No. 20-8308

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Wilhelmina MONTGOMERY, pro se — PETITIONER
(Your Name)

vs.

Agnieszka HOLLAND et al — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. Court of Appeals, Second Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Wilhelmina Montgomery
(Your Name)

17 Avenue Paul Vaillant Couturier, Esc. P.
(Address)

94110 Arcueil, FRANCE
(City, State, Zip Code)

(917) 858-4714
(Phone Number)

QUESTIONS PRESENTED

I. As, I, the pro se Plaintiff-Appellant pointed out in my First Amended Complaint (Doc. 9) and in my Second Amended Complaint (Doc. 51) *two (2) different scenes in "Rosemary's Baby the Miniseries" in which my pages, in my view, of my actual written expression can be seen on the screen,* could it be possible that the Court of Appeals Judges and the District Judge overlooked these two frames (each one appearing for about one second) when they watched the "Miniseries" and concurred in their decision to dismiss my action? Should not a jury made up of reasonable lay observers be allowed to view these frames – not by watching the "Miniseries" twenty-six (26) times as I have – but at least once, attentively?"

II. Is the affirming by the U.S. Court of Appeals, Second District, in its Summary Order dated November 12, 2020 concerning the U.S. District Court's (SDNY) granting Defendant Cinestar Pictures' Motion to dismiss my, the pro se Plaintiff-Appellant's, FIRST AMENDED COMPLAINT considered to be fair and just legal procedure, when Cinestar Pictures failed to serve me its Motion to dismiss?

III. Is it fair and just legal procedure for the Court of Appeals, Second Circuit, to affirm the District Court's and Judge Broderick's *inaccurate* statements in Document 76 and Document 89 – made to justify his dismissal of my SECOND AMENDED COMPLAINT (Doc. 51) – that he had used such limiting words as "only" and "for the limited purposes of" in the court's leave for me to amend, when he had *not* used those words therein?

(Continued)

IV. If Judge Broderick deemed my SECOND AMENDED COMPLAINT to be defective when I submitted it on April 18, 2018, was it fair of him to wait until June 2, 2019 to dismiss it – more than one year – and never having ordered me to cure it during that time?

V. Did the U.S. Court of Appeals, Second Circuit, err when it affirmed the U.S. District Court's Order to dismiss seven (7) Defendants in this case based on the district court's *inaccurate* claim that I, the Plaintiff-Appellant, failed to provide the Court with service information for certain Defendants? Because the said seven Defendants were not served, should they not have been dismissed without prejudice?

VI. Did the Court of Appeals, Second circuit err when it confirmed the District Court's dismissal of the foreign Defendant Liaison Films with prejudice in this action when Judge Broderick had formerly written that he would consider permitting me, the Plaintiff, more time to summon the said foreign Defendant should I write to him in detail of my efforts to summon that foreign Defendant, which I did?

LIST OF PARTIES

All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

NBC TELEVISION, LIONSGATE ENTERTAINMENT CORPORATION,
SCOTT ABBOTT, JAMES WONG, ROBERT BERNACCHI, ALIXANDRE WITLIN,
JOSHUA D. MAURER, MARIEL SALDANA, ZOE SALDANA,
CINESTAR PICTURES, KIPPSTER ENTERTAINMENT
NETFLIX ENTERTAINMENT COMPANY,

DEFENDANTS –APPELLEEES

AGNIESZKA HOLLAND, DAVID A. STERN, CISELY SALDANA,
TOM PATRICIA, FEDERATION ENTERTAINMENT,
LIAISON FILMS, LIONSGATE TELEVISION, KASIA ADAMIK,

DEFENDANTS

RELATED CASES

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[ ] For cases from **federal courts:**

The opinion of the United States court of appeals appears at Appendix B to the petition and is

[ ] reported at Montgomery v.Holland 408 F. Supp. 3d 353; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

[ ] reported at Montgomery v.Holland et al, No. 17-CV-3489; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

[ ] For cases from **state courts:**

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

JURISDICTION

[ ] For cases from **federal courts:**

The date on which the United States Court of Appeals decided my case was November 12, 2020

[X] No petition for rehearing was timely filed in my case.

[ ] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[ ] For cases from **state courts:**

The date on which the highest state court decided my case was _____. A copy of that decision appears at Appendix _____.

[ ] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

28 U.S.C. §1254(1)

28 U.S.C. §1746

Amendment VII to the United States Constitution

STATEMENT OF THE CASE

This is a copyright infringement case arising out of a Complaint filed in the Southern District Court for the Southern District of York on May 9, 2017 by pro se Plaintiff Wilhelmina "Mina" Montgomery Defendants Agnieszka Holland *et al.* I the Plaintiff-Appellant cited in my claim the infringement of two of my Short Stories, "The Groaning Road The True Story" and The Groaning Road the Fictionalizled Story".

In February of 2012, upon her acceptance, I the Plaintiff-Appellant e-mailed Defendant Holland, a film director and an acquaintance of twenty-five years at the time, the two Short Stories in question.

On November, 2017, I filed my First Amended Complaint and named nineteen Defendants, including the Defendants-Appellees.

On March 6, 2018 Defendants filed an answer. (Doc. 39). On March 22, 2018 Defendants filed their Instant Motion for Judgment on the Pleadings (Doc. 42) along with a Memorandum of law in support (Doc. 43). On March 3, 2018 and March 13, 2018, I submitted two letters opposing Defendants' Motion (Docs. 45 and 46).

I then filed my Second Amended Complaint on April 18, 2018 (Doc. 51); and filed my Memorandum of Law on April 19 (Doc. 50).

The District Court dismissed my Second Amended Complaint on June 2, 2019, stating that I had added two additional Defendants instead of one. -The District Court dismissed my First Amended Complaint on September 30, 2019 granting Defendant Cinestar Pictures' Motion to dismiss.

The Court of Appeals, Second Circuit, affirmed the District Court's Opinion of November 12, 2020.

Concerning Question I:

I, the pro se Plaintiff-Appellant, claim that frames within (2) scenes in "Rosemary's Baby the Miniseries" show actual images of my pages on which are printed my written expression. The "Miniseries" was produced, filmed and distributed all over the world by the Defendants, including directors and producers, *each* of whom played a specific role in the production and distribution of this film.

As copyright law protects from the infringement of various works including paintings, photographs, sculpture and pages of written expression, I claim that each the Defendants infringed my two (2) Short Stories. For not only do I claim hundreds of similarities throughout the "Miniseries" to *nearly every paragraph* of my written expression in my Short Stories – including characters, setting, plot, scenes, themes, dialogue development, verbatim dialogue within similar scenes, verbatim dialogue and similar actions by similar characters within similar scenes, *exact dates and exact spans of time* – but also that the actual pages of my written expression are shown on the screen of "Rosemary's Baby the Miniseries" *ALL OVER THE WORLD.*

Defendants' statements to the lower courts, that there exist two DVDs to be reviewed in this action – that of the original film *Rosemary's Baby* and that of the "Miniseries", is inaccurate. In fact, there exist three (3) DVDs that should have been reviewed in this action: that of the original film *Rosemary's Baby*, that of the original "Rosemary's Baby the Miniseries" and that DVD which the Defendants re-edited and submitted to the courts after I lodged this action.

In my letter to the District Court, SDNY, on March 13, 2018, (Doc.41) [1], I mentioned the fact that some scenes shown in the original DVD of the "Miniseries" had been shortened in the Blu-Ray DVD that Defendants submitted to the court, and that I wished to submit the original DVD version during the discovery phase. This action was dismissed before the discovery phase of this action took place;

I, the pro se Plaintiff-Appellant, stated in my Complaint, in my First Amended Complaint and in my Second Amended Complaint that *each* of the Defendants – the directors and producers of "Rosemary's Baby the Miniseries" – had infringed my written expression in two (2) of my short stories, "The Groaning Road The True Story" and "The Groaning Road The Fictionalized Story". Upon her acceptance in February of 2012, I sent these two Short Stories to film director Agnieszka Holland, an acquaintance of mine of twenty-five years at the time. Director Holland and I exchanged several e-mails about my two Short Stories before and after she received them attached to one of the e-mails. [2]

In its Summary Order that affirmed the District Court's Opinion and Order, the Court of Appeals, Second Circuit, states:

> Montgomery argues that the district court failed to apply the "pattern" test, under which, she contends, the works are substantially similar. This test conceives of a copyright as "cover[ing] the 'pattern' of [a] work...the sequence of events, and the developments of the interplay of characters." *Warner Bros. Inc. v. Am. Broad. Cos., Inc.*, 720 F.2d 231, 240 n.7 (2d Cir. 1983) (quoting Zechariah Chafee, Jr., *Reflections on the Law of Copyright*, 45 Colum. L. Rev. 503, 513—14 (1945)) (ellipses in original).[3]

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[1] See Plaintiff's letter (Doc. 41) to the District Court, SDNY, Montgomery v. Holland et al, No. 17-CV-3489, VSB, p. 2, para.10, line 1, 03/13/18.
[2] See attached e-mails sent by Plaintiff-Appellant Montgomery and Defendant Holland, U.S. Court of Appeals, No. 19-3665; U.S. District Court, No. 17-CV- 3489.
[3] Summary Order, U.S. Court of Appeals, 2d Cir., Montgomery v. Holland, et al, No. 19-3665, p.5, para.2, line 1, 11/12/20.

