Case #: 20-1707

ORIGINAL

Supreme Court of the United States

KATHERINE JACOBS
Petitioner/Pro Se

vs.

JOHNSON STORAGE & MOVING CO. HOLDINGS, LLC.
Respondent

ON PETITION FOR A WRIT OF CERTIORARI
to the

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT (No. 20-1545) &
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI/ EASTERN DIVISION
(No. 4:18-cv-0024-SRC)

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

(1) Whether the district court did not uphold F.R.C.P. Rule 56, Rule 60(b) and the Supreme Court's summary judgment standards when weighing and dismissing evidence of fraud, unlawful FLSA violations, withheld evidence and perjury that bear heavily on the merits of the case thereby dismissing genuine issues of material facts?

(2) Whether the district court's reliance on the defendant's Employee Handbook stating that "employees may work overtime only with prior approval" violated CFR § 778.316, when no evidence of an overtime approval process exists?

(3) Whether administrative errors [lost motions and petitions within the courthouse] altered the outcome of the plaintiff's lawsuit and ultimately her appeal?

LIST OF PARTIES

The following is a list of all parties to the proceedings in the Court below, as required by Rule 14.1(b) of the Rules of the Supreme Court of the United States.

1. Katherine Jacobs, Petitioner

2. Johnson Storage & Moving Co. Holdings, LLC.,
   Defendant

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CORPORATE DISCLOSURE STATEMENT

Appendix F - Johnson Storage and Moving Corporate Disclosure

LIST OF PROCEEDINGS:

District Case: No. 4:18-cv-0024-SRC
Appellate Case: No. 20-1545

Appendix A– Eastern District of Missouri, Summary Judgment Memorandum and Order (March 3, 2020) [Doc.#81]

Appendix B- Eastern District of Missouri, Relief of Judgment Memorandum and Order (March 3, 2021) [Doc.#105]

Appendix C- Eighth Circuit Court of Appeals, Summary Judgment (Nov. 12, 2020) (Opinion Unpublished)

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March 3, 2020 (Eastern District of Missouri): [Doc.81, App. A] Granting Summary Judgment Memorandum and Order

December 18, 2020 (Eighth Circuit Court of Appeals): Denying petition for rehearing [App.D]

January 20, 2021 (Eighth Circuit Court of Appeals): Denying Stay Mandate pending Writ [App. G]

March 3, 2021 (Eastern District of Missouri): [Doc.105, App. B] Relief of Judgment Memorandum and Order systemically denying all motions dating back to July 2020.

March 19, 2021 (Eighth Circuit Court of Appeals): Denying supplement to appeal with Relief of Judgment/Indicative Ruling [App.E]

May 17, 2021: Deadline to file Writ of Certiorari (timely filed, revision timely filed)

CONSTITUTIONAL AND STATUTORY PROVISIONS

Seventh Amendment of the U.S. Constitution:

The Amendment has for its primary purpose the preservation of "the common law distinction between the province of the court and that of the jury, whereby, in the absence of the express or implied consent to the contrary, issues of law are resolved by the court and issues of fact are to be determined by the jury under appropriate instructions by the court." Baltimore & Carolina Line, Inc. v. Redman, 295 U.S. 654 657 (1935); Walker v. New Mexico & So. Pac. R.R., 165 U.S. 593, 596

(1897): Gasoline Products Co. V. Champlin Ref. Co., 283 U.S. 494, 497-99 (1931); Dimick v. Schiedt, 293 U.S. 474, 476, 485-86 (1935).

The primary purpose of the Amendment was to preserve the historic line separating the province of the jury from that of the judge. It is constitutional for a federal judge, in the course of trial, to express his opinion upon the facts, provided all questions of fact are ultimately submitted to the jury. Vicksburg & Meridian RR. V. Putnam, 118 U.S. 545, 553 (1886); United States v. Philadelphia & Reading R.R. 123 U.S. 113, 114 (1887).

Supreme Court's Articulated Summary Judgment Standards:
(also located within the text of the brief)

In Tolan v. Cotton, 188 L. Ed.2d 895 (2014): (1)"(C)ourts may not resolve genuine disputes of fact in favor of the party seeking summary judgment. (2)"a judge's function at summary judgment is not to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial" Anderson, 477 U.S., at 249 (3)"Summary judgment is appropriate only if the movant shows that there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law." Fed. Rule Civ. Proc. 56(a) (4)"In making that determination, a court must view the evidence in the light most favorable to the the opposing party". Adickes v. S. H. Kress & Co., 398 U.S. 144, 157 (1970).

Similarly, the Supreme Court set forth a standard in Reeves v. Sanderson Plumbing Products, 530 U.S. 133 (2000). "[T]he court must draw all reasonable inferences in the favor of the nonmoving party, and it may not make credibility determination or weigh the evidence..." "Credibility determinations, the weighing

of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge" Liberty Lobby, supra, at 255, 106 S. Ct. 2505. "Thus, although the court should review the record as a whole, it must disregard all evidence favorable to the moving party that the jury is not required to believe. See Wright & Miller 299. "That is, the court should give credence to the evidence favoring the nonmovant as well as the evidence supporting the moving party that is uncontradicted and unimpeached". Id., at 300

The Supreme Court has also cautioned, "it is only when witnesses are present and subject to cross-examination that their credibility and the weight to be given their testimony can be appraised" Pollar v. Columbia Broadcasting Sys., Inc. 368 U.S. 464, 473, 82 S. Ct. 486, 491 (1962).

STATEMENT OF THE CASE BEFORE THE SUPREME COURT

Question #1: Whether the district court did not uphold F.R.C.P, Rule 56, Rule 60(b) and the Supreme Court's summary judgment standards when weighing and dismissing evidence of fraud, unlawful FLSA violations, withheld evidence and perjury that bear heavily on the merits of the case thereby dismissing genuine issues of material facts?

Within this Writ are multiple evidences of genuine material facts any one of which should result in a reversal of summary judgment as summary judgment is appropriate only if "the movant show that there is **no** genuine issue as to **any** material fact". What is particularly egregious is the consistent dismissal of

material evidence and a disregard for the Supreme Court's standards. The plaintiff's lawsuit also sustained prejudice when administrative errors resulting in multiple lost motions and petitions causing delays and altering the outcome of this lawsuit and appeal [explained in detail in Question 3].

The plaintiff demonstrates a factually sound case witnessing fraud, perjury, unlawful FLSA violations, and withheld evidence creating material facts and "exceptional circumstances" that would justify relief. In order for the plaintiff to succeed in having summary judgment reversed, she must prove that a material fact exists and that her cause of action can prevail. It is on the moving party to "conclusively negate" a necessary element of the plaintiff's case or demonstrate "that under no hypothesis is there a material issue of fact" that would require a reasonable trier of fact not to find any underlying material fact more likely than not." (Saelzler v. Advanced Group 400 (2001) 25 Cal. 4th 763, 767 (emphasis added); Ann M. Pacific Plaza Shopping Center (1993) 6 Cal. 4th 666, 673-674; Aguilar v. Atlantic Richfield Co. (2001) 25 Cal. 4th 826 851.)

