in favor of employer, in employment discrimination action, would be vacated and remanded.” *Godfrey v. New York City Transit Auth.*, 258 F. App’x 353 (2d Cir. 2007).

Therefore based on decision and judgment quoted above, which is the case law, and becomes a mandatory case law, the final judgment, must

be reversed and remanded and defendant, must be sanctioned, see APPENDIX C.

4. Similarly or same, A Mandatory case law,

“Thus, even if construed as a motion for summary judgment, defendants' motion was not sufficient to show that there was no genuine issue of material fact and that defendants were entitled to judgment as a matter of law. See *Celotex*, 477 U.S. at 323. Accordingly, the district court erred by granting defendants' motion to dismiss/motion for summary judgment and dismissing Jacobs's complaint. See *Henry*, 983 F.2d at 949–50.4 *3 VACATED AND REMANDED.” *Jacobs v. Angelone*, 995 F.2d 231 (9th Cir. 1993).

Therefore based on decision and judgment quoted above, which is the case law, which becomes a Supreme Court Precedence mandatory case law, the final judgment, must be reversed and remanded, defendant must be sanctioned.

5. Similarly or same, A Mandatory case law,

“Holdings: The Court of Appeals, Kravitch, Circuit Judge, held that: 1.

district court could not base entry of summary judgment on mere fact that motion was unopposed; and 2. genuine issue of material fact, as to whether precluded entry of summary judgment. Reversed and remanded."

United States v. One Piece of Real Prop. Located at 5800 SW 74th Ave., Miami, Fla., 363 F.3d 1099 (11th Cir. 2004).

Therefore based on decision and judgment

quoted above, which is the case law, and becomes a mandatory case law, the final judgment, must be reversed and remanded and defendant, must be sanctioned, see APPENDIX C.

6. Similarly or same, A Mandatory case law,

"Holdings: The Court of Appeals held that: 1. review of arbitrator's legal conclusions should be de novo under Multi-Employer Pension Plan Amendments Act (MPPAA), and 2. district court could not base entry of summary judgment in favor of pension fund on its perception that the motion was unopposed by employer, but, rather, was required to consider the merits of the motion. Vacated and remanded." *Trustees of Cent. Pension*

Fund of Int'l Union of Operating Engineers & Participating Employers v. Wolf Crane Serv., Inc., 374 F.3d 1035 (11th Cir. 2004).

Therefore based on decision and judgment quoted above, which is the case law, and becomes a mandatory case law, the final judgment, must be reversed and remanded and defendant, must be sanctioned, see APPENDIX C.

7. Similarly or same, A Mandatory case law,

Synopsis "In civil rights action, the United States District Court for the Eastern District of Michigan, Lawrence P. Zatkoff, J., dismissed case based on plaintiffs' failure to timely respond to defendants' summary judgment motions, and plaintiffs appealed. The Court of Appeals, Gilman, Circuit Judge, held that dismissal pursuant to local rule was abuse of discretion, absent specific finding of either bad faith by plaintiffs or prejudice to defendants as result of delay or notice that court was contemplating dismissal. Reversed and remanded." *Stough v. Mayville Cnty. Sch.*, 138 F.3d 612 (6th Cir. 1998).

Therefore based on decision and judgment quoted above, which is the case law, and becomes mandatory case law, the final judgment, must be reversed and remanded, defendant must be sanctioned, see APPENDIX C.

8. Similarly or same, A Mandatory case law,

“Holdings: The Court of Appeals, Clifton, Circuit Judge, held that: 1. passenger's failure to file an opposition did not warrant granting prosecutor summary judgment by default” *Heinemann v. Satterberg*, 731 F.3d 914 (9th Cir. 2013).

Therefore based on decision and judgment quoted above, which is the case law, and becomes a mandatory case law, the final judgment, must be reversed and remanded and defendant, must be sanctioned, see APPENDIX C.

9. Similarly or same, A Mandatory Case Law,

The District Court did not even rule on the plaintiffs last *ex parte* motion for extension of time, even till date, please see the Docket Report for the Case 3:16-cv-00468-WQH-AGS, let alone, let the plaintiff know when the due date is for the opposition for the motion for summary judgment, far from warning the plaintiff that if the opposition is not file the case would be granted in favor if the defendant. And surprisingly ruled the Final Judgment in the guilty parties, i.e. in the Defendants Favor.

“Given these circumstances, we vacate the district court's grant of summary judgment and remand the case in order to allow the district court the opportunity to consider Garcia's motion for an extension of time in which to file his opposition to the defendants' motion for summary judgment. See *Eldridge*, 832 F.2d at 1136–38. Vacated and Remanded.” *Garcia v. Knapp*, 936 F.2d 577 (9th Cir. 1991).

Therefore based on decision and judgment quoted above, which is the case law, and becomes a mandatory case law, the final judgment, must be reversed and remanded and defendant, must be sanctioned, see APPENDIX C.

10. Similarly or same, A Mandatory case law,

“district court's failure to give pro se state inmate notice of right to file counter-affidavits or other responsive evidentiary materials on motion for summary judgment and be alerted to the fact that the failure to do so might result in entry of summary judgment against inmate was harmful error. Vacated and remanded.” *Smith v. Haan*, 199 F. App'x 594 (9th Cir. 2006).

Therefore based on decision and judgment quoted above, which is the case law, and becomes a mandatory case law, the final judgment, must be reversed and remanded and defendant must be sanctioned, see APPENDIX C.

