No. 20-_____

IN THE
SUPREME COURT OF THE UNITED STATES

ALICE GUAN (YUE GUAN),

Applicant,

v.

Bing Ran

Respondent.

On Petition for Writ of Certiorari to the Supreme Court of Virginia

APPENDIX (Total 95 Pages)

Volume 1 of 3

For the

Petition for Writ of Certiorari

8/23/2021

Alice Guan, or Yue Guan, pro se
#286
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Reston, VA 20190
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AliceGuan2021@gmail.com

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1-A

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Monday the 11th day of January, 2021.

Alice Jin-Yue Guan, Appellant,

against Record No. 200995
Circuit Court No. CL07003662

Bing Ran, Appellee.

From the Circuit Court of the City of Alexandria

Upon review of the record in this case and consideration of the argument submitted in support of and in opposition to the granting of an appeal, the Court is of the opinion there is no reversible error in the judgment complained of. Accordingly, the Court refuses the petition for appeal.

A Copy,

Teste:

Douglas B. Robelen, Clerk

By: Helen Keegan

Deputy Clerk

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VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday the 26th day of March, 2021.

Alice Jin-Yue Guan,

Appellant,

against Record No. 200995
Circuit Court No. CL07003662

Bing Ran,

Appellee.

Upon a Petition for Rehearing

On consideration of the petition of the appellant to set aside the judgment rendered herein on January 11, 2021 and grant a rehearing thereof, the prayer of the said petition is denied.

Upon consideration whereof, appellant's February 9, 2021 amended motion to augment the record is denied.

A Copy,

Teste:

Douglas B. Robelen, Clerk

By: Julia Kagan

Deputy Clerk

VIRGINIA: 3-A

IN THE CIRCUIT COURT FOR THE CITY OF ALEXANDRIA

ALICE JIN-YUE GUAN,

Plaintiff,

v.

BING RAN,

Defendant.

CL97003662

ORDER

THIS MATTER came to be heard upon the following pleadings filed by the both parties: the Defendant's Affidavit and Petition for Issuance of Rule to show Cause; Defendant's Supplement to Affidavit and Petition for Issuance of Rule to Show Cause; Defendant's Rule to Show Cause; Plaintiff's Motion for Entry of Rule to Show Cause and for Temporary Injunction and for Declaratory Judgment; Plaintiff's Affidavit and Petition for Issuance of Rule to Show Cause and for Setting Trial to Determine Damages; Plaintiff's Amended Motion for Entry of Rule to Show Cause and for Temporary Injunction; Plaintiff's Supplemental and Revised Affidavit and Petition for Issuance of Rule to Show Cause, for Declaratory Judgment, and or Setting Trial to Determine Damages; Plaintiff's Motion/or Emergency Motion to Stay April 24, 2019 Order; Plaintiff's Motion/or Emergency Motion to Keep the $2.3M in the and to Freeze AdSTM Fidelity Account Ending in 1090; Defendant's Reply to Plaintiff's Motion for Entry of Rule to Show Cause and for Temporary Injunction and for Declaratory Judgment; Plaintiff's Second Supplemental and Revised Affidavit and Petition for Issuance of Rule to Show Cause, for Declaratory Judgment and for Setting Trial to Determine Damages and for Sanctions; Defendant's Motion for Entry of Rule to Show

Cause and Affidavit and Petition for Issuance of Rule to Show Cause; Defendant's Reply to Plaintiff's Second Supplemental and Revised Affidavit and Petition for Issuance of Rule to Show Cause, for Declaratory Judgment and for Setting Trial to Determine Damages and for Sanctions; Plaintiff's Opposition to Defendant's Motion for Entry of Rule to Show Cause and Defendant's Affidavit and Petition for Issuance of Rule to Show Cause; Plaintiff's Second Supplemental Verified Answers and Responses to Rule to Show Cause.

AND IT APPEARING to the Court that the following relief should be granted; it is, hereby, and this Court ruling from the bench on May 22, 2019 is hereby incorporated *in haec verba*, said transcript to be expeditiously filed with this Court in this matter,

ORDERED, ADJUDGED and DECREED as follows:

1. The Plaintiff is found to have breached the Amendment, as specifically set forth in Defendant's Affidavit and Petition for Issuance of Rule to Show Cause filed on February 19, 2019, Defendant's Supplement to Affidavit and Petition for Issuance of Rule to Show Cause filed on February 22, 2019, and as presented at the hearing on May 22, 2019.

2. The Plaintiff is therefore found to be in willful contempt of this Court's May 13, 2016 Amended Final Order.

3. This Court therefore finds that pursuant to paragraph 17 of the Amendment, the Property Settlement Agreement of December 15, 2006 has become the governing agreement rather than the Amendment.

4. The Plaintiff's pending pleadings for the hearing of May 22, 2019 are denied and dismissed with prejudice for the reasons set forth in Defendant's Reply to Plaintiff's Motion for Entry of Rule to Show Cause and for Temporary Injunction and Declaratory

5-A

Judgment, in Defendant's Reply to Plaintiff's Second Supplemental and Revised Affidavit and Petition for Issuance of Rule to Show Cause, for Declaratory Judgment and for Setting Trial to Determine Damages and for Sanctions, as well as upon evidence presented and argument of counsel for Defendant during the May 22, 2019 hearing. This Court specifically finds and rules in that regard that the $2,294,000 was improperly removed by Plaintiff, and that said monies were and remain solely the funds belonging only to AdSTM and not the Plaintiff individually.

5. A permanent injunction against the Plaintiff is hereby granted, until further order of this Court, enjoining her from having any contact with any AdSTM employees, attorneys and/or clients as well as enjoining her from having any physical access to any of AdSTM's offices and properties.

6. Plaintiff is permanently enjoined, until further order of this Court, from representing to third parties that she is the 51% majority shareholder of AdSTM, as she is 49%.

7. Pursuant to Virginia Code 58.01-631(A) this Court finds, and therefore orders, that it would be improper and/or unnecessary to require Defendant to post a bond pursuant to this permanent injunction.