Questions #2: The District Court erroneously relied on Johnson Storage's "Employee Handbook" that stated, "employees may work overtime only with prior approval." when ruling in favor of summary judgment. The defendant violated 29 CFR § 778.316 which states, "An announcement by the employer that no overtime work will be permitted, or that overtime work will not be compensated unless authorized in advance, will not impair the employee's right to compensation for work which he is actually suffered or permitted to perform."

The defendant unlawfully circumvents 29 CFR § 778.317 by demanding the plaintiff under-report the hours she was working. Johnson Storage points to their Employee Handbook stating Jacobs did not get prior authorization as justification for terminating her employment, when no evidence of an approval process exists. The defendant has not produced any communication to or from Jacobs, Heaney, Hindman, Hiles, or Manandhar, discussing, approving, or denying overtime. The defendant's lack of any evidence documenting the existence of an overtime approval process is, in and of itself, a genuine issue of material fact which should allow this case to move to trial.

Question #3: Substantial administrative errors occurred within the courthouse when processing and filing the plaintiff's Motion to Enter Evidence and Petition for Relief of Judgment/Indicative Ruling. Documents were lost multiple times causing delays, prejudice, and negatively altered the outcome of the plaintiff's lawsuit and ultimately her appeal.

REASONS FOR GRANTING THIS PETITION

The plaintiff, Katherine Jacobs, respectfully petitions for a Writ of Certiorari as she presented [above and within this Writ] the Supreme Court's articulated summary judgment standards. The plaintiff then presents material facts, exceptional circumstances, District Court opinions and rulings and how they deviated from the governing Supreme Courts rules and standards.

QUESTION 1: Whether the district court did not uphold F.R.C.P, Rule 56, Rule 60(b) and the Supreme Court's summary judgment standards when weighing and dismissing evidence of fraud, unlawful FLSA violations, withheld evidence and perjury that bear heavily on the merits of the case thereby dismissing genuine issues of material facts?

On March 13, 2020, the plaintiff ("Jacobs") filed her notice of appeal [Pro Se]. [Doc.#98]. As Jacobs began weeding through the opposing attorney's discovery documents, evidence, and motions she began uncovering errors, fraud, withheld documents, perjury, and neglect. Jacobs filed motions in an effort to introduce this new evidence. A motion to Enter Evidence (withheld evidence) was submitted July 7, 2020 and a petition for Relief of Judgment/ Indicative Ruling was timely filed November 24, 2020.

Fed. Rule. Civ. Proc., 60(b): Jacobs timely filed a Relief of Judgment/Indicative Rule granting courts the power to relieve a party from judgment for any one of six (6) reasons [of which the plaintiff has documented four of the six reasons: 1.) mistakes, inadvertence, and excusable neglect. 2.) Newly discovered evidence 3.) Fraud and misconduct by the opposing party 4.) any other reason (withheld documents and perjury) that justifies relief. [Doc.#102, p. 1-2]

KNOWLEDGE OF UNREPORTED HOURS/PERJURY: (Emails)

The plaintiff, ("Jacobs") presents the following evidence and communication documenting genuine issue of material fact exist that Johnson Storage had full knowledge and instructed Jacobs to under-report her working hours.

a. March 23, 2017, Jacobs clocked out at 5:03 but [still working] sent an email to Heaney [supervisor] at 5:33pm stating, "I clocked out already just so you know". (**withheld** by the defense) **[Addendum No. "i"]**

b. April 16, 2017, Heaney sent a text to Jacobs [telling Jacobs to clock out], Heaney states, "OK. I will get a lashing if you have overtime so you need to do that anyway" (Pla. Exh 5) **[Addendum No. "ii"]**

c. April 21, 2017 @ 12.52 Heaney sent an email to Jacobs regarding clocking out, "Done, it looks like your right at 40 hours". (Pla. Exh 17, attached Addendum No. **"iii"**) Jacobs responded, "I have a few more hours of work to do, **(off the record)"**. (Pla. Exh 6) **[Addendum No. "iv"]** In Heaney's deposition she was asked, if it was 12:52 and Jacobs was right at 40 hours, did she tell Jacobs to stop working and Heaney replied, "I did not tell her to stop working."(Heaney Depo 75-4, p.134, line 22-23) **Perjury**: Heaney stated in her deposition, "I don't believe she ever said she was working off the clock. Ever" [Doc. #75-4, p.67, lines 11-12]

d. April 21, 2017 at 4:00pm, Jacobs sent email to Miller [Diane Miller/employee] responding to her question, "Are you still on the clock?" Jacobs responded, "Not on the clock but still working". Johnson Storage's ADP report shows Jacobs clocked out at 2:53pm confirming she was working uncompensated work hours. (Pla. Exh 7) **[Addendum No. "v"]**

e. July 6, 2017, Jacobs sent a lengthy, email to Heaney documenting Johnson Storage's unlawful behavior and ends by stating, "The only other thing I can do is clock out and continue to work but we already had conversations about that.", "don't get up for lunches", "not even taking any breaks". (Def. Exh. 10, Jacobs291-292) **[Addendum No. "vi-vii"]** **Perjury:** In Heaney's deposition she was asked, "did you know she [Jacobs] was working through lunches and breaks?" Heaney responded, "No. ", . [Doc.#75-4, p.87, lines 4-8]

Summary Judgment (Appendix A): The District Court ruled, "Jacobs' subjective belief that Heaney was instructing her to work off the clock does not create a genuine issue of fact." and concluded, "Jacobs has failed to raise a genuine issue of material fact..." {Doc.#81, p.21] "Jacobs cannot show Johnson Storage knew or should have known that she worked unpaid overtime hours" [Doc.#81, p.24, par.1]

Relief of Judgment (Appendix B): The District Court ruled, "4.) Jacobs has failed to raise a genuine issue of material fact as to whether Johnson Storage instructed her to violate the law by under-reporting her hours," [Doc.#105, p.6]

In Summary: The District Court erred when straying far from the Supreme Court standards and weighing material facts and ruling in a light favorable to the moving party. As witnesses above in the emails sent Johnson Storage had full knowledge and directed Jacobs to under-report her worked hours. The District Court

changes the direction of their ruling from Jacobs' "subjective belief' in summary judgment to Jacobs failed to "raise a material fact as to whether Johnson Storage instructed her to violate the law" in the Relief of Judgment ruling. Jacobs presented direct evidence that Johnson Storage knew and was directing Jacobs to under-report her worked hours which is a violation of FLSA law.

"If an employer's actions squelch truthful reports of overtime worked, or when the employer encourages artificially low reporting, it cannot disclaim knowledge."(Brennan, 482 F.2d at 828) An employer may not subject non-exempt employees to a work week in excess of forty hours without paying overtime ....:29 U.S.C. § 207(a)(1). An employer who violates this restriction "shall be liable to the employee ....29 U.S.C. § 216(b). To prevail on a claim for unpaid overtime, a plaintiff must show:

(1) that she worked overtime hours that were uncompensated: (see below "Uncompensated Work Hours")

(2) that the employer "knew or should have known" that the plaintiff worked unpaid overtime which is evidenced in the emails above.