The Second Circuit does not state its opinion of the merits of my "pattern test" argument; but, rather continues:

> She also argues that the district court overlook significant similarities between the miniseries and her short stories, including the "plot, the verbatim dialogue within similar scenes spoken by similar characters in similar settings, [and] the exact dates in the... works." Appellants' Br. At 24. **Given the absence of any recognizable similarity** between the protectable elements of the works, these arguments are unavailing.[4] (Ellipses in Appeals Court original) (Emphasis is that of the Plaintiff Appellant).

The Court of Appeals, Second Circuit also states:

> The portions of dialogue that Montgomery identified as "verbatim" in her complaint are limited to isolated word choices, short common phrases, and purportedly similar expressions of common ideas, such as the concept of feeling transported in time. But copyright protections "extend[] only to those components of a work that are original to the author" and "come[] from the exercise of the creative power of the author's mind." *Boisson v. Banian, Ltd,* 273 F .3d 262, 268 (2d) Cir. 2001).[5]

Hence, my argument that the original DVD of the "Miniseries" should have been submitted to a jury of reasonable lay observers so that they might review the frames within scenes showing what I claim to be images my actual pages of my written expression on the screen.

I, the pro se Plaintiff-Appellant, had watched the "Miniseries" *several* times before I noticed these pages that look very similar to some of the actual pages that I sent to director Holland by e-mail. The frames within the scenes, in which I claim that my pages of written expression are produced, appear on the screen for one or two seconds; someone who is not attentive, or might not pay attention to them; but my claim is that they do appear on the screen.

In my First Amended Complaint (Doc. 9) and in my Second Amended Complaint (Doc. 51), I pointed out the hour, minute, and second of the "Miniseries" in which the pages in question appear. It could be possible that the judges of the Court of Appeals, Second Circuit, and the

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[4] Ibid, p. 5, para.2, line 6.
[5] Ibid, p.6, para.1, line 3.

judge of the District Court, SDNY, overlooked these two frames if they watched the "Miniseries" only one time; which is probably the case.

And, it seems as if neither the judges of the Court of Appeals, Second Circuit, nor the judge of the District Court, SDNY, thoroughly read my Complaints where I pointed out these pages within frames within scenes (my Second Amended Complaint was stricken from the record for my having added pleading along with two (2) Defendants, rather than only one).

Judge Broderick of the District Court, SDNY, admitted during a conference hearing on April 26, 2018 – to which only the Defendants' had been summoned (supposedly "due to a clerical error" (See Doc. 60) and at which only Defendants' counsel appeared): "In the meantime, I'm going to have to admit **I have not flipped through in any kind of detail, the first amended complaint at 100-some-odd pages.**[6] (Emphasis is that of the Plaintiff-Appellant).

His above admission seems to raise the problematic that Judge Broderick and other judges may have only "flipped through" my Amended Complaints claiming infringement by the Defendants of my two short stories. Because the list of similarities and patterns happens to be lengthy, the list has perhaps not been thoroughly reviewed. A jury made up of reasonable lay observers would be instructed to actually read my Complaint and to view these frames – not by watching the "Miniseries" twenty-six (26) times as I have – but at least once, attentively, as a part of *de minimis* requirements.

Concerning the Right to a Jury Made Up of Average Lay Observers:

The question of substantial similarity is very often submitted to a jury made up of "average lay observers" for a decision. *As no District Court judge or Court of Appeals judge could be defined as an "average lay observer".* The decisions of the U.S. District Court, SDNY, and

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[6] See Court Reporters Transcript, U.S. District Court, SDNY, Montgomery v. Holland, et al, No. 17-CV-3489, p. 6, line 11, 4/26/2018.

the Court of Appeals, Second Circuit, deny me, the *pro se* Plaintiff-Appellant, the right to a jury trial, with a jury made up of lay observers.

A jury made up lay observers would have been instructed to watch *the original DVD of the "Miniseries"* and not the one that was edited *after* I, the Plaintiff-Appellant, brought this action.

The District Court judge and the Appellate judges cannot actually *know* what "a reasonable jury" would find as "substantial" similarities between my **two works** of written expression and ***one film***, "The Miniseries", unless the reasonable women and men of such a jury were given the opportunity to speak for themselves.

That subjective reasoning and inaccuracies proffered throughout the Opinion and Summary Order by the District Court judge and the appellate judges in this action, respectively, bring to mind the widely held belief that the judicial system is often unfair.

Judge Broderick of the District Court states, *subjectively,* in his Opinion and Order:

> In sum, there are no "protectible elements, standing alone" that meet even a *de minimis* level of similarity. *Williams, 84 F.3d* at 588 (emphasis omitted); *see also Castle Rock Entm't*, 150 F.3d at 138—39. Accordingly, I find that because the differences between the works are so "pronounced," "no reasonable jury could find that the works are substantially similar." *Hogan*, 48 F. Supp. 2d at 311. [7] ; (Emphasis is those of the Plaintiff-Appellant)

In the statement immediately above, as throughout his Opinion and Order, Judge Broderick excerpts words from case law and sews them into his subjective, and what appears to be deliberate, attempt to exonerate the Defendants of infringement of my ***two*** short stories for the purpose of making ***one*** film. Judge Broderick states:

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[7] Opinion and Order, U.S. District Court, SDNY, Montgomery v. Holland et al, Docket # 17-CV-3489, p. 38, para2, line 1, 9/30/19.

> Further, pleadings of a pro se party should be read "to raise the strongest arguments that they suggest." *Kevilly v. New York,* 410 F. App'x 371, 374 (2d Cir. 2010) (summary order) (internal quotation marks omitted). **Nevertheless, dismissal of a pro se complaint is appropriate where a plaintiff fails to state a plausible claim supported by more than conclusory [as written in statement] factual allegations.**[8] (Emphasis is that of the Plaintiff-Appellant)

The second sentence, without quotes, in Judge Broderick's immediately above statement suggests *subjectively* that I "failed to state a plausible claim" of infringement by the Defendants of my written expression, *when* ***I pointed out similarities in the FILM to nearly every paragraph of two of my short stories.***

As I pointed out in detail in my FIRST AMENDED COMPLAINT and in my SECOND AMENDED COMPLAINT more than one hundred similarities in the FILM to my characters, plot, setting, scenes, dialogue, similar dialogue within similar scenes, action with similar scenes, similar action and similar dialogue within similar scenes, and the Defendants use in the FILM of my *exact dates*, then Judge Broderick's suggestion, and the Court of Appeals' affirming that suggestion, that all this detail is no more than "random similarities scattered throughout the works" is disingenuous and misleading:

> Merely listing "random similarities scattered throughout the works" cannot, on its own, support a finding of substantial similarity "because it fails to address the underlying issue: whether a lay observer would consider the works as a whole substantially similar to one another." *Williams*, 84 F.3d at 590 (internal quotations marks omitted). Instead, the court's analysis should be principally guided by a comparison of the "total concept and overall feel of both works, *Gaito* 602 F.3d at 67 (citation omitted), as well as an

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[8] Opinion and Order, U.S. District Court, SDNY, Montgomery v. Holland et al, No. 17-CV-3489, p. 38, para2, line 1, 9/30/19.

Opinion and Order, U.S. District Court, SDNY, Montgomery v. Holland et al, Docket # 17-CV-3489, p. 8, para.1, line 4, 9/30/19.

examination of "similarities in the theme, setting, characters, time sequence, plot, and pace." *Williams*, 84 F.3d at 589 (Doc 89).[9]

Furthermore, Judge Broderick states:

> The Lions Gate Defendants also allege that the Miniseries was based on Ira Levin's novel *Rosemary's Baby* (the "Novel"), which was previously adapted into a 1968 film with the same title (the "Film"), and annex a copy of the Novel, DVD of the Film and synopsis of the Film (Ans. 6, 7; Exs. D, E, G.) In their memorandum of law, the Lionsgate **Defendants argue that "[w]hile the Miniseries makes some minor alterations**...the basic story is unmistakably the same" as the Novel and the Film. (Defs.' Mem. 1.) Plaintiff's claims of copying, they contend, "ignor[e] the express and unmistakable lineage of the Miniseries." (Emphasis is that of the Plaintiff-Appellant).[10]

No reasonable, objective jury of lay observers would find that the differences between the Film, *Rosemary's Baby* and "Rosemary's Baby the Miniseries" amount to "minor alterations":

alterations":

1) The setting is for the infringing "Miniseries" is no longer Manhattan, but Paris; as is my setting;
2) Rosemary and Guy Woodhouse are not an interracial couple in the "Film";
3) In the Miniseries Guy Woodhouse is no longer a struggling Broadway actor, but a teacher at a University in Paris, as is my character;
4) In the "Film" there is no lost Rosemary looking for addresses on Paris streets, as is my character and the Rosemary in the "Miniseries";
5) Rosemary is no longer just pregnant and clueless, but now investigating mysterious disappearances; as is my character;

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[9] Opinion and Order, U.S. District Court, SDNY, Montgomery v. Holland et al, Docket # 17-CV-3489, p. 10, para.5, line 5, 9/30/19.