8. This Court finds and rules that pursuant to paragraph 16 of the PSA, Bing has prevailed in this matter, finds the fees he set forth in Defendant's Attorneys' Fees Affidavit admitted into evidence during the May 22, 2019 hearing are reasonable, and orders Plaintiff to pay Defendant $71,164.25 by ~~June 1, 2019~~ July 21, 2019.

AND THIS CAUSE IS CONTINUED PENDING THE ADJUDICATION OF THE ISSUE OF REMAND ATTORNEYS' FEES AND COSTS.

6-A

Entered this 22 day of May, 2019.

JUDGE

SEEN AND AGREED:

Christopher W. Schinstock, V.S.B. No.: 36179
Kyle F. Bartol, V.S.B. No.: 42581
Schinstock & Bartol, PLLC
439 N. Lee Street
Alexandria, VA 22314
Phone: (571) 551-2678
Fax: (571) 699-3072
Email: cschinstock@schinstocklaw.com
Email: kbartol@schinstocklaw.com
Counsel for Defendant

SEEN AND Objected & disagreed based on the filed documents & the arguments in hearing

Alice Jin-Yue Guan
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212-163
Oviedo, FL 32765
Phone: 703-628-4500
Phone: 407-402-8178
Email: aliceguan.golf@gmail.com
Email: Aliceguan.2016@gmail.com
Plaintiff Pro Se

7-A

EXHIBIT A

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF ALEXANDRIA

ALICE JIN-YUE GUAN,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CL07003662
	)	
BING RAN,	)	
	)	
Defendant.	)	

ORDER GRANTING TEMPORARY INJUNCTION

THIS MATTER came to be heard upon the Defendant's Motion for Entry of Rule to Show Cause and For Temporary Injunction filed against the Plaintiff, ALICE JIN-YUE GUAN.

AND IT APPEARING to the Court that the following relief should be granted; it is, hereby,

ORDERED, ADJUDGED and DECREED as follows:

1. A temporary injunction against the Plaintiff is hereby granted enjoining her from having any contact with any AdSTM employees, attorneys and/or clients as well as enjoining her from having any physical access to any of AdSTM's offices and properties.

2. Plaintiff is hereby ordered to immediately return any funds or properties of AdSTM that she may have improperly acquired, and to immediately close any AdSTM accounts she has improperly opened.

3. Plaintiff is enjoined from representing to third parties that she is the 51% majority shareholder of AdSTM, as she is not.

AND THIS CAUSE IS CONTINUED,

8-A

Entered this 27 day of February, 2019.

JUDGE

SEEN AND AGREED:

Christopher W. Schinstock, V.S.B. No.: 36179
Schinstock & Bartol, PLLC
439 N. Lee Street
Alexandria, VA 22314
Phone: (571) 551-2678
Fax: (571) 699-3072
Email: cschinstock@schinstocklaw.com
Counsel for Defendant

SEEN AND [illegible]:

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Email: Aliceguan.86@gmail.com
Plaintiff Pro Se

Amendment to the Original Agreement (Signed on Dec. 15, 2006)
Between Yue Guan and Bing Ran

October 15, 2008

This agreement is made and entered into to take effect on the 15th day of October, 2008, by and between Bing Ran (referred to as "Bing") and Yue Guan (referred to as "Yue").

Bing and Yue agree:

1. Yue shall sell Bing of her house (with the pool table) at 2369 Jawed Place, Dunn Loring, VA 22027 to Bing at the price of $600K. The payment terms are as follows:

a. Bing will pay $10K as escrow at the time of signing the buy and sell contract;
b. $50K at settlement, 11/17/2008;
c. 4/1/2009, $67,500+4% interest;
d. 7/1/2009, $67,500+4% interest;
e. 10/1/2009, $67,500+4% interest;
f. 1/1/2010, $67,500+4% interest;
g. 4/1/2010, $67,500+4% interest;
h. 7/1/2010, $67,500+4% interest;
i. 10/1/2010, $67,500+4% interest;
j. 1/1/2011, $67,500+4% interest.

2. Yue is entitled to all the AdSTM's distributions made to her and the taxes AdSTM paid to IRS and VA State for Yue from 1/1/2008-7/1/2008, and those payments are Yue's sole property. Bing agrees that those payments were made correctly and Bing shall not claim any part of it. In addition Bing agrees that the wording of "income" in the original agreement citing: "……..Neither Bing or Yue shall receive a higher income than the other from AdSTM ……" means salary and bonus only. And the spousal support in the original agreement (singed on Dec. 15, 2006 between Bing and Yue) is voided. Bing shall not pay any spousal support to Yue. And Yue shall not claim any spousal support under any circumstances.

The validity of this term is based on the completion of the term 1 in this amendment.

3. Bing owns 49% of AdSTM (stock certificate #22), Yue owns 51% (stock certificate #21). The stock certificate #20 is voided.

4. Yue shall be President and Secretary of AdSTM. Ran shall be Chief Executive Officer and Chairman of Board of Directors of AdSTM, Yue or/and Bing cannot be fired and removed from these positions (unless with 100% of voting stock). The maximum positions in BOD is the above four.

Initial: _____ R. B.

5. Yue shall delegate the AdSTM's management functions to Bing. Yue has right to turn down Bing's decisions. However, if this happens, Bing shall come up with new decisions again until agreements are reached. Yue's delegation and right cannot be remove for the life time of this agreement (unless with 2/3 of voting stock). Yue has complete accesses to AdSTM and subsidiary companies' financial, HR, contract and other files. Yue will lead modeling and simulation division and will have up to $50K/year budget if needed.

6. Yue shall not sell any stock or/and company including its sub-companies' assets (contracts, funds, and hardware), prior to the "Termination Date" (see below for its definition).