If an employer fails to keep accurate records of wages and hours, employees are not denied recovery under FLSA simply because they cannot prove the precise extent of their uncompensated work. *Holaway v. Stratasys, Inc., 771 F.3d 1057, 1059 (8th Cir. 2014).* The plaintiff has presented direct evidence that confirm Johnson Storage knew and directed her to underreport her hours which is proof of uncompensated work hours and proof genuine issues of material facts exist.

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UNCOMPENSATED WORK HOURS:

The plaintiff compared Johnson Storage's ADP time-keeping report ("ADP") **[Addendum No. "viii – xiv"]** of the dates and times she clocked in and clocked out, to the dates and times she was sending work emails. [Brief of Appellant, p. 5-7) **[Addendum No. "xv – xvii"]** This comparison [using only fraction of emails available] documents a consistent pattern of Jacobs sending work emails at times she was not reporting her hours in ADP, which demonstrates a pattern of under-reporting her work hours. This comparison also demonstrates that Jacobs was not compensated for all the hours that she worked.

Summary Judgment Ruling (Appendix A):

The Court finds "Jacobs has not met her burden to produce "sufficient evidence to show the amount and extent of [uncompensated] work" [Doc.#81 p.27] "To prevail on a claim for unpaid overtime, a plaintiff must show: (1) that she worked overtime hours that were uncompensated (2) That the employer "knew or should have known" that the plaintiff worked unpaid overtime. Hertz v. Woodbury Cty., Iowa, 566 F.3d 775, 781 (8th Cir. 2009).". [Doc.#81, p.24]

Relief of Judgment Ruling (Appendix B):

Jacobs' evidence does not disturb the court's findings...."4.) Jacobs has failed to raise a genuine issue of material fact...that Johnson Storage instructed her to violate the law by under-reporting her hours," and "Jacobs cannot show the amount of unpaid overtime as a matter of just and reasonable inference.". [Doc. #105, p. 6]

In Summary: The District Court erred when (1) weighing direct evidence and ruling in a light more favorable to the moving party and (2) not acknowledging the direct evidence of uncompensated work hours. The plaintiff provided evidence [earlier within this Writ] of emails documenting the defendant's knowledge of uncompensated work hours and now presents a second source to document uncompensated work hours by comparing the ADP report to work emails she was sending. Both sources of proof also provide evidence that Johnson Storage failed to keep accurate records [genuine material fact].

Record Keeping Requirements under FLSA (29 CFR Part 516): It is the employers [Johnson Storage's] burden to maintain accurate time records for employees (St. Pierre, et al. v. CVS Pharmacy, Inc. (D. Mass., 2017). "If an employer fails to keep accurate records of wage and hours, employees are not denied recovery under FLSA simply because they cannot prove the precise extent of their uncompensated work. Halaway v. Stratasys, Inc., 771 F.3d 1057, 1059 (8th Cir. 2014)"

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FRAUD AND PRETEXT

The plaintiff has identified evidence of fraudulent documents entered by the defense during Discovery. All evidence of fraud bear heavily on the merits of this case [material facts] and support the very reason's Jacobs filed the four [4] counts of unlawful FLSA violations against Johnson Storage.

INTENTIONAL FRAUD:

The defendant ("Johnson Storage") entered fabricated emails as their evidence of alleged and pretextual "poor performance" on the part of the plaintiff. (Def. JSMC128, JSMC132],**[Addendum No. xviii-xix]**

Acts of fraud: No person may make, cause to be made.... (b) any reproduction or alteration, for fraudulent purpose,..." (49 CFR § 1570.5(b)) Penalties for document fraud (8 U.S. Code § 1324c.) Fraud on the court occurs when, "it can be demonstrated, clearly and convincingly, a party has sentiently set in motion some unconscionable scheme calculated to interfere with the judicial system's ability to impartially adjudicate a matter by improperly influence the trier of fact or unfairly hampering the presentation of the opposing parties claim or defense". Cox v. Burke, 706 So. 2d 43, 47 (Fla, 5ht DCA 1998), Kornblum v. Schneider, 609 So. 2d 138, 139 (Fla. 4th DCA 1992).

FRAUDULENT EMAILS:

Comparing the defendant's emails JSMC128 to JSMC132 side-by-side erroneously depict DMiller [employee] capable of typing and sending two different emails on two different email chains at exactly the same date and time, August 4, 2017 at 8:51am and even more implausible these two email chains show the vendor [M. Dyer and Sons] capable of responding to Miller's two different email chains at exactly the same date and time, August 4, 2017 at 1:00pm. The subject line and body of the emails are different; however, the dates and times are exactly the same. Jacobs presented Johnson Storage's fabricated evidence and concluded that Johnson

Storage copied an email and then fraudulently altered it to make it appear as if there was a second occurrence. However, Johnson Storage made an error when they neglected to change the date and times on the fabricated copy. The defense has made two [2] failed attempts to validate their evidence and then brazenly ask the appellate court to strike their own evidence. [Relief of Judgment Doc.# 102, p.2-3]**[Addendum xliv]**

1.) The defendant's ("Johnson Storage") original defense to fraudulent emails was to state, "time zone" differences. (Brief of Appellee, p.34, footnote 8) This excuse was quickly abandoned when the plaintiff pointed out both emails were sent from the same time zone and both responses were sent from the same time zone.

2.) Johnson Storage then changed their defensive strategy stating, "they are simply an original email and a forward of that email". [Doc. #100, p.7, par. 3] This defense is also not plausible as "simply an original forward" would produce an exact replica of the first email and this did not happen with these documents. Again, the subject line and body of the emails are different so it is not a "forward of an original email". Johnson Storage's second attempt at defending fraudulent documents is not plausible.

3.) The defense attorney [Miller] then asks the appellate court to strike their own fraudulent evidence from the records. Document JSMC-128 was identified in Heaney's deposition as being fraudulent. [Pla. Ex.33] **[Addendum No."xx", p.223]** Document JSMC-128 was identified as fraudulent in the plaintiff appeal. [20-1545, ID 4906979, p.13] After failed

attempts to defend acts of fraud the defense seeks to have the appellate court strike their own evidence from the records. [Appellee 20-1545, ID 4917614, p.31] **[Addendum No."xliv"]**

Relief of Judgment (Appendix B): The District Court cited Heaney's deposition testimony that, "It didn't happen that way.", then ruled, "the differences between the two emails are not a result of tampering: the second email is just a forwarded version of the first email." The Court concluded, "The Court finds that Jacobs presents no clear and convincing evidence of fraud with regard to these emails." [Doc.#105, p. 7-8]

In Summary: The District Court erred when weighing and acting as jury ruling on material facts of fraud and in addition favor the moving party's mere testimony that, "It didn't happen that way". [Doc.#r105, p.8, par.1] The Supreme Court has cautioned, "it is only when witnesses are present and subject to cross-examination that their credibility and the weight to be given their testimony can be appraised" Pollar v. Columbia Broadcasting Sys., Inc. 368 U.S. 464, 473, 82 S. Ct. 486, 491 (1962).

"[T]he court must draw all reasonable inferences in the favor of the nonmoving party, and it may not make credibility determination or weigh the evidence." "Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge" Liberty Lobby, supra, at 255, 106 S. Ct. 2505.