[10] Ibid., p. 12, para.2, line 7.

6) There are no mysterious disappearances in the "Film" as in the "Miniseries" and in my two short stories.

7) Rosemary did not have a blond best friend in whom she confides – one who likes to tease playfully, to flirt and drink, as does my character;

8) In the "Film" *Rosemary's Baby*, Rosemary did not have a best friend at all: but now in the "Miniseries" she does; one whose *character* is similar to the *character* of my character;

9) The "Film" does not have a crime solving inspector in Paris similar to my character, and whose dialogue is similar to that of my character; both of which we find in the "Miniseries".

10) There is no reference to a mysterious secret society using coded language in the "Film", as in my short story and the "Miniseries";

11) There are no adoring groupies in the "Film" such as we find in my short story and in the "Miniseries".

12) There are no glamorous parties in the "Film"; as are in my short story and in the "Miniseries"

13) There is no Jazz nightclub in the "Film"; as is in my short story and in the "Miniseries";

14) There is no all-gray apartment in a wealthy neighborhood in Paris in the Polanski "Film"; but there is one in my short story and the "Miniseries";

15) The *exact dates* and exact spans of time or time found in my two works and in the "Miniseries" are not mere coincidences.

Judge Broderick also writes in the District Court's Opinion and Order:

> In any event, Defendants do not contend that Plaintiff has failed to sufficiently allege actual copying. Instead, they assume for the purposes of the motion that they

> had access to the Short Stories – one way in which a plaintiff may circumstantially establish copying, *see Jorgensen v. Epic/Sony Records,* 351 F.3d 46, 51 (2d Cir. 2003)—but argue that "all the access in the world would not make Plaintiff's copyright infringement claim sustainable" because ultimately the works are not substantially similar. (Defs.' Mem. 4 N.3.) Therefore, because 1) Defendants have not put actual copying in issue, and 2) because in the absence of an argument that Plaintiff has failed to state a claim as to actual copying, actual copying is a question of fact not appropriate for resolution by judgment on the pleadings, I do not consider the relation between the Miniseries and the antecedent works. Instead, I limit my analysis to the question of whether, on the face of the works, the Miniseries is substantially similar to the Short Stories. I find that it is not.

There are perhaps laws that permit such flagrant infringement of my written expression for the purpose of developing and producing films and other projects, but these laws are not necessarily just.

Judge Broderick of the District Court writes, "The works undisputedly bear a handful of superficial and immaterial similarities, such as the ethnicities of certain characters and the Parisian setting." [11] (Emphasis is that of the Plaintiff-Appellant) *But when he limits the similarities to just these two, his analysis cannot be seen as impartial, just or credible.*

Judge Broderick continues, *subjectively and inaccurately*:

> However, having examined the relevant works in detail, it is apparent that the True Story and the Fictionalized Story, even taken together, differ dramatically from the Miniseries in "total concept and overall feel," See *Gaito*, 602 F.3d at 66, as well as in elements more easily isolated, like plot, themes and pacing, *Williams*, 84 F.3d at 589. There is simply no "plausible claim that there is a common aesthetic appeal between" the Short Stories and the Miniseries. ... Putting to the side the divergence in genre and mood, the qualitative and quantitative

[11] Opinion and Order, U.S. District Court, SDNY, Montgomery v. Holland et al, Docket # 17-CV-3489, p. 31, para.4, line 1, 9/30/19.

similarities of protectible [] expression are less than *de minimis*.[12] (Emphasis is that of the Plaintiff-Appellant).

A reasonable jury of lay observers would be instructed to consider the whole of these elements, along with the fact that Agnieszka Holland had copies of both of my two short stories before she directed the "Miniseries".

To be clear, the Defendants used the *title* of the "Film" *Rosemary's Baby* for name recognition and as internet "click bait" for centuries to come, and then pared the original "Film" down to a skeleton and hung my two short stories on that skeleton in order to modernize the production in question.

The Court of Appeals, Second Circuit, repeats the District Court's subjective analysis and writes,

> "Here the district court only considered the issue of substantial similarity. (In its footnote 2, the Court of Appeals writes, Montgomery's arguments regarding Holland's access to her work miss the mark because access is probative of actual copying, but not substantial similarity."[13]... The test for substantial similarity is "whether, in the eyes of the average lay observer, [one work is] substantially similar to the protectible []expression in the [other."] Williams v. Crichton ... In evaluating substantial similarity," we are principally guided by comparing the contested design's total concept and overall feel with that of the allegedly infringed work." *Peter F. Gaito Architecture LLC v. Simone Dev. Corp.*, ... **In addition, we consider commonalities in the works' "theme, characters, plot, sequence, pace, and setting**. *Williams* ...
>
> Here, the total concept and overall feel" of the miniseries is very different from the two short stories ...
>
> Montgomery. ... also argues that the district court overlooked significant similarities between the miniseries and her short stories, including the "plot, the verbatim dialogue within similar

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[12] Ibid, p. 31-32, para.4, line 1, 9/30/19.

[13] Summary Order, U.S. Court of Appeals, 2nd Cir., Montgomery v. Holland, et al, No. 19-3665, p. 4, para. 1, line 1,11/12/20.

> scenes spoken by similar characters in a similar setting [and] the exact dates in the... works." Appellants' Br. At 24. Given the absence of any recognizable similarity between the protectable elements of the works, these arguments are unavailing.
>
> A review of the three works at issue in this case reveals that their plots are entirely dissimilar... her list merely "emphasizes random similarities scattered throughout the works," and such a list "cannot support a finding of substantial similarity because it fails to address the underlying issue: whether a lay observer would consider the works as a whole substantially similar to one another." *Williams,* 84 F.3d at 590 ...[14] (Underscoring is that of the Plaintiff-Appellant).

Thus, the judges of the Court of Appeals, Second Circuit, decide that both it and the District Court can use their own subjective reasoning, and not that of reasonable lay observers, to declare the three works "very different", to declare "the absence of *any* recognizable similarity", in the three works, to relate "the overall feel" of the works, to know what lay observer would consider to be substantial similarity in the works "as a whole", and to know that lay observers would minimize to "*de minimis"*, by injecting the minimizing words "her list *merely* 'emphasizes random similarities scattered throughout the works'" (Emphasis is that of the Plaintiff-Appellant)

The Court of Appeals and District judges in this action proffer subjective reasoning attached to the understandingly subjective reasoning of Defendants – **often with no quotation marks, but cleverly attached to case law.**

But the Court of Appeals makes its most stunningly and monstrously false assertion when it states:

> Finally, Montgomery's allegations regarding common significant dates in the works are difficult to follow. She **largely** appeared to draw connections between dates or spans of time

[14] Summary Order, U.S. Court of Appeals, 2nd Cir., Montgomery v. Holland, et al, No. 19-3665, p. 4-5, 11/12/20.

appearing in the miniseries (or associated with its production) and events **in her own life, rather than within her copyrighted work**. (Emphases are those of the Plaintiff-Appellant).[15]

By its falsity, the immediately above statement by the Court of Appeals, Second Circuit, not only makes a mockery of justice and the law in its falsity, but it ridicules me, the pro se Plaintiff-Appellant, and *is defamatory.* I wrote dates and spans of time in my two short stories, and pointed out *in detail,* in my FIRST AMENDED COMPLAINT and SECOND AMENDED COMPLAINT, these *exact* dates and spans of time that are found in the "Miniseries". If the Court of Appeals judges actually read my two short stories, and watched the first version of the "Miniseries", *and not the one that was digitally edited after I lodged the action*, then they would have seen the *exact dates and spans of time* in all three works. It seems that these Appeals Court judges would simply like *to minimize my Complaint, including by ridiculing me, and to mislead the readers of their Summary Order* in their affirming of the dismissal by the District Court of my action against the Defendants.

After actually reading my Complaint, any judge who states that I did not *point out in detail these exact dates and spans of time* that are found in the "Miniseries" and in my two Short Stories can be suspected and accused not only of dishonesty and defamation, but also of the obstruction of justice.

Furthermore, when Judge Broderick *rewrites* my two short stories *in his words*, and calling this rewriting summarizing, it is also an aberration of justice. **My written expression should speak for itself to reasonable lay observers as well as to the courts.** Moreover his *subjective* re-writing is done in such a way that it minimizes substantial similarity, overlooks detail, and highlights insignificant elements of my two works, misleading the readers of his Opinion and Order (Doc 89).