7. Yue and Bing shall have the same salary and bonus, other benefits and the profit distribution from AdSTM. Minimum salary Bonus of Yue or/and Bing will be $150K. AdSTM shall provide Yue or/and Bing with the company cars, free of charge, by their choices. And cell phones. AdSTM shall distribute at least a minimum profit amount each quarter to cover the taxes.

8. Both Yue and Bing shall be signers of all AdSTM and its sub-companies' bank accounts. Any transactions (including checks, over-counters, and wiring) over $50,000.00 need signatures from both Bing and Yue. For all subcontractors' payments, as long as they are in accordance with subcontract paying plans, Bing can sign the checks paid to them.

9. 2/3 voting shares are needed for subcontracting any subcontract from AdSTM's to other companies.

10. 2/3 voting shares are needed for hiring any future Yue or Bing's family members, including Yue or Bing's boyfriends or girlfriends. However, for Yue's brothers, Yu Guan and Fei Guan, they will be continuously hired by AdSTM according to following terms:

As long as AdSTM has annual revenue of not less than $3 million dollars/year, Yu Guan will be employed until 2/1/2011, and Fei Guan will be employed until 10/14/2011. Fei Guan's salary will be $75,000/year and Yu Guan's salary will be $90,000/year starting 10/16/2008. Each of them will give Bing Ran half of their net incomes from AdSTM (except Yu Guan can keep his income for the period of 7/1/2008 to 10/15/2008). If they do not pay Bing on a monthly basis and still do not pay Bing after Bing's reminder, then their employments with AdSTM shall be terminated. However, if they work on projects later and their hours are charged to the government as direct labors, then they shall not pay Bing for any those incomes. After AdSTM's annual revenue drops below $3 million dollars/year, Yu Guan and Fei Guan will be continually hired by AdSTM without pays and they will pay their insurances through AdSTM plan.

Bing agreed for Yue to hire Fei by H1 visa. AdSTM shall continue to support Yu Guan and Fei Guan's H1 and Green card visas.

Initial: _____ R.B

Bing has right to hire two of his sisters or brother-in-laws by the same terms as Yu Guan and Fei Guan.

11. AdSTM shall provide Yue or/and Bing's and their two daughters' medical insurance and $1,300/month of business expenses for each of Bing and Yue.

12. After the date AdSTM does not require Yue's certification to maintain its 8(a) status (i.e. the date the last AdSTM's 8(a) contract is expired, referred to as "Termination Date"), at Bing's option, Bing shall buy additional 20 shares of AdSTM stocks from Yue at ten cents per share.

13. If AdSTM ceases to have any 8(a) contracts prior to the Termination Date, or if Bing shall no longer require Yue's certification to maintain its 8(a) status prior to the Termination Date, the Termination Date shall be moved to that earlier date. If the terms 5 or/and 6 of this agreement are breached, the Termination Date shall be moved to the date on which the term is breached.

14. Bing requests Yue to develop business in Boston and New Jersey areas, for up to six trips per year. AdSTM shall pay for and reimburse all travel, hotel and per diem cost for those trips. This is not part of the $1300.00/month expenses.

15. If Bing becomes a stock owner of an 8(a) company which will be a C corp, Yue shall have 9% stock in this company, provided:

a. AdSTM will subcontract to the company for the purpose of gaining some past experiences only and Yue will assist the efforts;

b. The agreement Bing has with the company becomes valid;

c. If Bing brings 2.75 million dollars into company in three years; and

d. Yue agrees that there are no conflict interests if AdSTM's officers help and participant in the company.

16. If this company pays Bing's health insurance then it shall pay for the health insurance for Yue and their two daughters as well.

17. This amendment is the only valid amendment to the original agreement signed between Bing and Yue on Dec. 15, 2006. All the prior amendments are voided and null. The meeting minutes dated 6/30/2008 and 7/7/2008 are also voided and null. If this amendment is breached, then the original agreement will become the governing agreement.

Voiding a package VPa

18. For the past operations at AdSTM, both Bing and Yue have been key decision makers and key players. Both have done their best to do the right thing. Bing and Yue are

Initial: _____ R.B.

10/15/2008

equally responsible for any potential issues related to IRS, DCAA, VA states taxation, and SBA and both shall work together to resolve any issues may they arise.

19. Both Bing and Yue have reviewed all corporate documents and files prior to 7/1/2008 and agree with all that is in those documents are correct. Bing and Yue shall not threaten each other or take any legal action against each other.

20. Yue shall acquire the company Shared Best Resources, Inc. and Yue and Bing shall designate an individual to nurture this company to be an 8(a). Yue shall have 9% of the total undiluted stock. Nina and Kelly shall each have 6% of the undiluted stock. Bing shall work with Nina and Kelly to obtain the voting proxy. If Nina or Kelly does not agree on providing Bing with the proxy, then Nina or Kelly shall not have the share of their stock. This company shall distribute minimum profit to the shareholders to cover the taxes, quarterly. When this company's revenue is above $2M/yr, Yue shall be paid a yearly salary of 0.8% of the total annual revenue. This company will give Yue and Bing and their two daughters health insurance, when it is needed and the company is capable of.

Bing Ran Date: 10/15/08

Yue Guan Date: 10/15/08

County/City of Fairfax
Commonwealth/State of Virginia
The foregoing instrument was acknowledged before me this 15th day of October, 2008, by BING RAN & YUE GUAN
(name of person seeking acknowledgment)
Mohan Singh
Notary Public
My commission expires: November 30, 2009.