FRAUDULENT DOCUMENTS ALSO PRETEXTUAL:

These same two emails are also evidence of pretext as Heaney documented her decision to terminate Jacobs' employment on July 11, 2017 and all alleged evidence of poor performance was dated in August of 2017. In an email chain on July 11, 2017 between Heaney and Human Resources ("Manandhar"), Heaney asks Manandhar, "How many write ups are required by the state of MO to let a person go?" and stated, "I want to wait until the end of the payroll to see how much overtime she accumulates then do a write up for the overtime", "I have already started thinking about how to begin the process of hiring a replacement however I want to make sure I handle it in a way that is legal and doesn't hurt the company." All three [3] emails of alleged poor performance were dated in August, after Heaney had already decided to fire Jacobs. (Pla. Ex.22) **[Addendum No."xxi"]**

Heaney also enlisted Diane Miller ("DMiller") an employee, to help her find evidence to terminate Jacobs in August, 2017. DMiller sent emails to Heaney with subject lines that read, "If you need any more ammo.", "Another example of multiple requests", "not a multiple request but definitely a rant", (Pla. Ex. 32, 33, 31) **[Addendum "xxii – xxiv"]**

Summary Judgment (Appendix A): The District Court ruled, "no evidence from which a reasonable jury could determine that Johnson storage's stated reasons for Jacobs' termination were pretextual. [Doc.#81, p.17]

Relief of Judgment (Appendix B): "Further, Jacobs's evidence does not disturb the Court's findings for summary judgment that, 1) Johnson Storage undisputedly offered legitimate, non-retaliatory reasons for Jacobs' termination" and cited Heaney's deposition statement, "...It didn't happen that way.". (Doc. #105, p.6] "no clear and convincing evidence of fraud" [Doc. #105, p. 8]

In Summary: The District Court strayed from summary judgment standards when they:

- weighed material facts of fraud and pretext and then ruled in a light more favorable to the moving party.
- weighed material facts against mere testimony of the defendant stating, "It didn't happen that way". [Doc.#105, p.8]
- weighed only one aspect of the argument and did not consider that all emails were dated after the decision to terminate Jacobs had been made which is evidence of pretext.
- ignored the emails from DMiller stating, "if you need any more ammo", etc., documenting she was working with Heaney to find evidence to terminate Jacobs; again, all dated in August.
- Overlooked that Heaney had sent an email to Manandhar on July 11, 2017 stating, "not a failure in job performance" and Jacobs was, "defiant and would not follow direction"; which was to under-report her hours.

The plaintiff respectfully requests that the material facts of this case be allowed to be heard by a jury as "Courts may not resolve genuine disputes of fact in favor of the party seeking summary judgment." See Brosseau v. Haugen, 543 U.S. 194, 195, n. 2 (2004) (per curiam); Saucier, supra, at 201; Hope, supra, at 733, n.1.

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FRAUDULENT "ADP" REPORT (Addendum No. "viii-xiv"):

Johnson Storage's ADP time-record report ("ADP") entered into evidence and its validity is central to this FLSA employment law lawsuit. Jacobs identified two specific types of intentional fraud presented within Johnson Storage's ADP report. (1) The intentional act of altering the ADP Report itself and (2) The intentional acts of violating Jacobs FLSA rights when demanding that she under-report the hours she was working [witnessed earlier within this Writ] both resulting in a deceptive and fraudulent ADP report.

Intentional Acts of Fraud: (altering the ADP report):

The **electronic** ADP time-report presented by the Johnson Storage during discovery has **manual errors** and is void of any identifying ADP logos indicating that it was sourced directly from ADP as sworn to by the defendant. One of the more blatant manual errors in the ADP report **[Addendum No. "xi"]** is on page three [3] as it indicates 5/11/2017 as "Thursday" and the following date 5/12/2017 also indicates "Thursday". In addition to that manual error, it appears to be simply an excel spreadsheet, as the ADP report is void of any identifying ADP logos validating its authenticity as being sourced directly from ADP. [**Add. "xi",** Def. Ex. 5, p. 3, line 15-16]

Heaney testified under oath in a "Declaration of Tina Heaney" and under oath in Heaney's deposition (Ex. 6, p.93, line 15-17), that this document was sourced directly from ADP. **[Addendum No. "xlv-xlvi"]** Jacobs exposed Johnson Storage's

electronic ADP report as having manual errors and inaccuracies in her "Appellant's Reply Brief" [Doc. #95, p.13],and "Relief of Judgment" [Doc. 102, p.3-4]

Relief of Judgment (Appendix B): The District Court ruled, "this is not evidence of fraud as Jacobs has already admitted that she did not enter her unreported hours..." and "Jacobs presents no evidence linking the incorrect data entry and the lack of an ADP logo to her allegations that Johnson Storage tampered with the document." The District Court then ruled that Jacobs presented, "no clear and convincing evidence of fraud with regard to the ADP report". [Doc #105, p.8, par.2]

In Summary: The District Court's statements and rulings are argumentative, confusing and inconsistent with the Supreme Court's established role of the District Court in awarding summary judgment for the following reasons:

(1) The District Court weighed and ruled on material facts of fraud which are a jury's function.

(2) The District Court's ruling, "not evidence of fraud...Jacobs admitted she did not enter her unreported hours" is a confusing and evasive ruling. It appears that the Court is stating that the manual errors on the ADP report are not fraudulent because Jacobs under-reported her own hours. This sidesteps the manual errors on the ADP report and at the same time is conceding that Jacobs under-reported her work hours.

(3) Rule 56(e) Failing to Properly Support or address a fact. The plaintiff provides direct evidence of fraud, the defense produced no evidence or even an explanation as to why their ADP report has manual errors and is void of any ADP logos.

The legal definition of fraud is "a false representation of a matter of fact...that deceives and is intended to deceive another". Jacobs has three [3] separate and independent sources of documenting Johnson Storage's ADP report is fraudulent. (1)Jacobs documented earlier in this Writ with emails that Johnson Storage knew and directed her to under-report the hours she was working. (2) Jacobs documented earlier within this Writ, a comparison of Johnson Storage's ADP report of dates and times she clocked in and out, to the dates and times she was sending work emails, proving a consistent pattern of unreported and uncompensated work hours and (3) Jacobs produced manual errors and missing logo's on an ADP report as evidence of a fraudulently altered document.

In lieu of the Court's denial to let Jacobs subpoena the ADP report directly from ADP, Jacobs accessed ADP's website, and all sample reports shown on the website are validated with "Powered by ADP®"., which is absent from the ADP report that Johnson Storage entered into evidence.

The Court's ruling, "no evidence linking incorrect data to Johnson Storage" is an erroneous ruling as Johnson Storage swore under oath that they sourced this document directly from ADP both in a deposition and a written statement. Either ADP produced an electronic report with manual errors and void of any identifying logos or Johnson Storage altered the document prior to submitting into evidence which is evidence that a jury should weigh and decide.