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[15] Ibid, p. 6, para.1, line15.

Concerning Question II:

Defendant Cinestar Pictures' did not serve me, the Plaintiff-Appellant its Motion to Dismiss:

Defendant Cinestar Pictures failed to serve me, the pro se Plaintiff, its Motion to dismiss my FIRST AMENDED COMPLAINT (Doc. 9) – a Motion that the District Court granted on September 30, 2019 in its Opinion and Order (Doc. 89), after it had dismissed my SECOND AMENDED COMPLAINT (Doc. 51) on June 2, 2019.

However, on July 23, 2019, when Defendant Cinestar Pictures falsely claims in an affidavit (Doc.81) that it had served me its Motion to dismiss (Doc. 80), the District Court granted its Motion even though I was in France trying to follow the District Court's Order dated June 2, 2019 (Doc. 76) to summon foreign Defendant Liaison Films. Thus, the District Court should not have accepted Cinestar's Motion to dismiss, especially when I explained to Judge Broderick in a letter dated September 24, 2019 that I had not received notice of it. (Doc.88).

Moreover, in his Order of June 2, 2019, Judge Broderick of the District Court *inaccurately* justifies his dismissal of seven (7) of the Defendants by *stating as the reason, the failure to serve notice:*

> IT IS FURTHER ORDERED that, because Plaintiff has been given at least three opportunities to provide the Court with service information for the Defendants named in this action, **but has failed to do so for certain Defendants**, the following parties are dismissed from this action: Agnieszka Holland, David Stern, Cicely Saldana, Lionsgate Television, Tom Patricia, Federation Entertainment, and Kasia Adamik. [16] (Emphasis is that of the Plaintiff-Appellant).

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[16] Order, U.S. District Court, SDNY, Montgomery v. Holland, *et al*, No. 17-CV-3489, VSB, p. 2, para.3, line1, 06/02/19.

Judge Broderick of the District Court did not specify that his dismissal of these seven (7) Defendants was with or without prejudice; but taking into consideration his reasoning for this dismissal, h should have also dismissed Defendant Cinestar Pictures' Motion after examining its fraudulent affidavit claiming notice of service to me the Plaintiff, and after receiving my letter to the District Court that I had *not* received notice of Cinestar's Motion.

Furthermore, in his Order dated June 2, 2019 (Doc. 76), in which he dismissed my SECOND AMENDED COMPLAINT as well as those seven Defendants, Judge Broderick of the District Court *contradicts* himself in that document and states: "On June 26, 2018, **Plaintiff submitted a letter containing service information for *all* Defendants** (Doc. 70.)" [17] (Emphasis is that of the Plaintiff-Appellant)

IN ITS SUMMARY ORDER, the Court of Appeals writes:

> Accordingly, to the extent that the Montgomery challenges the district court's decisions dismissing unserved defendants and striking her second amended complaint, which she attempted to add defendants, any error by the district court was harmless.[18]

Fifteen months after dismissing those seven (7) Defendants and my SECOND AMENDED COMPLAINT, Judge Broderick of the District Court, in his Opinion and Order (Doc. 89) dated September 30, 2019 , evokes highly accelerated and questionable actions by Defendant Cinestar Pictures and by the District Court that ended with the dismissal of those seven (7) Defendants to whom the U.S. Marshals had not managed to serve; and to the dismissal of my case with prejudice:

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[17] Order, U.S. District Court, SDNY, Montgomery v. Holland, *et al*, No. 17-CV-3489, VSB, p. 2, para.1, line1, 06/02/19.

[18] Summary Order, U.S. Court of Appeals, 2nd Cir., Montgomery v. Holland, et al, No. 19-3665, p. 7, para.1, line 4, 11/12/20.

On June 2, 2019, he dismissed seven (7) of the Defendants from this action because the U.S. Marshals were unable to serve them summons (he does not specify that these dismissals are with or without prejudice);

On that same day, June 2, 2019, Judge Broderick "issued an amended order of service as to Cinestar Pictures at one of the addresses provided by Plaintiff in Doc. 70. (Doc. 75)" [19]; (I had submitted those addresses on one year before – on June 26, 2018).

On June 20, 2019, the above-cited "Service was returned unexecuted (Doc. 78)"[20]

On June 25, 2019, Judge Broderick "issued another Order of service as to Cinestar Pictures at a different address previously provided by Plaintiff (Doc. 79)"[21];

(All of a sudden, it seems, **beginning on June 2, 2019,** Judge Broderick became bent on finding ***only*** Cinestar Pictures among the Defendants who had not yet been served, and dismissing, *on that same day,* **June 2, 2019,** the other Defendant who had not been served, due to their not having been served summons. However, I had submitted additional service information for some of those seven dismissed **Defendants**

"**on July 23, 2019**, service was made upon Cinestar. (see Doc. 81)."[22]

"**on July 23, 2019**, Cinestar filed a motion to dismiss Plaintiff's Amended Complaint pursuant to Rule 12(b)(6), (Doc. 80)"[23]

on July 23, 2019, Cinestar filed "an affidavit of service stating that it served the motion on Plaintiff on that day", (Doc. 81).[24]

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[19] Opinion and Order, Doc. 89, U.S. District Court, SDNY, Montgomery v. Holland, *et al*, N° 17-CV-3489, VSB, p.5, para.1, line 7, 09/30/19.

[20] Ibid, line 8.
[21] Ibid, line 9.
[22] Ibid, line 10.
[23] Ibid, line 11
[24] Ibid, line 12.

I, the Plaintiff-Appellant, do not understand why the District Court's service on Cinestar and Cinestar's affidavit of service on the Plaintiff are **both filed as Doc. 81.**

But, then, these actions on July 23, 2019 were carried out in a flurry.

As in other instances in his Opinion and Order, Judge Broderick does not list a date for his second Order of service (Doc. 79) to Defendant Cinestar Pictures. It was June 25, 2019:

> I issued another Order of Service as to Cinestar Pictures at a different address previously provided by Plaintiff, (Doc. 79), and **on July 23, 2019, service was made upon Cinestar. (See Doc. 81).** On July 23, 2019, **Cinestar filed a motion to dismiss Plaintiff's Amended Complaint** pursuant to Rule 12(b)(6), (Doc. 80), along with an affidavit of service **stating that it served the motion on Plaintiff on that day,** (Doc. 81).[25] (Emphasis is that of the Plaintiff-Appellant).

Supposedly,

> **Cinestar Pictures**, whose motion to dismiss was granted, **was located on July 23, 2019** – *more than one year after I submitted service information for it* to the District Court; and *after* seven Defendants had already been dismissed on June 2, 2019 by Judge Broderick and the District Court because U.S. Marshals could not locate them;
>
> *on that same day*, July **23, 2019,** Cinestar Pictures retained the same counsel as twelve other Defendants in this action;
>
> ***also*** *on that same day,* **July 23, 2019**, Cinestar Pictures, "hand delivered" to Judge Broderick a Motion to Dismiss (Doc. 80) my FIRST AMENDED COMPLAINT (why the Motion necessitated being hand delivered I cannot say).
>
> *and, further, on that same day,* **July 23, 2019**, Cinestar Pictures secured an affidavit of service for which to serve me, the Plaintiff,

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[25] Opinion and Order, Doc. 89, U.S. District Court, SDNY, Montgomery v. Holland, *et al*, N° 17-CV-3489, VSB, p.5, para.1, line 9, 09/30/19.

and, still further, on that same day, **July 23, 2019,** Cinestar Pictures supposedly served me the, Plaintiff, their Motion to Dismiss, when I the Plaintiff was, in fact, still in France.

The Court of Appeals, Second Circuit, affirms the District Court's dismissal of seven (7) Defendants in this action because they have not been served at their addresses that they themselves listed on an entertainment industry database, and then affirms Defendant Cinestar's Motion to dismiss when Cinestar has not served me, the Plaintiff-Appellant, an affidavit of service. This cannot be called fair judicial practice.

Of course I would have objected to the Motion to dismiss my case, two and a half years (2 ½) after I brought the action against the Defendants, had I been served notice of that Motion.

Indeed, Cinestar Pictures motion concerned my, the Plaintiff-Appellant's, FIRST AMENDED COMPLAINT. I remind that Judge Broderick in his Opinion and Order (Doc. 89) stated:

However, Cinestar's motion consisted only of a notice of motion that incorporated the arguments of the Lions Gate Defendants, and introduced no new arguments.[26]

It seems evident to me that Judge Broderick of the District Court dismissed my SECOND AMENDED COMPLAINT due to the immediately above-stated fact; for in his Order, dated June 2, 2019, dismissing my SECOND AMENDED COMPLAINT, Judge Broderick stated:

> On April 18, 2018 Plaintiff filed the Second Amended Complaint which not only added Lionsgate Television as a Defendant but also included nearly one hundred pages of additional material. (Doc. 51.) [27] (Emphasis is that of the Plaintiff-Appellant).