MOHAN SINGH NOTARY PUBLIC MY COMMISSION NUMBER 366681 COMMONWEALTH OF VIRGINIA

Initial: R.B

13-A

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF ALEXANDRIA

ALICE JIN-YUE GUAN, *Plaintiff,*	)	
vs.	)	Civil Action No. CL07003662
BING RAN, *Defendant.*	)	

AMENDED ORDER

THIS MATTER CAME ON FOR TRIAL before the Court on August 31 through September 2, 2015, on the Court's Rule to Show Cause dated October 20, 2014, as to why the Defendant, Bing Ran, should not be held in contempt for failure to pay amounts ordered to be paid to the Plaintiff, Alice Jin-Yue Guan, pursuant to the Court's Final Decree of Divorce dated November 30, 2007;

And the Defendant, by his Motion to Modify Decree of Divorce filed May 1. 2015, having moved the Court for incorporation into the Final Decree of Divorce an Amendment, dated October 15, 2008, to the parties' Property Settlement Agreement dated December 15, 2006, which was previously incorporated into the Final Decree of Divorce;

And the Defendant, by his Motion for Attorney's Fees filed February 9, 2015, seeking an award of his reasonable attorneys' fees incurred in this subject litigation;

And the Court having heard and considered the testimony of the witnesses and the exhibits and other evidence presented at trial;

And the Court having considered the proposed findings of fact and conclusions of law and briefs filed by the parties in lieu of closing arguments;

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And the Court having set forth is findings of fact and rulings of law in a Letter Opinion dated December 22, 2015, which Letter Opinion is incorporated herein and made a part hereof by reference.

NOW THEREFORE, it is hereby ORDERED, ADJUDGED and DECREED:

1. That the October 15, 2008 Amendment to the parties' Property Settlement Agreement (the "PSA") dated December 15, 2006, Exhibit A, attached, be the controlling document in this matter from the time of its execution until this litigation. and is for that purpose incorporated into the parties' Final Decree of Divorce, pursuant to Va. Code § 20-109(C). The PSA is the controlling document from October 10, 2014 and continuing thereafter.

2. The terms of the October 15 amendment and the PSA shall be applied utilizing the numbers generated from Mr. Rosenberg's expert report on behalf of Mr. Ran, as set forth in Mr. Rosenberg's report (Defendant's trial exhibit 79 and Mr. Rosenberg's attached exhibit 1). The overpaid amount in that report is $1,976,899.

3. That the alleged 2008 overpayments to Ms. Guan claimed by Mr. Ran in the total amount of $2,462,083, as enumerated in Mr. Rosenberg's report and his exhibit 1, taken by Ms. Guan from Advanced Systems Technology and Management, Inc., a Virginia corporation, ("AdSTM") during the period January 1, 2008 through June 30, 2008 are her separate property and are not offsets against amounts subsequently accruing to her under the PSA, the October 15, 2008 Amendment, or otherwise.

4. That AdSTM therefore owes Ms. Guan a total of $485,184 in salary, bonus and profit distributions pursuant to the October 15, 2008 Amendment and the PSA for the period through March 15, 2015. Mr. Ran shall guarantee that AdSTM pays this amount to Ms. Guan. Prejudgment interest at 6% shall accrue on this amount from October 10, 2014 until paid.

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15-A

5. That as of October 15, 2008, the initial $50,000 installment of Spousal Support required to be paid by Mr. Ran to Ms. Guan pursuant to the terms of the PSA and the Final Decree of Divorce had accrued and remains due and payable by Mr. Ran, but that the remaining $200,000 in Spousal Support payments, in annual $50,000 installments beginning on July 5, 2009 and continuing through July 5, 2012, were waived by the October 15, 2008 Amendment to the PSA and the parties' subsequent reliance upon the terms of that Amendment.

6. That, for the reasons previously stated, Mr. Ran is therefore justly indebted to Ms. Guan in the amount of $50,000 and AdSTM is indebted to Ms. Guan in the amount of $485,184, plus prejudgment interest. The total amount indebted to Ms. Guan is accordingly $535,184, plus prejudgment interest described above

7. That the $50,000 of alimony is entitled to simple judgment interest of 6% from July 5, 2008 through May 13, 2016 and thereafter until paid in full by Mr. Ran, all as set forth in the following attached Vader interest arrearage calculation.

8. That the Court finds that, due to the facts and circumstances of this case, including the imprecise and confusing language employed by the parties in their various agreements, the Court will withhold a finding of contempt, provided that Mr. Ran and AdSTM, satisfy in full the sums owed to Ms. Guan as set forth in this order including interest, within 10 days of the entry of this Order.

9. The parties' motions for an award of attorneys' fees and costs are denied. Each party shall bear their own costs and attorneys' fees.

THIS ORDER IS FINAL.

ENTER this 13 day of May, 2016:

James C. Clark, Circuit Judge

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16-A

SEEN AND OBJECTED TO, for the reasons stated in Plaintiff's Proposed Findings of Fact and Conclusions of Law and her Reply Memorandum, including but not limited to her entitlement to spousal support post-July 5, 2008; and the Plaintiff's Motion and Reply Brief filed in connection with the attorneys' fee motion, and the exhibit proffered in court on May 13, 2016.

John Thorpe Richards, Jr., *Counsel for Plaintiff*

SEEN AND OBJECTED TO for the reasons stated in Defendant's Closing Argument Memorandum Setting Forth Defendant's Proposed Findings of Fact and Conclusions of Law filed with the Court on November 2, 2015 as well as Defendant's January and April, 2016, pleadings filed in this cause; and as argued on May 13, 2016.

Christopher W. Schinstock, *Counsel for Defendant*

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No. 20- _____

IN THE
SUPREME COURT OF THE UNITED STATES

ALICE GUAN (YUE GUAN),

Applicant,

v.

Bing Ran

Respondent.

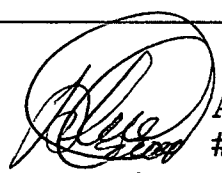
On Petition for Writ of Certiorari to the Supreme Court of Virginia

APPENDIX (Total 95 Pages)

Volume 2 of 3

For the

Petition for Writ of Certiorari



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17-A

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF VIRGINIA

Alice Guan	)
Plaintiff,	)
v.	) **Civil Case No. 1:21-CV-752-RDA-TCB**
Gary Bell, et al.	)
Defendants.	)

***Proposed* RESPONSE IN OPPOSTITION TO COMMONWEALTH DEFENDANTS' MOTION TO DISMISS ("MTD") 1ST AMENDED COMPLAINT ("1AC")**

Plaintiff, Alice Guan (I, me, my), hereby submits aforementioned response in opposition, and in support of such, I respectfully state the following in which, I have employed the same terminologies as defined in 1AC:

In the attached Exhibit A herein, I have identified by underlining all facts and content stated by the Defendants with which I disagree. Exhibit B attached herein is my Affidavit that set forth my version of the facts (most of which is already contained in 1AC) which are utilized here in this writing.