Jacobs' motion to subpoena the ADP report [Doc.#98] directly from ADP was denied. The District Court ruled that Jacobs needed, "some showing that a fraud actually has occurred" [Doc. 105, p.11-12] For Jacobs to meet her burden of proof she must "present evidence" or show that she can "reasonably obtain" needed

documents to support her clams for trial. (ld at 854 (emphasis added), Pisaro v. Brantley (1996) 42 Cal App 4th 1591, 1601

F.R.C.P. Rule 56 (d) When Facts Are Unavailable to the Nonmovant: If a nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition and demonstrates that it would be possible to present the evidence in admissible form at trial, the court has reign to allow the case to proceed to trial. "Submission by party opposing summary judgment need not themselves be in form admissible at trial, but party "must show that she can make good on the promise.." (Alexander v. CareSource, 576 F.3d 551, 558 (6th Cir. 2009) (see Humphreys, 790 F.3d at 538-39) If the Courts approve her subpoena of the ADP records, Jacobs can produce the needed evidence at trial.

Case law under CR 56.03 tells us that if any material fact is in dispute a summary judgment should not be granted. A summary judgment is authorized only when there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law.

Additional Fraud: In addition to the aforementioned evidences of fraud, Johnson Storage has proven themselves incapable of providing trustworthy evidence. Johnson Storage has consistently altered documents to meet their needs making it difficult to ferret out truth and argue the facts.

- Johnson Storage submitted a fraudulent report with the Colorado Dept. of Labor and Employment erroneously stating that Jacobs was, "LAID OFF DUE TO A LACK OF WORK" (Exh. 5, JACOBS119) **[Addendum No."xxv"]**

- Johnson Storage submitted a fraudulent Organizational Chart that misrepresented the number of employees, dates of employment, who they reported making it difficult to assess when employees were hired, and how many people Johnson Storage hired to replace Jacobs'. (Pla. Ex. 6/JSMC-110) **[Addendum No. "xxvi"]** Heaney's deposition confirms the errors in the organization chart. [Heaney Depo: Doc.#75-5, p.85-92] The defense's argument to a fraudulent document is that, "Johnson Storage did not cite or rely on the Organizational Chart" (Declaration of Patricia J. Martin, 100-2, p.3, #14)

Penal Code 132 PC, "It is unlawful for any person or entity to use, **attempt to use**... forged, counterfeit, altered, or falsely made documents..."

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RETALIATION

At the time Jacobs was fired, she had over 350 active military family moves in progress in which she was responsible for all aspects of their international relocation; this was only one of Jacobs' responsibilities. Jacobs requested help to reduce her workload, notifying managers both verbally and in writing without success. Heaney became more aggressive towards Jacobs as she began reporting more of the hours she was working.

April 16, 2017	Heaney sent a text message to Jacobs, "I will get a lashing if you have overtime..." **[Addendum No."ii"]** In Heaney's deposition she is asked who would reprimand her if Jacobs reported overtime and Heaney responds, "Lori [Tubaya] or Don [Hindman]. [Heaney Depo, Doc.#75-4, p.81-82]

May/June	Jacobs contacted Hindman (COO/Owner) and Hiles (Director) to confirm she was being told by Heaney to under-report the hours she was working; no action was taken by management to reduce the hours or authorize more overtime. Jacobs then begins reporting more of the hours she was working.
July 6, 2017	Jacobs sent an email to Heaney memorializing the unlawful conversations she had been having with Heaney about the abusive volume of work. Jacobs stated, "The only other thing I can do is clock out and continue to work but we already had conversations about that.", "don't get up for lunches", "not even taking any breaks". **(Addendum No. "xxvii")** **Perjury:** In Heaney's deposition she was asked, "did you know she [Jacobs] was working through lunches and breaks?" Heaney responded, "No.", [Doc.#75-4, p.67, lines 4-12] **(Addendum No. xxviii")**
July 11, 2017	Heaney does not respond directly to Jacobs regarding her July 6th email but in turn begins an emails chain of correspondence with Human Resources. [Doc.#75-7,, Pla. Ex. 22] • Heaney, "How many write ups are required by the state of MO to let a person go." **[Addendum No."xxix"]** • Heaney, "not a failure in job performance", "She [Jacobs] is defiant and does not follow direction", "I want to wait until the end of the payroll to see how much overtime she accumulates then do a write up for the overtime." "It is obvious this is unsustainable. I have already started thinking about how to begin the process of hiring a replacement, however I want to make sure I handle it in a way that is legal and doesn't hurt the company....need to be strategic with the timeframe."(JSMC107) **[Addendum No."xxx"]**

	• Manandhar: "I will need dates and the things that are not done." "If we are terminating an employee we need to have enough documentation to show we gave her ample opportunity...".(JSMC108) **[Addendum No."xxxi"]**
August, 2017	Heaney enlisted Diana Miller ("DMiller"") to help her find "enough documentation" as request by Manandhar. No evidence of alleged "poor performance" predated Heaney and Manandhar's July 11, 2017 emails discussing the need to have enough documentation to terminate Jacobs. In August DMiller, conspiring with Heaney, then begins sending Heaney frivolous emails of alleged poor performance with subject lines that state, "If you need any more ammo.", "Another example of multiple requests", "not a multiple request but definitely a rant", (Exh. 32, 33, 31/attached) **[Addendum "xxii – xxiv"]**
August 17, 2017	Audio taped conversation of Jacobs termination. Heaney begins by listing the number of overtime hours that Jacobs reported as justification for her termination and follow up with listing pretextual emails. (Transcript: Doc. # 75-13, Exh. 3)
Nov. 26, 2020	In Heaney's Deposition she stated Hindman made the decision to terminate Jacobs, "I don't know why you're messing around with this. Just terminate her". "I [Heaney] talked to him [Hindman] about Katy continually working more hours than her authorized hours." [Doc. #75-4, p. 180] **[Addendum No."xxxii"]** Heaney was asked, "Did Don Hindman instruct you to terminate Katy [Jacobs]? Heaney replied, "yes". [Doc.#75-4, p.185, line 21-23]

Summary Judgment (Appendix A): To establish a prima facie case of retaliation, the plaintiff must show that (1) she participated in a statutorily protected activity (2) Johnson Storage took adverse action against her, and (3) there

was a causal connection ... Montgomery v. Havner, 700 F.3d 1146, 1149 (8th Cir. 2012)." "even assuming that Jacobs could make a prima facie case – she cannot show that Johnson Storage's legitimate reasons for her termination were pretextual." [Doc.#81, p.12, par 3] "Heaney's statement that she had started thinking about hiring Jacobs' replacement does not show she has already made the decision", "no evidence suggests Heaney solicited any of the complaints.." [Doc.#81, p.16, par.1] "Unlike the "but for" causation standard of a FLSA retaliation claim, Jacobs need only show that her complaint to Hindman was a "contributing factor" in her termination. Fleshner, 304 S.W. 3d at 95. "Even under this more lenient standard, Jacobs has presented insufficient evidence to withstand summary judgment." ".... in the absence of a causal relationship – does not create a genuine issue of material fact..."