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[26] Opinion and Order, U.S. District Court, SDNY, Montgomery v. Holland et al, Docket # 17-CV-3489, p. 38, para2, line 3, 9/30/19.

[27] Order to Dismiss Second Amended Complaint and seven Defendants, U.S. District Court, Montgomery v. Holland, *et al*, No. 17-CV-3489, VSB, p. 1, para.2, line 4, 6/2/2019.

When Cinestar Pictures "**incorporated the arguments of the Lions Gate Defendants**" it moved to dismiss my FIRST AMENDED COMPLAINT, as Judge Broderick had, not long before that, conveniently dismissed my superseding SECOND AMENDED COMPLAINT. Thus, we note here three (3) *inaccurate and misleading statements* by Judge Broderick concerning his leave for me to file my SECOND AMENDED COMPLAINT:

> ORDERED that, because Plaintiff failed to follow my instructions **to only "nam[e]** Lionsgate Television as a Defendant in this matter," I will not consider the Second Amended Complaint and it shall be stricken from the record. Instead, the First Amended Complaint, (Doc. 9), shall serve as the operative pleading in this matter.[28] (Emphasis is that of the Plaintiff-Appellant);

And, again, *in an inaccurate claim and inaccurate quote*, found in his Opinion and Order, Judge Broderick states:

> On June 2, 2019, I issued an order striking the Second Amended Complaint from the record because "Plaintiff had filed to follow my instructions **to only** name Lionsgate[sic] Television as a Defendant in is matter."[29] (Emphasis is that of the Plaintiff-Appellant);

And yet again in Document 76, *inaccurately*:

> On February 7, 2018, I granted Plaintiff an extension of 90 days, until May 10, 2018, to serve the Defendants in this case, and also gave Plaintiff permission to file a second amended complaint **for the limited purpose of** "naming Lionsgate Television as a Defendant in this matter." (Doc.31.) [30] (Emphasis is that of the pro se Plaintiff-Appellant);

I fear that Judge Broderick of the District Court doth protest too much in an attempt to justify his dismissal of my SECOND AMENDED COMPLAINT. For in reality, when answering my request to "add Lionsgate Television to the list of Defendants", he wrote simply: "IT IS

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[28] Order, Doc. 76, U.S. District Court, SDNY, Montgomery v. Holland *et al*, No. 17-CV-3489, VSB, p. 2, para. 2, line 1. 06/02/19;

[29] Opinion and Order, Doc. 89, U.S. District Court, SDNY, Montgomery v. Holland *et al*, No. 17-CV-3489, VSB, p. 4, para.4, line 4,09/30/19.

[30] Order, Doc. 76, U.S. District Court, SDNY, Montgomery v. Holland *et al*, No. 17-CV-3489, VSB, p. 1, para. 2, line 1. 06/02/19.

FURTHER ORDERED that Plaintiff may file a Second Amended Complaint naming Lionsgate Television as a Defendant in this matter."[31]

We do not find the words "only" or "for the limited purposes of" in Judge Broderick's and the District Court's leave for me to add Lionsgate Television to the list of Defendants or to file a Second Amended Complaint. Judge Broderick changed his original statement more than one year after I submitted my SECOND AMENDED COMPLAINT (with service information for Defendant Cinestar Pictures), and less than three weeks before Cinestar Picture was served summons.

Also in his Opinion and Order (Doc. 89) dated September 30, 2019, Judge Broderick stated:

> In a letter dated September 24, 2019, Plaintiff sought leave for an additional extension of time to serve Liaison until November 30, 2019. (Doc. 88) In the same letter, Plaintiff informed that that she did not receive Cinestar's motion to dismiss until September 19, 2019, and reiterated her request that her First Amended Complaint not be dismissed.[32]

And again in his Opinion and Order dated September 30, 2019 Judge Broderick writes:

> **In Plaintiff's letter of September 24, 2019, she states that she did not receive Cinestar's motion to dismiss until September 19, 2019**, and would have objected by the deadline had she received it in time. (Pl.'s 9/24/19 Ltr. 3) (Internal footnote citation omitted) **However, Cinestar's motion consisted only of a notice of motion that incorporated the arguments of the Lions Gate Defendants, and introduced no new arguments.**[33] (Emphasis is that of the pro se Plaintiff-Appellant).

Thus, Judge Broderick's and the District Court real reason for dismissing my SECOND AMENDED COMPLAINT evidently seems to be *to not have it supersede my FIRST AMENDED COMPLAINT;*.

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[31] Order, Doc. 31, U.S. District Court, SDNY, Montgomery v. Holland, et al, No. 17-CV-3489, VSB, p. 1, para.3, line 1, 02/0918.

[32] Opinion and Order, Doc. 89, U.S. District Court, SDNY, Montgomery v. Holland, et al, No. 17-CV-3489, p. 5, para.2, line 4 09/30/19.

[33] Ibid, p. 38, para.3, line 1.

Concerning Question III:

The Court of Appeals' affirming Inaccurate statements, questionable actions and questionable *inactions* by the District Court:

On February 2, 2018, in my letter to the District Court, I, the pro se Plaintiff-Appellant, requested "that Lionsgate Television be expressly added to the list of Defendants in Case # 17-CV-3489" (Doc. 29.).

On February 9, 2018 Judge Broderick of the District Court wrote that "IT IS FURTHER ORDERED that Plaintiff may file a Second Amended Complaint naming Lionsgate Television as a Defendant in this matter." (Doc. 31)

On March 6, 2018, *before* I filed my SECOND AMENDED COMPLAINT, Defendants filed:

> ANSWER OF DEFENDANTS LIONS GATE ENTERTAINMENT CORP., NETFLIX, INC., NBCUNIVERSAL, MEDIA, LLC, ROBERT BERNACCHI, CITY ENTERTAINMENT, MARIEL SALDANA, SCOTT ABBOTT, JAMES WONG, ZOE SALDANA, KIPPSTER ENTERTAINMENT, LLC, JOSHUA D. MAURER AND ALIXANDRE WITLIN TO AMENDED COMPLAINT (Doc. 39). (Underscoring is that of the Plaintiff-Appellant.)

On March 22, 2018, based on Rule 12(c), Defendants filed their instant Motion for Judgment on the Pleadings (Doc. 42.) along with their Memorandum of Law in Support (Doc. 43.).

On April 3, 2018 I the Plaintiff-Appellant wrote to the Court to oppose Defendants' Motion (Doc. 45).

On April 7, 2018 I the Plaintiff-Appellant wrote to the Court, both to

request that I be granted until April 19, 2018 to formally respond to the Court and to the Defendants by Memorandum in opposition to the Defendants' Motion; and to remind that:

> As Federal Rule 12(c), that covers Motions for Judgment on the pleadings, states that, "After the pleadings are closed – but early enough not to delay trial – a party may move for judgment on the pleadings", **and as Your Honor has granted my request to submit a Second Amended Complaint that I am still amending and that I plan to submit by April 30, 2018, it is my understanding that the pleadings in my Complaint are not closed. (Doc.46)** (Emphasis is that of the Plaintiff-Appellant) [34]

On April 16, 2018 Judge Broderick of the District Court issued an Order (Doc. 49) for the parties to appear before him on April, 26, 2018 for a status conference hearing.

However, as the judge's Order to appear dated April 16, 2018 was never mailed to me, the pro se Plaintiff-Appellant, I did not know of the scheduled April 26, 2018 conference hearing and did not attend it.

On April 26, 2018 Defendants' counsel enjoyed a hearing before Judge Broderick *without my, the pro se Plaintiff, being present.* What actually transpired at that hearing I cannot know.

On April 26, 2018 Judge Broderick re-scheduled the April 26, 2018 hearing, stating:

> ORDERED that the parties are directed to appear for a status conference on May 11, 2018... **Plaintiff is warned** that if she again fails to appear for the conference, **the action may be dismissed** for failure to prosecute." (Doc. 52) (Emphasis is that of the pro se Plaintiff-Appellant).[35]

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[34] Letter from Plaintiff, Doc. 46, U.S. District Court, SDNY, Montgomery v. Holland *et al,* No. 17-CV-3489, VSB, 04/07/18.

[35] District Court Order, SDNY, Doc. 52, Montgomery v. Holland *et al,* No. 17-CV-3489, VSB, p. ___, 04/26/18

On May 11, 2018, as instructed in Document 52, I arrived at Judge Broderick's chambers at U.S. District Court, SDNY, at the appointed time, only to find not only that no one was present, **but that the door to Judge Broderick's chambers was locked.**

After inquiring at Pro Se Intake as to why the door to Judge Broderick's chambers was locked **with no forewarning**, when I had been ordered to attend a conference hearing on that very day, the Intake clerk checked the Docket entries and found that Judge Broderick had filed on May 10, 2018 *another* Order to appear (Doc. 60). (one day before the parties had been ordered, in Document 52, to appear on May 11, 2018 for the re-scheduled conference hearing).