Although MTD raised new facts, referenced exhibits, or made certain statements by Defendants' counsels, for the purposes of deciding a motion to dismiss, the District Court may not consider exhibits, would not consider alleged facts that went beyond scope of those pled in the 1AC, or statements by counsel that raise new facts constitute matters beyond the pleadings. Marshall v. Marshall, No. 3:20CV442 (DJN), 2021 WL 785090 (E.D. Va. Mar. 1, 2021); Fed.Rules Civ.Proc.Rule 12(b)(6), 28 U.S.C.A. Buffalo Wings Factory, Inc. v. Mohd, 622 F. Supp. 2d 325 (E.D. Va. 2007). I hereby provide a summary in opposition to the MTD which applies to more than one section in the MTD.

I have personal interest in both liberty interest and property interest, and I have lost that liberty and property, the loss is ongoing. Defendants, through their conduct in and out of courts related to Case 1664 and Case 3662, deprived my liberty and property without procedural due process of law. I have been deprived of a recognized and protectable interest in life, liberty, or property. (Wilkinson v. Austin (2005)). Defendants deprived my liberty interest without procedural due process of law, deprived my property interest without procedural due process of law, subjected me to injunctions without procedural due process of law, and deprived my liberty and property without substantive due process of law.

1AC is adequately pled because it contained adequate background, adequate allegation, and clear and plausible claims for which relief can be obtained. 1AC included the required alleged facts giving to plausible entitlement of relief.

Defendants violated Decree that was established based on the state law, interfered with performance of the private agreement that was made into a state order per state law.

Defendants subjected me to a deprivation of rights, privileges, or immunities secured by the Constitution and laws. Defendants caused me to be subjected to a deprivation of rights, privileges, or immunities secured by the Constitution and laws. Defendants also Abridged my privileges or immunities secured by the Constitution and laws. Those deprivations have commenced in 2019 and those deprivations are ongoing and will continue into the future. Defendants deprived me of the equal protection of the laws, including but not limited to discrimination and harassment. Defendant violated Fourteenth Amendment.

Per Decree, I possess a liberty or property interest. This state law established Decree creates my liberty and property which are sufficiently recognizable to demand due process protection. In

particular and for example, based on the allegation the protectable interests include but not limited to money (about $2.3M) (Nelson v. Colorado (2017)); real or personal property (2% of my stock) (Board of Regents of State Colleges v. Roth (1972)); employment (my employee employment has be altered into a 1099 consultant) (Roth; Stotter v. University of Texas at San Antonio (5th Cir. 2007)); education (lack of employee status, lost ability to receive education or advanced education paid by AdSTM) (Goss v. Lopez (1975)); corporate control, board position, official position, decision making rights, physical well-being, health (Davidson v. Cannon (1986); Daniels v. Williams (1986)); benefits (lost when employee status and officer and director positions were lost)(Mathews v. Eldridge (1976); Goldberg v. Kelly (1970)); etc. I have been deprived of that interest since May 22, 2019 and on-going through current time and will continue into the future. Negligence, corruption and bribery, intentional and deliberate act constituted the deprivation of property and liberty leading the deprivation itself concerning the rights secured by the Fourteenth Amendment.

The intentional deprivation of my liberty and property was planned, a pre-deprivation process is feasible, but defendants failed to provide, thus violated the Due Process Clause. I have lost liberty and property through acts that were not random, and I did not receive adequate pre-deprivation process that could have been provided to prevent the deprivation.

I did not receive sufficient process with respect to the aforementioned interest and deprivation. For the loss of the 2% ownership, I even did not receive notice of the possible loss. For all losses, I did not have an opportunity to be heard by a neutral decisionmaker in a meaningful manner. Defendant James C Clark had already been bribed and also for other reasons stated in 1AC, he was not a neutral decision maker, and none of the what he conducted was in a meaningful manner. Thus, the absence, the insufficiency of process surrounding the

deprivation led to the occurrence and the on-going occurrence of violation of Fourteenth Amendment.

Even if I were properly deprived of liberty or property, which is not the case, but because I did not receive adequate process, constitutional violation still occurred. Liability exist because defendants engaged in constitutionally violative conduct, in addition, the courts endorsed the violation, and a procedural due process violation occurs when the courts and other defendants have not accorded all the process due with respect to a willful deprivation of liberty or property.

Defendants violated First Amendment when I have been denied and continue to be denied the opportunity to speak. Defendants also violated federal law by restraining my physical movement and my rights to associate. Defendants violated Firth Amendment when my properties (for example: about $2.3M, 2% ownership) were taken without just compensation void of substantive due process. Defendants committed outrageous and constitutionally arbitrary executive misconduct that is so egregious as to shock the conscience without substantive due process. Defendants violated Eighth Amendment because Defendants acted with deliberate indifference when they deprived and continued to deprive my aforementioned rights. Defendants impaired contractual obligations (U.S. Const. art. I, § 10, cl.1) for a § 1983 claim. Pure Wafer Inc. v. City of Prescott (9th Cir. 2017).

Defendants also violated the Fourteenth Amendment by voiding substantive Due Process and Failure to Act. I have reported to the circuit court, of those federal rights violations but it stayed silent and failed to act. Their inaction is implicit-but-affirmative encouragement, resulting in the exacerbation of my harm, risk of injury at the hands of third parties, subjecting me to harms I would not have faced but for the state action.

Defendants also violated the Fourteenth Amendment by voiding substantive Due Process and Failure to Act. Post the conduct in the circuit court, I have reported to the SC of VA of those federal rights violations and the stated created danger and harm and injuries, SC of CA stayed silent and failed to act. Their inaction is implicit-but-affirmative encouragement.