Relief of Judgment ruling (Appendix B): "Jacobs's evidence does not disturb the Court's findings on summary judgment that, (3) "temporal proximity between the complaint and adverse action does not create a genuine issue of material fact on the issue of causation," [Doc.#105, p. 6, par.1]

In Summary: The District Court deviates from the Supreme Court standards by weighing and discarding direct evidence of whistleblowing and the retaliation which create genuine material facts and then ruled in favor of the moving party. In the Relief of Judgment, the Court only addresses the temporal proximity of the evidence and erroneously ruled direct evidence insufficient. Then discards the causal connection between theconversations Jacobs, Hindman, Heaney,

Manandhar, and Miller create. Also, within summary judgment the Courts stated that Jacobs "need only show that her complaint to Hindman was a contributing factor.". Jacobs notified Hindman [and other managers] that she was being told to under-report her hours. Heaney testified that she reported to and had conversations with Hindman about Jacobs' overtime. Heaney stated in her deposition that it was Hindman who made the final decision to terminate Jacobs' employment which all provide evidence of a contributing factor.

Jacobs demonstrated earlier within this Writ, the defendant's knowledge and direction for Jacobs to under-report her hours which violated her statutorily protected activity. The adverse action was witnessed in the transcript of Jacobs termination when Johnson Storage terminated her employment for reporting her worked hours. And, Jacobs produces direct evidence of not only a temporal connection but a causal connection above. Heaney stated in her July 11th email that it was, "not a failure in job performance". Jacobs has provided direct evidence of pretext as all evidence was produced in August, after Johnson Storage made the decision to terminate Jacobs in July, and then there is evidence that emails of alleged "poor performance" are fabricated.

The Court wrongly weighed the evidence and ruled in favor of the moving party stating, "she has started thinking about hiring Jacobs' replacement does not show she has already made the decision". This erroneous ruling does not take into consideration the entire sentence or the emails and communication surrounding that one comment. Heaney first emails Manandhar asking, "How many write ups

are required by the state of MO to let a person go?", "Obviously this is unsustainable" "I want to make sure I handle it in a way that is legal and does not hurt the company.", "need to be strategic with the timeframe" and Manandhar's response, "if we are terminating an employee we need to have enough documentation" which is evidence Heaney had made the decision to terminate Jacobs employment in July. [Doc.#75-7, Pla. Ex. 22]

"Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge" Liberty Lobby, supra, at 255, 106 S. Ct. 2505.

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WITHHELD EVIDENCE

The plaintiff argues that (1) the addition of withheld evidence provides direct proof that support Johnson Storage's knowledge of uncompensated work hours, the abusive volume of work and the effort itself to conceal proof of violations (2) material issues of facts also exist in the question as to when the plaintiff should have discovered withheld evidence and (3) whether an eight [8] month delay in processing the Motion to Enter New Evidence [Doc.#99] altered the outcome of these pretrial rulings and appeal (discussed in further detail below in Question #3).

Withheld Evidence:

Example 1: March 23, 2017 at 5:33pm, email sent from Jacobs to Heaney where Jacobs states, **"(I clocked out already just so you know)"**. The defendants ADP report (Def. Ex. 5) shows that Jacobs clocked out on March 23rd at 5:04pm demonstrating that Heaney [supervisor] was fully aware that Jacobs was working off the clock. **[Appendix No."i"]**

Example 2: . April 21, 2017, at 1:53pm, Heaney sent an email to Jacobs, "Done. It looks like you are right at 40 hours.". (JSMC-Jacobs-81) **[Appendix No."iii"]** What Johnson Storage withheld during discovery is Jacobs' response at 1:57pm, **"I'll clock out soon but I have a few more hours of work to do (off the record)"** . **[Appendix No."iv"]** Johnson Storage withheld a portion of an email chain during discovery that did not supported their defense that they had no knowledge that Jacobs was working unrecorded work hours.

Example 3: April 21, 2017 at 4:00pm DMiller sends an email, "Are you still on the clock". Jacobs responds at 4:00pm, **"Not on the clock, but still working"**. Johnson Storage's ADP record reflects Jacobs clocked out at 2:53pm confirming she was working uncompensated work hours. **[Appendix No."v"]**

Example (4): July 25, 2017 @ 4:30pm, Jacobs sent an email to Heaney documenting the massive volume of work she is suffered to work. This email declared, "As of right now I have 120 emails in my inbox from 1:00 today. I have 8 new moves...I have gone through 40 emails.... 60 emails from today. I told you this morning that I need help....". **[Appendix No."xxxiii"]**

Example (5): At the onset of this lawsuit, Jacobs turned in over 527 pieces of evidence that were "Bates Stamped", a computer and hard-drive, and three [3] boxes of files to her attorney [Dolley]. After taking over her lawsuit Pro Se, Jacobs discovered that a small fraction of this evidence was submitted into the records. In addition, opposing attorneys failed to enter into evidence exhibits that were documented in both Jacobs' and Heaney's depositions.

Relief of Judgment (Appendix B): The District Court ruled, "Her [Jacobs] failure to provide the laptop and its contents to Johnson Storage affected Johnson Storage's ability to produce responsive documents in discovery.", "Jacobs did not exercise diligence", "she knew that she had access to these emails", "not clear and convincing", "parties did not come to an agreement on search terms". "The Court finds that Jacobs's evidence does not constitute "newly discovered evidence". [Doc. #105, p. 5, 7, 9, 10]

In Summary: The District Court's many conclusions and rulings are erroneous and required the District Court to weigh and judge direct evidence and material facts, drawing conclusions on key evidence and on only portions of arguments, and dismissing material facts in the light more favorable to the moving party. For example:

1.)Jacobs work email [kjacobs@johnson-united.com] was an outlook account and controlled by Johnson Storage so the lack of Jacobs' work computer did not "affected Johnson Storage's ability to produce responsive documents in discovery" as stated by the District Court.

2.) Jacobs "did not exercise diligence" is an erroneous ruling as Jacobs was given legal instructions by her attorney not to access her work computer as ownership of the contents was in question and told that Johnson Storage would be responsible to disclose all evidence during Discovery. All work equipment and materials were delivered to her attorney's [Dolley] office. This warning about "legal ownership" of the computer's contents was corroborated by the defense attorney [Miller] in Jacobs deposition when Miller stated, "and when you started your employment with Johnson Storage you received the employee handbook that had the **confidential information policy**; right? [Doc.#75-1, p195, lines 16-19] Jacobs did not access the work computer until after summary judgment had been awarded and she took over her lawsuit Pro Se.

3.) A Protective Order and FRE 502(d) and (e) was signed by both legal parties. [Doc.#27]. Heaney testified in her deposition, "I know there was an IT dump of information sent over at discovery" [Doc.#75-4, p.129] The defense attorney [Miller] discloses on January 22, 2021, that the opposing attorneys failed to settle on search terms [Doc.105, p.5, par.2]. However, this does not explain or excuse Johnson Storage producing only select emails and withholding others. This also does not explain why Johnson Storage produced only portions of emails chains and withheld responses that did not support their defensive arguments as witnessed in the withheld emails above. It does not explain why all evidence relating to Don Hindman [and other managers] was withheld in this "IT dump" of information.