In his May 10, 2018 Order, (one day before the parties had been ordered, in Document 52, to appear on May 11, 2018 for the re-scheduled conference hearing), Judge Broderick wrote of "a clerical error" by the District Court, and of my having not been "made aware of" the April 26, 2018 conference, but still included in that Order a *second* warning to the pro se Plaintiff of dismissal:

> **On April, 26, 2018,** I ordered that the parties appear for a conference before me on May 11, 2018. (Doc. 52). **Due to a clerical error, the Clerk of Court did not mail a copy of my Order to the pro se Plaintiff and the pro se Plaintiff was not made aware of the conference.** (Doc. 60)

(The immediately above statement by Judge Broderick is false: the "clerical error" was *supposedly* linked to the April 16, 2018 Order to appear on May 26, 2018) (Parenthesis is that of the Plaintiff-Appellant).

> Accordingly, it is hereby
>
> ORDERED that the parties are directed to appear for a status conference on May 18, 2018, at 12: 00 p.m. in Courtroom 518 of the Thurgood Marshall United States Courthouse, 40 Foley Square, New York, New York. **Plaintiff is warned that if she fails to appear for the**

conference, the action may be dismissed for failure to prosecute.[36] (Doc. 60) (Emphasis is that of the pro se Plaintiff-Appellant).

In Judge Broderick's May 10, 2018 Order he did not mention that he had cancelled the conference that he had formerly scheduled for May 11, 2018. Nor did he mention it at the conference hearing that was finally held the following week on May 18, 2018

Between the counsel for Defendants, Judge Broderick and me, the pro se Plaintiff, I was the one who showed up for the May 11, 2018 conference hearing.

Thus:

- Court clerks not mailing me the **April 16, 2018 Order** to appear the **hearing scheduled for April 26, 2018** due "to a clerical error";
- Defendants' counsel appearing without my having been summoned before Judge Broderick on **April 26, 2018** (See transcript) [37];
- **On April 26, 2018** Judge Broderick reschedules the conference hearing for May 11, 2018 for all parties;
- **Between Judge Broderick, the Defendant' counsel and me, I, the Plantiff-Appellant, was the only one who showed up on May 11, 2018.**
- On May 10, 2018 Judge Broderick had ordered the conference hearing re-scheduled – *one day* before the parties were scheduled to appear – to May 18, 2018;
- **In this May 10, 2018** Order, Judge Broderick makes it appear that the "clerical error" had related to the April 26, 2018 Order to appear, when in reality it had supposedly related to the April 16, 2018 Order; which is why I missed the April

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[36] Order, U.S. District Court, SDNY, Doc. 60, Montgomery v. Holland *et al,* No. 17-CV-3489, VSB, p. _____, 05/10/18.

[37] See Court Reporters transcript, U.S. District Court, SDNY, Montgomery v. Holland *et al*, No. 17-CV-3489,VSB, 04/26/18

26, 2018 hearing. Why neither he nor Defendants' counsel did not show up on May 11, as I did, I cannot say; it was never honestly explained;

- Judge Broderick issued two warnings of dismissal (2) to the *pro se* Plaintiff-Appellant, should I fail to appear again; even though I had not been made aware of the conference that was scheduled for April 26, 2018;
- Judge Broderick's dismissal of my superseding SECOND AMENDED COMPLAINT – the justification for which he based on two inaccurate claims; in which he changed the wording in the courts leave to amend;
- Judge Broderick's dismissing seven (7) Defendants based on his inaccurate claim that the Plaintiff failed to submit service information for them;
- Judge Broderick's failure to dismiss those seven (7) Defendants ***with no mention of prejudice,***
- The Cinestar Picture Defendant's Motion to Dismiss granted by the District Court, when, *to this day,* Defendant Cinestar has not served the Plaintiff either its Motion or its Memorandum in Support;
- Judge Broderick's dismissal of the foreign Defendant Liaison Films in this case when he had formerly written to me the Plaintiff that he would consider permitting me more time to summon that foreign defendant (Doc. 85) should I write in detail to the District Court the effort I had made to summon Liaison Films – which I did, in detail (Doc. 88);

all seem to testify of unfairness, dishonesty of Judge Broderick's plans to dismiss my case nearly a year and a half before he actually did so.

On May 18, 2018, at the hearing that included Defendants' counsel and me, the *pro se* Plaintiff-Appellant, Defendants' counsel evoked the additional pages of pleading that I had included in my SECOND AMENDED COMPLAINT, stating:

> "The amended complaint was 187 pages; the second was 256. You asked me last time if I was able to give you any information about the differences. First, there are four new pages added to what you might call the pleading part, that's not including the exhibits."[38]

Upon which I assured the judge that I had heavily indented most of my SECOND AMENDED COMPLAINT and had typed it using size 14 pica throughout. I then said to Judge Broderick that that being the case, the entire SECOND AMENDED COMPLAINT **was "about a hundred pages".**[39]

Also during the **May 18, 2018** hearing, Judge Broderick stated:

> With regard to the second amended complaint, besides naming the Lionsgate Television and Kasia Adamik, were there any changes? I understand that there were various attachments that were included, and that may have been a change from the first amended complaint to the second. But are there any factual assertions that have been changed from the first amended complaint to the second? [40]

I answered inaccurately because I had forgotten, due to the amount of time that had passed since I had begun working on my SECOND AMENDED COMPLAINT, "No, your Honor… except some information about one of the defendants for whom I have not received a receipt of service."[41]

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[38] See Court Reporters' transcripts, U.S. District Court, SDNY Status Conference, Montgomery v. Holland *et al,* No. 17 CV-3489, VSB, p. 15, line 25, 05/18/18.

[39] Court Reporters' transcripts, Status Conference, U.S. District Court, SDNY, Montgomery v. Holland et al, No. 17-CV-3489, VSB, p. 9, line 9, 05/18/18.

[40] Ibid, p. 3, line 12.

[41] Ibid, p. 3, line 19.

The May 18, 2018 hearing ended with Judge Broderick saying to me, **"Ms. Montgomery, I don't need to hear from you anymore"**, but I cannot prove it because I cannot locate it in the transcript.

Judge Broderick did not order me during that hearing – or at any time afterwards – to cure my SECOND AMENDED COMPLAINT by removing the name Kasia ADAMIK or by removing my additional pages of pleading from it. And remembering his instructions that he didn't "need to hear from" me "anymore", I thought it better to not contact him anymore and to follow his very verbal order at the end of the May 18, 2018 conference.

On June 2, 2019, more than a year after that May 18, 2019 hearing, Judge Broderick issued an Order (Doc. 76) striking my SECOND AMENDED COMPLAINT from the record, having never instructed me to cure it.

In Document 76, Judge Broderick writes, with acrobatic prowess, the first of three (3) of his *inaccurate* quotes of his February 9, 2018 Order granting the District Court's leave to my request to add Lionsgate Television as a Defendant in this case:

> ORDERED that, because Plaintiff failed to follow my instructions to **only** "nam[e] Lionsgate Television as a Defendant in this matter," I will not consider the Second Amended Complaint and it shall be stricken from the record. Instead, the First Amended Complaint, (Doc. 9), shall serve as the operative pleading in this matter.[42] (Emphasis is that of the Plaintiff-Appellant).

Moreover, the following statement by Judge Broderick in Document 76 is also inaccurate, if not disingenuous, and *modified so as to limit retroactively*:

> On February 7, 2018, I granted Plaintiff an extension of 90 days, until May 10, 2018, to serve the Defendants in this case, and also gave Plaintiff permission to file a second

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[42] Order, U.S. District Court, SDNY, (Doc. 76), Montgomery v. Holland, *et al* Docket # 17-CV-3489, VSB, p.2, para.2, line 1, 6/2/2019.

amended complaint **for the limited purpose of** "naming Lionsgate Television as a Defendant in this matter." (Doc. 76) (Emphasis is that of the pro se Plaintiff-Appellant).[43]

The immediately above-statement by Judge Broderick is inaccurate because it includes the words "for the limited purpose of", which he had not used in the court's leave for me to add Lionsgate Television to the list of Defendants, or to amend my First Amended Complaint. The date of February 7, 2018 that he cites is also inaccurate, as the Order in question was issued, rather, on February 9, 2018.

In the District Court's June 2, 2019 Order (Doc. 76) to dismiss my SECOND AMENDED COMPLAINT, Judge Broderick states:

> On April 18, 2018 Plaintiff filed the Second Amended Complaint which not only added Lionsgate Television as a Defendant but **also included nearly one hundred pages of additional material.** (Doc.51.) [44] (Emphasis is that of the Plaintiff-Appellant).