11. More Importantly, Is Fed. R. Civ. P. Rule 56, 2010

Amendment Subdivision (e) a joke?

Fed. R. Civ. P. Rule 56, 2010 Amendment Subdivision (e): "As explained below, summary judgment cannot be granted by default even if there is a complete failure to respond to the motion, much less when an attempted response fails to comply with Rule 56(c) requirements."

This proceeding involves a question of exceptional importance. Was the Fed. R. Civ. P. (FRCP) Rule 56, amendment a pretension, a fake or a phony amendment. Why was this particular amendment added in the first place? And why is this Fed. R. Civ. P. Rule 56, 2010 amendment subdivision (e) ignored and thrown out of the FRCP Rule 56 rulebook, when every other rule in FRCP Rule 56 rulebook was followed, moreover

used to make final judgment on this entire case,
without Trials? Did District Circuit Court Err?

12. *White motor Co. v. U.S.*, 372 U.S. 253, 259(1963)

(summary judgment was improper when it required judicial finding of fact regarding the issue of motive & intent). Therefore based on decision and judgment quoted above, which is the case law, and becomes a mandatory case law, the final judgment, must be reversed and remanded and defendant must be, sanctioned.

13. Lastly, the most important penultimate Supreme Court Case law, *Adickes v. S.H.Kress & Co.*, 398 US. 144, 157, 90 S.Ct 1598(1970) (Summary Judgment was improper because “respondent here did not carry its burden because of its failure to foreclose the possibility that” there was a different version of the circumstances at issue). The defendant did not carry, its burden at all to

prove the case and or also to foreclose any possibility and the District Court and Circuit Court should have performed fact finding regarding motives & intents. Therefore based on decision and judgment quoted above, which is the case law, and becomes a mandatory case law, the final judgment, must be reversed and remanded and defendant must be, sanctioned.

14. Lastly Most Importantly Supreme Court Case Law, *MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 127 S.Ct. 764, 166 L. Ed. 2d 604 (2007)

“Holdings: The Supreme Court, Justice Scalia, held that Supreme Court would not address whether action was subject to dismissal on discretionary grounds. Reversed and Remanded”

Upon retrospection, the defendant was looking for a quick dismissal, to hide their very dirty and

very bad act against the plaintiff, by denying all motions from plaintiff, except time extension motions, by not letting the plaintiff submit the evidences for the summary judgment opposition... etc and what was planned, is what the defendant achieved, a quick dismissal of the case. However as per Justice Scalia, dismissal on discretionary grounds is not addressable and therefore reversed and remanded, the case listed above for further proceedings. Therefore similarly, because this case being similar to the case law listed above, therefore with Supreme Courts precedence, this case should be reversed and remanded and defendant must be sanctioned, because district court, lacks the discretionary grounds for dismissal of the case, on a **Summary Judgment Motion.**

Furthermore in the Reply Brief the plaintiff has enumerated and elaborated with a total of 30 + mandatory case law, in Supreme Court and various Circuit Court cases, overwhelmingly pleading, the final order must be Reversed and Remanded.

This petition for a writ of certiorari is presented to the Supreme Court of the United States, only when some gross injustice was being done by other party Named Covidien LP, now Medtronic LP and their far reaching authorities, see APPENDIX C. “Writ, And as they came to be regarded as among the most important judicial remedies.” “It must, however, be remembered, when we speak of judicial remedies or of judicial bodies in these times.”³

Important point; this case has been going on, since June 2009, officially since June 2015 and in the Courts since Feb 2016, and still to date i.e. more

than 11 years have gone by, and there has been absolutely no remedy at all, i.e. no remedy at all since 11+ years, and furthermore with defendant even politicizing, to avoid paying. And due to the bad faith defendant, lulling the plaintiff and eating away statutes of limitations ... etc, see APPENDIX C and making the plaintiff suffer (140+), for their insecurity of "loss aversion". It was very difficult for the single plaintiff, for even, to have had approach the Court, with these few statutes of limitations, left available, that were, later identified to be up to 44 claims, shown in FER Reply Brief Exhibit 67. Think about the damages that would have to be listed, that were actually incurred, yet kept aside, because of these 44 lost causes of action, because of these 44 claim's time bared, statutes of limitations. And more importantly the staggering amount of damages that the defendant has still, stacked deep and miles high,

due to their civil and criminal violating acts; and still continuing. The Supreme Court of the United States, would be the only one, to do the justice and provide legal remedy for these horrific and torturous acts of the defendant Covidien LP, now Medtronic LP.

“It was the court of King's Bench that possessed the power to issue the extraordinary legal remedies or writs of which the certiorari was one”.³

SANCTIONS ON THE DEFENDANT

Rambo Lawyering

continued. please see attached APPENDIX C.

In summary, The Ninth Circuit err in conflict, contradicting Supreme Court, and other circuit courts decisions, Federal Rule of Appellate Procedure. Similarly, the Southern District Court of California err, not following what other Federal District Courts, in all the 50 states follow, i.e. the

Federal Rule of Civil procedure, the precedence. And further more err in not even acknowledge hundreds and thousands of documents, as proof of evidences.

CONCLUSION

For the reasons stated above, The Supreme Court of the United States should grant the petition for a writ of certiorari.

Respectfully Submitted

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Petitioner Plaintiff

Date: May 7, 2021