Hindman has been shielded by opposing legal parties as the only evidence referencing Hindman was entered by the plaintiff. Prior to Jacobs being deposed she asked her attorney why Hindman was not being deposed, this is when Halquist told Jacobs that Hindman was an employment law attorney. The defense attorney [Miller] also confirmed this fact in Jacobs deposition when she asks Jacobs, "Were you aware of this before I just said that he's [Hindman's] also an employment attorney?". [Doc. 75-1, p.120, lines 4-18]

Hindman's status as an employment law attorney does not justify why he was not deposed or why the only evidence referencing his name was entered by the plaintiff. Hindman is part owner of Johnson Storage, he sought out, interviewed, hired, and made the decision to fire Jacobs however, opposing legal parties made decisions not to disclosed or pursue evidence referencing Hindman.

Fed. R. Civ. P., Rule 56(c): A material issues of fact exists in the argument of when the plaintiff should have discovered withheld evidence allowing for summary judgment on the claim to be reversed. Coffey v. Coffey, No. E2017-09988-COA—R3-CV (Tenn. Ct. App. Sept. 20, 2018).

F.R.C.P. Rule 56(d) When Facts Are Unavailable to the Nonmovant: If a nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition and demonstrates that it would be possible to present the evidence in admissible form at trial, the court has reign to allow the case to proceed to trial. "Submission by party opposing summary judgment need not themselves be in form admissible at trial, but party "must show that she can make good on the promise.." (Alexander v. CareSource, 576 F.3d 551, 558 (6th Cir. 2009) (see Humphreys, 790 F.3d at 538-39) The plaintiff would be able to access and make available all information, depositions, and evidence prior to trial.

The Supreme Court set forth a standard in Reeves v. Sanderson Plumbing Products, 530 U.S. 133 (2000). "[T]he court must draw all reasonable inferences in the favor of the nonmoving party, and it may not make credibility determination or weigh the evidence..." "Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge" Liberty Lobby, supra, at 255, 106 S. Ct. 2505.

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QUESTION 2: Whether the district court's reliance on the employer's "Employee Handbook" stating that "employees may work overtime only with prior approval" violated CFR § 778.316, when no evidence of an overtime approval process exists?

No Evidence an Overtime Approval Process

Jacobs repeatedly asked Johnson Storage for help to reduce her workload or to approve overtime; these pleas are documented in emails and in Heaney's own deposition testimony. Jacobs was told [and initially complied] not to report her overtime and was ultimately fired when she began reporting overtime. Johnson Storage point to their "Employee Handbook" as justification for terminating Jacobs' employment stating Jacobs did not obtain "prior authorization to work overtime." However, there is no evidence of an Overtime Approval Process which is, in and of itself, a material fact.

["Addendum xxxiv"]	Johnson Storage's Employee Handbook: "Non-exempt employees may work overtime only with prior approval of their supervisor/manager. Employees working overtime without supervisor approval may face disciplinary action." (Def. Ex. 3)
August 17, 2017 **[Addendum No. "xxxv"]**	Jacobs, Heaney, Manandhar - Audio taped conversation of Jacobs termination. Heaney begins by presenting a list of hours Jacobs reported as grounds for her termination. [Transcript Exhibit 3, p.5]
[Addendum No. "xxxvi", p.189]	Answers and Objections to Plaintiff's First Set of Interrogatories, Heaney stated as her "reasons or basis

	for termination", "First, plaintiff received repeated instructions from her supervisor, Heaney, about the requirement to obtain prior authorization to work overtime." [Pla. Ex. 26, p.5] [Doc.#75-4, p.189]
Nov. 26, 2020 **[Addendum No."xxxvii", p.143]**	In Heaney's deposition, she testifies, "Katy often suggested that she should work off the clock", "Katy often offered that in our conversations of how to redistribute her workload. How to get her work managed." [75-4, p.143, lines]
Nov. 26, 2020 **[Addendum No."xxxviii, p.62-63]**	Heaney was questioned in her deposition, Q:"...Nonexempt employees may work overtime only with prior approval of their supervisor manager, ", but that doesn't take into account, the 10 plus hours in peak season that somebody is automatically authorized to do without prior approval in the peak season, does it?" Heaney responds, "There is no automatic. "The 10 hours is what she was authorized....There is no blanket, automatic." [Doc.#75-4, p.62-63]
Nov. 26, 2020 **[Addendum No."xxxviii, p.65]**	Heaney was asked to describe in her deposition an employee approval process for overtime. Heaney testifies, "The employee would ask their supervisor. And upon approval, the supervisor would send an email to HR and to the payroll department saying that so and so has been authorized this amount of overtime, whatever that would be. So that would be the process." Q: There's no form to fill out?' Heaney, "No". [Doc.#75-4, p.65, lines 9-16]

Relief of Judgment (Appendix B) : The Defendant nor the District Court responded to or acknowledged, "No Evidence of an Overtime Approval Procedure" in the plaintiff's Relief of Judgment. [Doc.#102, p.13-14]

In Summary: F.R.C.P. Rule 56(d): Failure To Support or Address a Fact: The District Court erred in not acknowledging that the absence of any evidence documenting an overtime approval procedure is a material fact. The absence of any evidence validating that there was an overtime approval process is a key component when terminating an employee based on the fact they did not get "prior approval". The defendant must "present evidence, and not simply point out through argument..." (Id. At 854 (emphasis added); Pisaro v. Brantley (1996) 42 Cal. App. 4th 1591, 1601.)

F.R.C.P. Rule 56(c)(2) "Objection that a fact is not supported by admissible evidence", "failing to properly support or address a fact". The plaintiff objects that the defendant has not produced any evidence that an Overtime Approval Procedure existed. There are no emails to or from Heaney, Jacobs, HR, Payroll, Hindman, Hiles, or Manandhar referencing, discussing, approving, or denying overtime.

29 CFR § 778.316 – Agreements or practices in conflict with statutory requirements are ineffective. "An announcement by the employer that no overtime work will be permitted, or that overtime work will not be compensated unless authorized in advance will not impair the employee's right to compensation for work which he is actually suffered or permitted to perform. Johnson Storage attempts to circumvent 778.316 and 778.317 by demanding Jacobs under-report her hours.

The defendant stated Jacobs was paid for all the hours she "reported". [Doc.#81, p.1] However, Jacobs was not paid for all the hours she "worked" and was fired in retaliation for reporting the unlawful behavior to management and when she began reporting more of the hours she was working. Johnson Storage has not supplied any viable or legitimate supporting papers or evidence showing there is no triable issue.

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QUESTION 3: Whether administrative errors [lost motions and petitions within the courthouse] altered the outcome of the plaintiff's lawsuit and ultimately her appeal?

Due to Covid-19 motions and petitions were placed on a cart in the lobby of the courthouse to be distributed to the appropriate Court at a later time. The plaintiff took pictures to document her hand-delivered motions to the courthouse. In error, motions and petitions were lost and/or sent to the wrong Court causing delays and altering the outcome of this lawsuit.

MOTIONS AND PETITIONS LOST:

Federal Rules of Appellate Procedure: Rule 4, Appeal as of Right: (D) Mistaken Filings in the Court of Appeals. If a notice in a civil case is mistakenly filed in the court of appeals, the clerk of that court must note on the notice the date when it was received and send it to the district clerk. The notice is then considered filed in the district court on the date so noted.