Judge Broderick of the District Court seems to have taken special pains to justify his questionable dismissal of my SECOND AMENDED COMPLAINT. In the statement herein below, from his Opinion and Order filed on September 30, 2019 (Doc. 89), he *again inaccurately* quotes with a limiting modifier – *in a third version* of the words that he actually wrote when granting my request to add Lionsgate Television as a defendant in this case:

> On June, 2, 2019, I issued an order striking the Second Amended Complaint from the record because **"Plaintiff had failed** to follow my instructions **to only name** Lionsgate [sic] Television as a Defendant in is matter."[45] (Emphasis is that of the Plaintiff-Appellant).

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[43] Ibid, p.1, para.2, line 1, 6/2/2019.

[44] Order, U.S. District Court, SDNY, (Doc. 76), Montgomery v. Holland, *et al* Docket # 17-CV-3489, VSB, p.1, para.2, line 4, 6/2/2019

[45] Opinion and Order, Doc. 89, U.S. District Court, SDNY, Montgomery v. Holland, et al, No. 17-CV-3489, VSB, p. 4, line 3, 09/30/19

We know that some appellate courts and some districts courts in other cases have instructed plaintiffs to cure First Amended Complaints, Second Amended Complaints and even Third Amended Complaints.

O***ne year before he dismissed*** my SECOND AMENDED COMPLAINT. During that May 18, 2018 hearing, Judge Broderick also queried me about the additional pages of pleading[46] that I had included in my SECOND AMENDED COMPLAINT, but he did not order me during that hearing – or at any time afterwards – to cure it by removing the additional pages of pleading.

Chavis v. Chappius, 618 F.3d 162, 170 (2d Cir. 2010): Actions filed by pro se Plaintiffs are usually dismissed without prejudice to amend if "a liberal reading of the complaint gives any indication that a valid claim might be stated."

FRCP 15 (a)(2) states :

Other Amendments. In all other cases, a party may amend its pleading only with the opposing party's written consent or the court's leave. **The court should freely give leave when justice so requires.** (Emphasis is that of the Plaintiff-Appellant.)

> FRCP 15
>
> Amendments before trial.
>
> **Amending as a Matter of Course**. A party may amend its pleading once as a matter of course within:
>
> 21 days after serving it, or

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[46] See Court Reporters' transcripts of Conference Hearing, U.S. District Court, SDNY, Montgomery v. Holland, *et al*, No. 17-CV-3489, p. 3, line 12, 05/18/2018.

> If the pleading is one to which a responsive pleading is required, 21 days after service of a motion under rule 12(b), (e) or (f), whichever is earlier.

My SECOND AMENDED COMPLAINT (Doc. 51) was filed in District Court on April 18, 2018, within 21 days of Service of Defendants' Motion, and Memorandum in Support to Dismiss my FIRST AMENDED COMPLAINT. My Opposition (Doc. 50) to Defendants' Motion to Dismiss (Doc. 42) and to their Memorandum in Support (Doc. 43) was filed on April 19, 2018.

(One wonders why my Second Amended Complaint that was filed on April 18, 2018 is labeled Doc. 51 on the Docket; and why my Opposition Memorandum to Defendants' Motion, which was filed on April 19, 2018 is labeled Doc. 50 on the Docket).

Concerning Question IV:

More than one year passed between the time that I, the Plaintiff-Appellant, filed my SECOND AMENDED COMPLAIINT and its being stricken from the record, without any instructions from the District Court to cure it:

At the conference hearing on April 26, 2018, for which the District Court had not informed me of notice to attend, during my absence Judge Broderick stated to Defendants' counsel:

> I will take your application under advisement with regard to holding this current complaint in advance and/or striking at least those portions of it that for which she wasn't granted leave.[47] (Emphasis is that of the Plaintiff-Appellant).

But he did not do that; he struck my *entire* SECOND AMENDED COMPLAINT and dismissed Defendants who had not been served, clearing the way, it seems, for granting Defendant Cinestar's Motion to dismiss my FIRST AMENDED COMPLAINT.

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[47] Court Reporters' Transcript, U.S. District Court, SDNY, Montgomery v. Holland, et al, No. 17-CV-3489, VSB, p.6, line 13, 04/26/2018.

If Judge Broderick of the District Court deemed my SECOND AMENDED COMPLAINT to be defective when I submitted it on April 18, 2018, one wonders why he waited until June 2, 2019 to dismiss it – more than one year – and never having ordered me to cure it during that time. Because my FIRST AMENDED COMPLAINT complied with Rule 15(a)(2), my timely filed SECONDED AMENDED COMPLAINT superseded it, and should not have been stricken from the record.

Moreover, I wrote to Judge Broderick and the District Court on March 13, 2018, and stated, "Lastly, please know that in the Second Amended Complaint to be filed, I will only briefly address additional information recently found during research on the production of the FILM" (Doc 41).

Defendants' counsel also stated in the status conference hearing that was held on May 18, 2018 that I, the Plaintiff, had "added nearly a hundred pages of material" [48] to my FIRST AMENDED COMPLAINT.

In addition, Judge Broderick reiterated Defendants' counsel's claim in his Opinion and Order dated September 30, 2019, stating that,

> Plaintiff filed her Second Amended Complaint on April 18, 2018, naming LIONSGATE Television **as well as including nearly one hundred pages of additional material (Doc. 51.)** She then filed her memorandum of law in opposition to Defendants' motion on April 19, 2018. (Doc. 50.) Defendants filed their reply memorandum on April 30, 2018. (Doc.53.) [49] (Emphasis is that of the pro se Plaintiff-Appellant)

Judge Broderick even stated in his Opinion and Order of September 30, 2019:

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[48] See Court Reporters' transcripts, U.S. District Court, SDNY, Montgomery v. Holland, *et al*, No. 17-CV-3489, VSB, p.15, line 25,05/18/18.

[49] Opinion and Order, Doc. 89, U.S. District Court, SDNY, Doc. 89, Montgomery v. Holland, et al, No. 17-CV-3489, VSB, p. 4, para.3, line 1, 09/30/19.

"However, Cinestar's motion consisted only of a notice of motion that incorporated the arguments of the Lions Gate Defendants, and introduced no new arguments. (Doc. 89) [50] (Emphasis is that of the pro se Plaintiff-Appellant.)

In Ramirez v. City of San Bernardino [51]:

Civil Procedure: The panel reversed the district court's dismissal of a civil rights complaint and remanded for further proceedings. The panel held that plaintiff was not required, pursuant to Federal Rule of Civil Procedure 15(a), to seek leave of court before filing his Second Amended Complaint. The panel held that Rule 15(a) does not impose any particular timing mechanism governing the order in which amendments must be made. Because plaintiff's First Amended Complaint ... complied with Rule 15(a)(2) as an "other amendment", plaintiff was permitted to file a timely Second Amended Complaint. Because the timely filed Second Amended Complaint mooted the pending motion to dismiss, the panel reversed the districts court's grant RAMIREZ V. CTY. OF SAN BERNARDINO 3 of defendants' motion to dismiss the First Amended Complaint and the resulting dismissal of the plaintiff" case.[52]

.....

In Ramirez v. City of San Bernardino, the US Court of Appeals for the Ninth Circuit held that a party does not need to exhaust the right to file an amended complaint once as a matter of course under Federal rule of Civil Procedure (FRCP) 15(a)(1) before amending based on consent or leave of the court under FRCP 15(a)(2), and that a party may amend under either FRCP 15(a)(1) or 15(a)(2) in whatever order the party sees fit.

The district court granted the motion to dismiss based on the plaintiff's failure to comply with Local Rule7-9. The Plaintiff filed a motion for reconsideration under FRCP 59(e) and 60(b), arguing that his second amended complaint was appropriately filed under FRCP 15(a)(1) and that it superseded the first amended complaint, making the motion to dismiss moot. The district court denied the motion. It ruled that the plaintiff was not entitled to file the second

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[50] Ibid., p.38, para.3, line 1, 09/30/19.

[51] Ramirez v. County of San Bernardino, No. 13-56602, 9th Cir. 2015.
[52] JUSTIA Opinion Summary

amended complaint because he did not seek consent or leave of the court, and he had already amended the complaint once as a matter of course by virtue of his first amended complaint. The plaintiff appealed.

The Ninth Circuit reversed, and held that ... FRCP 15(a) was not ambiguous, and that under the rule, a party could either or both, and in any sequence:

File an amended pleading once as a matter of course within either:
21 days of serving the original pleading or
If the pleading is one to which a responsive pleading is required, 21 days after service of a motion to dismiss under FRCP 12(b), (e) or (f), whichever is earlier.
File an amended pleading with the opposing party's written consent or permission from the court.[53]

Many District Courts and Appeals Courts, after dismissing amended or second amended complaints, have given plaintiffs leave to amend the dismissed complaints a second or even a third time to cure all defects within 21 days after the entries of the Orders. (See, for example, *Wiggins v. Quesenberry* [54] and *Primo C. Novero vs. Duke Energy*, URS Energy and Construction Inc, CDI Corporation).[55]

Moreover, FRCP 15(d) states that:

FRCP 15(d). Supplemental Pleadings. On motion and reasonable notice, a court may, on just terms, permit a party to serve a supplemental pleading setting out any transaction, occurrence, or event that happened after the date of the pleading to be supplemented. The court may permit supplementation even though the original pleading is defective in stating acclaim or defense. The court may order that the opposing party plead to the supplemental pleading within a specified time.