Defendants also violated Virginia State Tort Law when they intentionally deprived my property and liberty. Even if not intentional, which is not the case, state should provide remedies for non-intentional, negligent, or careless acts. Because the deprivation of property was wrongful, state tort law should provide a remedy to substitute or compensate for the loss and damages for the value of the loss, return of the property, restitution, and other recognized legal and equitable remedies. This court should adjudicate state claims by exercise the jurisdiction because considering the defendants in this case and their past conducts and current conduct, the state system is fundamentally not fair.

If there are Virginia state policies or actions or laws that are contrary to federal constitutional rights, per the Supremacy Clause, I am entitled to recovery under §1983 because I have been deprived of my rights secured by other constitutional provisions. Armstrong v. Exceptional Child Center (2015); Golden State Transit Corp. v. Los Angeles (1989)).

This case in this court is not to review state court orders or judgment, but to adjudicate the conspiracy, bribery, corruption, tort, other wrongdoings, seek relief per federal and state laws.

I. State Case 3662 Phase 2 between My Ex-husband Bing Ran and Me Where My Petitioned Case Has Already Concluded Has Resulted In a Decree Which Is A Law and An Edict That Governs AdSTM to State That I Have the Control of Management and Direction of AdSTM

State Case 3662 started in 2007 when it was a simple divorce case between me and my ex-husband Bing Ran. The divorce decree incorporated a PSA that was notarized by me and Bing

Ran during our separation in December 2006. After the divorce was finalized in 2007, the case stayed dormant for 7 years. This portion of the case is defined as Case 3662 Phase 1.

On October 15, 2008, I and Bing Ran notarized a so-called October 15, 2008 Amendment ("Amendment") to amend the PSA. But we did not bring it to the court to be incorporated into the divorce decree at that time.

In October 2014, I filed Petition for Rule to Show Cause alleging my ex-husband Bing Ran caused underpayment to me. This part of the litigation is defined as Case 3662 Phase 2. The issue of if Bing Ran is AdSTM's 51% owner was litigated in Case 3662 Phase 2 because that potentially could have affected how much payment Bing Ran owes me for underpayment.

Defendant James C Clark wrote an opinion in December 2015, ruled on May 13, 2016 to incorporate the Amendment into the divorce decree and based on that Amendment (which dictates that I and Bing Ran must have equal payment from our co-owned company AdSTM, thus the underpayment was calculated without depending on ownership percentage), Defendant James C Clark ruled on a certain amount Bing Ran owed me as a judgment, and then in the same order, Defendant James C. Clark ruled I breached the Amendment. May 13, 2016 order did not rule if Bing Ran is 51% of AdSTM, and did not need to rule such.

I appealed May 13, 2016 order. Judge Alston, along with Defendant Chafin, were two of the 3 judges oversaw the appeal of that May 13, 2016 ruling and they granted me complete victory on all of my assignments of errors, including I did not breach the Amendment.

In the 1st Amended Complaint, the divorce decree with the incorporated Amendment are collective defined as the Decree, the Law, and the Edict that govern who is legally permitted to control the management and directions of AdSTM: Decree states clearly that person is me, and

my control of management and direction of AdSTM is not dependent on how many stock share I have in AdSTM or how many stock share Bing Ran has (there are only 2 owners).

Decree states I delegate management functions to Bing Ran but I retain the veto right to his decisions. Decree states only Bing Ran and I can be on the Board, and only Bing Ran and I can serve as the President, the CEO, the other important positions in AdSTM. Decree states it takes a certain required votes to remove the management delegation function or remove any one of us from any of those officer positions. Decree dictates: the control and management provisions and officer and Board member position provisions are independent from ownership.

Case 3662 Phase 2 closed when Bing Ran did not appeal the Court of Appeal's decision.

Case 3662 Phase 3 is defined as the remand after appeal plus adjudicating the amount Bing Ran owes me in the more recent years since the May 13 2016 judgement order. Defendant James C Clark made ruling on the amount Bing Ran owes me. Case 3662 Phase 3 is closed.

Thus, Case 3662 Phase 2 led to a Decree Which Is A Law and An Edict That Governs AdSTM to State That I Have the Control of Management and Direction of AdSTM independent from how much stock I own, a Decree that was established by Defendant James C. Clark and upheld by the Court of Appeal of Virginia.

Per Decree, I am the only person who is legally permitted to control the management and direction of AdSTM and that control is independent from how much stock I own. Per the Decree, I make all decisions for AdSTM as well, even though I delegate management functions to Bing Ran but I retained veto right to any of his decisions.

II. Case 3662 Phase 4 and Case 1664

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In 2018, Bing Ran casted all of his vote to vote himself off all positions in AdSTM. He also voted to no longer take the management functions I used to delegate to him. I later also voted to agree with his voting. Thus, in AdSTM, there was 100% vote to stop management function delegation from me to Bing Ran and to remove Bing Ran from all of his AdSTM positions.

Upon Bing Ran's complete departure, I became the only member of the Board per the Decree, I became the only officer of AdSTM per the Decree, and independent of those and independent of how much stock I have I also become the only person who is legally permitted to perform management functions and make decisions for AdSTM per Decree. Gary Bell and Jen Kim provided affidavits to the federal government stating Bing Ran has already completely left from AdSTM, etc., he no longer can exercise influenced on AdSTM. I did not promote Sergey or Gary or Jen to any other position, so they as 2 VPs and a manager, were required to report to me directly. Bing Ran's previous positions prescribed by the Decree legally remained vacant.

Bing Ran filed a petition against me in Case 3662 in February 2019, a case defined herein as Case 3662 Phase 4. I was sued by my own company AdSTM in Case 1664.