Motions and Petitions

Date:	Documents:	Doc.#
March 3, 2020	Summary Judgment awarded to Johnson Storage	[81]
March 13, 2020	Plaintiff filed her notice of appeal (Pros Se)	[86]

July 7, 2020 Jan. 5, 2021 refiled **[Addendum No."xxxix"**	**"Motion to Enter Evidence"** (kjacobs@johnson-united.com] – Delivered on July 7, 2020 was not processed. The plaintiff redelivered the motion on January 5, 2021. [Doc.#99/attached witnesses both dates] The motion was not acknowledged by the district court until March 3, 2021 in the Relief of Judgment when it was systemically dismissed together will all motions and petitions. [Doc.#105, p.1, 15]	[99]
November 24, 2020 refiled: Dec. 30, 2020 refiled: January 5, 2021 **Addendum No."xl – xlii"**	**"Relief of Judgment/Indicative Ruling"** – Timely submitted on November 24, 2020 [prior to the appellate court ruling]. In contacting the district clerk was told it was not received. Resubmitted December 30, 2020 in a file marked "District Court". Called the clerk and again told it was not received and was not in the mailroom. Redelivered for a third time January 5, marking the file, "Hon. Judge Stephen R. Clark", along with verification of filings. See 95-1 confirmation of all submissions with date stamped pictures.	[95] [95-1]
December 17, 2020 refiled January 19, 2021	**"Motion for Production"** (ADP report) – Originally filed December 17, 2020. Supplement to the motion delivered January 19, 2021. Not acknowledged by the District Court till March 3, 2021. [Doc.#105, p.15]	[98]
December 18, 2020	Petition for Rehearing Denied [Add. D][Doc.#96]	[Add D]
December 28, 2020	Appellate Court's mandate issued while the motion for relief of judgment was being processed.	[94]
March 3, 2021	The District Court denied all the plaintiff's motions and petitions systemically within the Relief of Judgment Memorandum.	[Doc.105, p.1,15]
March 17, 2021	Motion to Supplement Appeal delivered	
March 19, 2021	Appellate Court denied review of Motion to Supplement Appeal	

ERROR - "Motion to Enter Evidence": The plaintiff took over her lawsuit Pro Se after summary judgment and discovered withheld evidence. The plaintiff submitted a motion to enter evidence on July 7, 2020. The motion was not acknowledged by the Court. The plaintiff resubmitted the motion on January 5, 2021. [Doc.#99, **Addendum "xxxix"]** witnesses both dates] In the "Civil Docket for Case", dated March 3, 2021, the District Court acknowledge motion [99] as being initially received on July 7, 2020, confirming that it was received from the Circuit Court [no date/time] but ruled, "because the motion raises the very same issues as her Motion for Relief from Judgment [95] – dated January 5, 2021, the Court denies the motion [99] for the same reasons". [Doc.#105, p.1, 15] **[Addendum No. "xliii"]**

The plaintiff argues that had Motion [99] been acknowledged by the Courts back on July 7, 2020 [9 months earlier] it would have altered the direction of these pretrial proceedings and her appeal. Denying the entry of new evidence, after Jacobs' appeal had been closed, creates a prejudice against the plaintiff for an error committed by the Courts. In addition to this administrative error, the errors compounded when the plaintiff timely submits a "Relief of Judgment/Indicative Ruling" which was only acknowledged by the District Court after the plaintiff submitted it for the third time; along with evidence of multiple submissions [95-1] **[Addendum "xl-xlii"].**

ERROR – "Petition for Relief of Judgment 60(b) /Indicative Ruling (FRAP 12.1)": The plaintiff's petition was delivered in a timely manner to the Court on November 24, 2020. It is unclear how this petition was lost within the

courthouse twice, causing the plaintiff to resubmitted the petition on December 30, 2020 and again on January 5, 2021. The plaintiff submitted evidence of the courthouse errors on January 5, 2021. [Doc.#95-1 /**Addendum "xl-xlii"**].

Remand is in the Court of Appeals' discretion under Appellate Rule 12.1:

The District Court acknowledges and processed the plaintiff's Relief of Judgment 60(b)/Indicative Ruling (12.1), however by this time the appellate court had already concluded the appeal. The Appellate Court had not 12.1(b) "remanded authority back to the district court for further proceedings or notified the district court if they were retaining jurisdiction", because they had already closed the appeal. The district court processed the plaintiff's Relief of Judgment motion dismissing all motions dating back to July 7, 2020 simultaneously on March 3, 2021. [Doc.# 105, p. 1, 15]

The administrative errors and delays in processing the Relief of Judgment/Indicative Ruling resulted again in prejudice against the plaintiff as the appellate court made final ruling on the appeal without benefit of viewing the appeal as a whole. Subsequently, when the plaintiff filed her motion to supplement her appeal with the information from the Relief of Judgment order on March 17, 2021, the motion was denied without consideration on March 19, 2021.

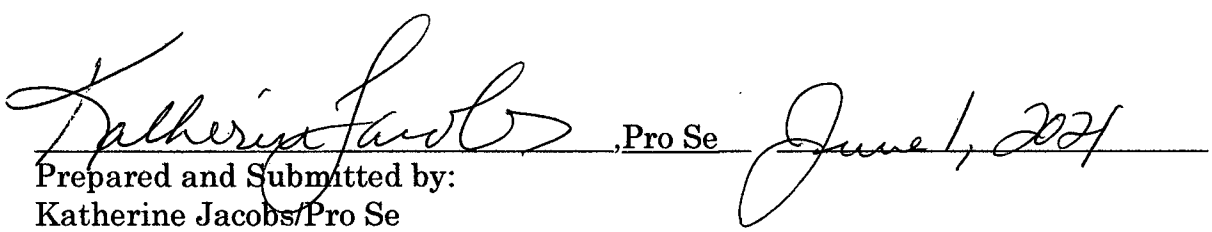
CONCLUSION

The plaintiff has submitted several complex issues that the seriousness of the errors and injustices resulted in flawed decisions by the District Court. These

flawed decisions carried over to the Appellate Courts as they were not able to view issues raised in the Relief of Judgment which unfairly prejudiced the outcome of the appeal. The plaintiff argues that procedural steps have failed to meet legal requirements which have deprived judges of key tools and information to make informed decisions and deprived the plaintiff due process.

The plaintiff appeals to the Supreme Court to exercise its power of judicial review [Marbury v. Madison] granting this Writ of Certiorari as the District Court's administrative errors and disregard for the Supreme Court's rules and standards have caused them to exceed their limits of power when dismissing genuine issues of fact and awarding summary judgment.

Note (First Person Narrative): I, Katherine Jacobs, have devoted the last year as a Pro Se litigant trying to repair the damage and errors sustained to this lawsuit and in the process have filed several motions. Please do not construe my efforts to repair the damage to my lawsuit as, "an attempt to abuse the judicial process and waste judicial resources" [Doc.#105, p.16] as this is sincerely not my intentions. I have done my best to navigate, research, and apply the rules and laws in an effort to present the facts and merits of my case in clear and convincing manner. Thank you for your patience and understanding.



, Pro Se June 1, 2021

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