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[53] Westlaw Opinion Summary
[54] Wiggins v. Quesenberry, U.S. Distriict Court, E.D. Virginia, Newport News Division, Civ. No.4:16CV34.
[55] Novero v. Duke Energy et al, U.S. Court of Appeals, 11th Circuit, No. 17-14963; D.C. Docket No. 5-16-cv-oo571-BJD-PRL.

CONCERNING QUESTION V:

The dismissal of seven Defendants

The District Court's claim [56] that I, the Plaintiff-Appellant, failed to provide the Court with service information for the seven (7) Defendants that were dismissed from this action is inaccurate. I submitted service forms to the District Court for all twenty (20) Defendants to be transmitted to the U.S. Marshals Service. The service forms for these seven Defendants were returned not served. However, I was under the impression that there would be three attempts to serve them.

Nonetheless, it is my understanding that as it is true that these seven Defendants eluded the U.S. Marshals service for more than a year and a half before the District Court dismissed them, they should they have been dismissed without prejudice.

On November 7, 2017 I, the *pro se* Plaintiff-Appellant, filed my FIRST AMENDED COMPLAINT (Doc. 9) *along with* detailed contact information that was found on IMDb Pro (Internet Movie Database) for nineteen (19) Defendants in this case.

On November 13, 2017, Judge Broderick issued an Amended Order of Service that included the statements:

> To allow Plaintiff to effect service of the amended complaint on Defendants through the U.S. Marshals Service, the Clerk of Court is instructed to fill out, **based on the addresses listed below**, a U.S. Marshals Service Process Receipt and Return form ("USM-285 form") **for each of the Defendants**. The Court of Clerk is further instructed to issue a summons and deliver to the Marshals Service all of the paperwork necessary for the Marshals Service to effect service upon Defendants." **(Emphasis is that of the *pro se* Plaintiff-Appellant).**

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[56] ORDER to dismiss Second Amended Complaint and to dismiss seven Defendants, Doc. 76, U.S. District Court, SDNY, Montgomery v. Holland et al, No. 17-CV-3489, VSB, p.2, para.3, 06/02/19.

...

This Court's previous Order of Service, (Doc. 6), VACATED" (Doc. 10)

Pages of 3 and 4 of the District Court's Doc. 10 that was filed by Judge Broderick consist of detailed physical addresses, telephone numbers and e-mail addresses that were copied from the list that I, the Plaintiff-Appellant, had submitted on November 7, 2017, along with my AMENDED COMPLAINT (Doc. 9), for nineteen (19) Defendants including Agnieszka Holland, Scott Abbott, James Wong, David A. Stern, Robert Bernacchi, Cisely Saldana, Mariel Saldana, Zoe Saldana, Alixandre Witlin, Joshua D. Maurer, Tom Patricia, Lionsgate Entertainment Corporation, NBC Television, City Entertainment, Kippster Entertainment, Liaison Films, Federation Entertainment, Netflix Entertainment Company and Cinestar Pictures. Additional contact information for some of these herein nineteen (19) named Defendants even included that for their legal counsel (Doc.10).

The second service form that I submitted for Defendant Tom Patricia included the suite number at his place of work, which I had overlooked in the first service form that I filled out for him. I also added and submitted a different address for Defendant Cisely Saldana, and resubmitted a new service form with a different address for David A. Stern – that of his company, which is Defendant KippSter.

Concerning Question VI:

The District Court's Dismissal of foreign Defendant Liaison Films:

The Court of Appeals confirmed the District Court's dismissal of the foreign Defendant Liaison Films with prejudice in this action.

On August 10, 2019 (Doc. 84) I, the Plaintiff-Appellant, wrote to the District Court and requested 90 additional days to summon foreign Defendant Liaison Films. Having not received a reply from the District Court concerning this request, I wrote to the court again on **August 22, 2019** and reiterated that request. Judge Broderick filed an Order to me on **August 28, 2019, (Doc. 85),** granting me one month, or until **September 30, 2019**, to summon foreign Defendant Liaison Films. In that **Order of August 28, 2019,** Judge Broderick also stated that he would consider permitting me additional time to summon foreign this Defendant should I write to him "in detail of" my "efforts to summon foreign Defendant Liaison Films" .

On **September 24, 2019**, I followed Judge Broderick's Order and wrote to the District Court a letter detailing my efforts in France to summon foreign Defendant Liaison Films, and reminded of its promise to consider granting me additional time to summon that foreign Defendant. Also in that letter of **September 24, 2019**, detailing my efforts to summons foreign Defendant Liaison Films, I informed the Court that I had not been served Cinestar's Motion to dismiss.

I followed the District Court's Order to write in detail of my efforts to summon, but Judge Broderick of the District Court did not honor his promise to consider additional time to summon upon receipt of that letter.

Foreign Defendant Liaison Films was dismissed on **September 30, 2019**; and Cinestar Pictures' Motion to dismiss was granted with prejudice on **September 30, 2019**.

REASONS FOR GRANTING THE PETITION

A. The Court of Appeals for the Second Circuit's Summary Order affirming the U.S. District Court's decision to strike my Second Amended Complaint is in conflict with the decision of the U.S. Court of Appeals for the Ninth Circuit *in Ramirez v. City of San Bernardino.* The panel held that plaintiff was not required, pursuant to Federal Rule of Civil Procedure 15(a), to seek leave of the court before filing his Second Amended Complaint. The panel held that Rule 15(a) does not impose any particular timing mechanism governing the order in which amendments must be made. Because plaintiff's First Amended Complaint ... complied with Rule 15(a)(2) as an "other amendment", plaintiff was permitted to file a timely Second Amended Complaint. Because the timely filed Second Amended Complaint mooted the pending motion to dismiss, the panel reversed the district court's grant RAMIREZ V. CTY. OF SAN BERNADINA 3 of defendants' motion to dismiss the First Amended Complaint and the resulting dismissal of the plaintiff's case.[57]

B. The District Court's justification for striking my Second Amended Complaint is that I added pleading and more than one Defendant. However, Rather than striking amended complaints, many courts have simply ordered plaintiffs to cure them. Moreover, concerning my Second Amended Complaint, Judge Broderick of the District Court, SDNY, stated to Defendants' counsel at a conference hearing of which I was not notified to appear, supposedly "due to a clerical error" (See Doc. 60):

> I will take your application under advisement with regard to holding this current complaint in advance and/or striking at least those portions of it that for which she wasn't granted leave. In other words, she was granted leave for the

[57] JUSTIA Opinion Summary

additional defendant. I think it was just Lionsgate and there was an individual she added also.[58]

Instead, the District ended up striking my entire Second Amended Complaint.

C. At that same conference hearing for which I was not notified to appear, Judge Broderick of the District also stated to Defendants' counsel: "In the meantime, I'm going to have to admit I have not flipped through in any kind of detail, the first amended complaint at 100-some-off pages."

This issue of Judge Broderick, and perhaps other judges, having not "flipped through in any kind of detail" is not only of importance to my case, but it is of great importance to the public who deserve a judicial system that we can all count on to assign cases to judges who will give careful review to the pleadings of all the parties in an action. Here, Judge Broderick of the District Court suggests that even though he has "not flipped through" my First Amended Complaint, that he will eventually have "flipped through" it. And if what Judge Broderick of the District did was to have "flipped through" my First Amended Complaint; and to have struck my Second Amended Complaint due to my having added pleading and two Defendants instead of one – without ordering me to cure it – then justice was not done in my action and the public's trust was abused as well as my own.

Attention to detail in any litigation should be guaranteed the public by the judicial system.

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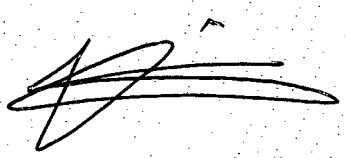
[58] Court Reporters' transcript, U.S. District Court, SDNY, Montgomery v. Holland et al, No. 17-CV-3489, VSB, 04/26/18.

D. Any attentive court, or any attentive jury of reasonable lay observers, will find in my First Amended Complaint and in my Second Amended Complaint my claim that not only were my characters, setting, plot, themes, scenes, verbatim dialogue, dialogue spoken by similar characters in similar scenes and exact dates infringed by the "Miniseries", but *that actual pages of my written expression are seen in frames on the screen of that Film.* Those pages of my written expression are protected by copyright, and only careful observers would see them on the screen. Only careful observers would notice my claim and documentation in my amended Complaints of the hour, minute and second where my written expression is seen on the screen of the film "Rosemary's Baby the Miniseries".

CONCLUSION

The order of the petition for writ of certiorari that was first submitted to the Court on April 12, 2021 has been duly corrected as requested, and the petition should be granted.

Respectfully re-submitted,



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