The conduct or transaction or occurrence in Case 3662 Phase 4 and in Case 1664 that give rise to the claim or cause action, as admitted and agreed to by the Employee Defendants in their MTD, is: I am 49% owner of AdSTM, which is a fact made suddenly by Defendant James C. Clark at the bench when he was signing a pre-typed order in February 2019 by hand writing such sudden decision into the order to utilize it to injunct me in that same order, without holding any evidential hearing on stock share issue. The February order in Case 3662 Phase 4 became the foundation for the May 22, 2019 order, which I appealed. Defendant James C. Clark's May 22, 2019 Order for Case 3662 Phase 4 speaks for itself. Defendant James C. Clark also presided over Case 1664, made rulings and stayed Case 1664 in or about 2019.

In December 2019, it was discovered in Protorae law firm office that Defendants conspired to seize AdSTM control from me, they obtained support from 4 attorneys from Protorae (Brian Chandler, Scott Dinner, John Monica, and Michael Stamp) and Bing Ran, they fabricated Bing Ran being 51% and used that fabrication to bypass the Decree, bribed Defendant James C. Clark to go with this fabrication to name me as 49% owners and will bribe higher officials in higher courts to also go along with this scheme that is built on conspiracy and fraud and corruption. They have plenty money to bribe, they use the money they took from my personal property.

On appeal, prior to ruling, I informed SC of VA of those federal right violations via a telephone hearing. SC of VA ruled, twice, Orders from SC of VA speak for themselves.

III. The Only Court Can Review SC of VA's Orders for Case 3663 Phase 4 Is SCOTUS

Petition for Writ in SCOTUS is to assume Official Defendants in this case had the jurisdiction adjudicating Case 3662 Phase 4. Under that assumption, Petition for Writ to SCOTUS seeks SCOTUS's review of the state court orders on constitutional and statutory violations such as: due process, ruling on ownership lacking any evidential hearing, freedom of speech, freedom of movement, freedom of association, civil rights, constitutional issues associated with SC of VA issuing affirm and wholly adoption of lower court ruling but only with one small paragraph without offering any its own opinion. Petition to SCOTUS can only seek review of the specific languages in the orders for remand relieves, it cannot seek adjudication and remedies from corruption and conspiracy and bribery and other wrongful conducts committed by the defendants as alleged in this case. I have filed an application for a 60-day time extension to SCOTUS in August 2021, a copy sent to opposing counsels for that case.

IV. This Case Is Not to Review State Court Orders and Filing this Case Was Timed to Have Maximum Evidence Available So This Court Can Effectively Adjudicate and

One of Defendants' victory dates and one major kick back payment likely was in late June 2021 if the typical 90 days pass and if I do not submit Petition for Writ to the SCOTUS. Although the 90 days has been extended to 150 days due to COVID, it appears that some legal professionals and public did not know the extension. June 2021, I filed Complaint in this case, a prime time when maximum amount of evidence on corruption is available to be discovered.

Considering the reporting of corruption and bribery to the FBI and the fact that Michael Stamp, who as an attorney in Protorae being one of the persons involved in the corruption and bribery, has moved on to become a deputy director of the Department of Justice overseeing the FBI; considering any reporting to the Virginia state is to report to Virginia Attorney General's office, whose lawyers are currently defending all of the Justices and Judge and courts in this case; considering all these lead to the high likelihood that the corruption and bribery will not be investigated by the FBI or by VA state. That makes this court be the only place where I can have a fair chance where discovery can be done, remedies for the harms and injuries of those wrongful conducts can be provided, discovered information can be used to take actions on the defendants in other proceedings to prevent other persons like me to be victimized by the same defendants.

Currently, Official Defendants are already very concerned about discovery. After I merely filed a motion to seek the court provide a scheduling order, in response to oppose that in document #63, Official Defendants demanded the court prohibit any discovery. Defendants do not want to answer the allegations in 1AC because if they deny those allegations, they commit perjury, if they admit those allegations, they admit criminally wrongdoing. So, all Defendants filed Motion to Dismiss (see Doc #40, 41, 43, 44) insisting this case be dismissed with prejudice so that their corruption and bribery can be forever concealed.

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This case is not reviewing state orders. Dismissing this case means this court is ignoring the corruption and other wrongdoings that have caused harms and injury, is turning away from providing legal remedies to a 1st Amended Complaint that is adequality pled, is leaving the victim here continue suffer, and is leaving the door open for other people to be victimized in the state courts, failing the role to bring justice to protect the public and private citizens.

For these above reasons alone, MTD must be denied.

V. All of My Claims Are Sufficiently Stated In the 1st Amended Counterclaim

Defendants attempts to dismiss all claims in 1AC by Rule 12(b)(6). Federal Rule of Civil Procedure ("Fed. R. Civ. P.") 8(a)(2) states: a complaint should contain "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(d)(1) further states: "[e]ach allegation must be simple, concise, and direct." Contrary to MTD's claims, my 1st Amended Complaint contains more than what is required by Rule 8(a), it included the required alleged facts giving to plausible entitlement of relief. See 1AC.

As seen in the allegation section and claim and cause of action section in 1AC, adequate facts and elements for cause of action have been adequately pled giving rise to plausible entitlement to relief. Here, my 1st Amended Complaint has clearly identified Defendant's actions and how those actions are wrongful, it has more than sufficient statements of the claims. Those statements are Clearly stated, not unintelligible, not confusing, and they meet the "short and plain" Fed. R. Civ. P. requirements to put Defendants on fair notice of the charges against them in a clear and unambiguous way and to show I am entitled to relief.

MTD likely is concerned about the 1st Amended "Complaint 'lack of detail.'" Epos Tech., 636 F. Supp. 2d at 63 (citations omitted). But SCOTUS stated in Swierkiewicz v. Sorema N.A.,

534 U.S. 506, 512 (2002) that Complaint should not be a collection of detailed facts and that a complaint only need to "give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests"; accord Atchison, Topeka & Santa Fe Ry. v. Buell, 480 U.S. 557, 568 n.15 (1987) (under Federal Rule 8, claimant has "no duty to set out all of the relevant facts in his complaint"). "Specific facts are not necessary in a Complaint; instead, the statement need only 'give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" See Epos Tech., 636 F. Supp.2d 57, 63 (D.D.C. 2009) (quoting Bell Atlantic v. Twombly, 550 U.S. 544, 555 (2007)). MTD should then be motion for more definite statement.

As clearly seen, Fed. R. Civ. P. regards complaint as a "notice pleading" and does not demand any evidentiary facts in any complaint because disputed facts and dispose of claims are part of the proceedings involving discovery and motions for summary judgement. Discovery and summary judgment motions will define disputed facts and dispose of unmeritorious claims. See Swierkiewicz, 534 U.S. at 512. Courts have found that if the information sought by the motion is obtainable through discovery, the motion should be denied. See, e.g., Towers Tenant Ass'n v. Towers Ltd. P'ship, 563 F. Supp. 566, 569 (D.D.C. 1983) (denying motion for a more definite statement because details such as "dates, times, names and places" are "the central object of discovery, and need not be pleaded").

All claims in 1AC meet all the above Rule and laws. Therefore, MTD should be denied.

VI. This Court Has subject matter jurisdiction because Judge Clark and the Supreme Court Justices are Not entitled to absolute judicial immunity.

First of all, it is understandable that judge or justice in unique judicial position should be protected from potential intimidation from parties of the cases they adjudicate. However,

"the history of judicial immunity in the United States is fully consistent with the common-law experience. There never has been a rule of absolute judicial immunity from prospective relief, and there is no evidence that the absence of that immunity has had a chilling effect on judicial independence."

Pulliam v. Allen, 466 U.S. 522, 104 S. Ct. 1970, 80 L. Ed. 2d 565 (1984). Furthermore,

"While there is a need for restraint by federal courts called upon to enjoin actions of state judicial officers, there is no support for a conclusion that Congress intended to limit the injunctive relief available under § 1983 in a way that would prevent federal injunctive relief against a state judge. Rather, Congress intended § 1983 to be an independent protection for federal rights, and there is nothing to suggest that Congress intended to expand the common-law doctrine of judicial immunity to insulate state judges completely from federal collateral review. Pp. 1978–1981."

Again, Pulliam v. Allen, 466 U.S. 522, 523, 104 S. Ct. 1970, 80 L. Ed. 2d 565 (1984)." Thus, this case in this court reserved Injunctive Relief under § 1983 claim properly with such legal support, and with:

"Judicial immunity is not a bar to prospective injunctive relief against a judicial officer, such as petitioner, acting in her judicial capacity. Pp. 1974–1981.... that judicial immunity did not extend to injunctive relief under § 1983"

Pulliam v. Allen, 466 U.S. 522, 104 S. Ct. 1970, 80 L. Ed. 2d 565 (1984). This case in this court also reserved attorneys fee, as supported by "Judicial immunity is no bar to award of attorney fees under section 1988. 42 U.S.C.A. § 1988". Pulliam v. Allen, 466 U.S. 522, 104 S. Ct. 1970, 80 L. Ed. 2d 565 (1984). This case in this court reserved Liability of damages because when judge or justice tuck bribery cash under their robs while performing a judicial act and rule in obligations to the briber for the briber or for the briber's associate, the judge and justice has lost all jurisdiction to the case in front them. They become liable for damages, "a judge is not immune from actions, though judicial in nature, taken in the complete absence of all jurisdiction." Mireles v. Wavo, 502, U.S. 9, 11-12 (1991). As a matter of fact, accepting bribe or agreeing to accept bribe at judicial location or elsewhere either prior to, during or after adjudicating cases affect all above claims: injunctive relief, fees, and liability of damages, as in

this case in this court where the seemingly normal adjudication act is no longer judicial but an act less protected than typical official acts such as administrative, legislative, or executive act which already are subject to damages liability because highest executive officials in states are not protected by absolute immunity from damages liability arising from their official acts under federal law. Forrester v. White, 484 U.S. 219, 108 S. Ct. 538, 98 L. Ed. 2d 555 (1988). Furthermore, when judge or justice, acting away from the bench, driven by greed, take actions for the benefit of the briber in relation to the case he presides on is even less protected than all of the above mentioned acts – this, and all aforementioned acts, not the result of grave procedural error or malicious intent or in excess of authority, but acts driven by financial rewards taken to willfully and knowingly violate Federal rights of another warrant all the claims in 1AC.

Therefore, defendants are not permitted to qualified immunity, let alone absolute immunity. Furthermore, Judge and Justices are personally liable for damages because our system of jurisprudence rests on the assumption that all individuals, whatever their position in government, are subject to federal law. Butz v. Economou, 438 U.S. 478, 98 S. Ct. 2894, 57 L. Ed. 2d 895 (1978). I am entitled to a remedy in damages from federal and state law violations.

VII.The Rooker-Feldman doctrine Does Not Apply to This Case in This Court

Whether ROOKER-FELDMAN DOCTRINE is applicable can only be considered if the state case has concluded prior to the commencement of the district case. Because Case 1664 has been stayed and has not concluded yet, ROOKER-FELDMAN DOCTRINE is irrelevant here in respect to Case 1664. Thus, claims here should proceed relative to Case 1664 without the concern of ROOKER-FELDMAN DOCTRINE. Even if Case 1664 concluded, but it is not, for the same reasons explained for Case 3662 Phase 4 below, this doctrine does not apply here.

A tangential but related aspect of the non-concluded Case 1664 is, I did not have any ability to appeal any part of the proceeding in the state court or there is nothing to be appealed from or to review "*Rooker–Feldman* doctrine did not deprive federal district court of jurisdiction over voters' action ..... voters were not in a position to seek review of the state court's judgment. Lance v. Dennis, 546 U.S. 459, 126 S. Ct. 1198, 163 L. Ed. 2d 1059 (2006)

Even for cases that have concluded in the state court, *Rooker-Feldman* doctrine has narrow scope (Hulsey v. Cisa, 947 F.3d 246, 250 (4th Cir. 2020)) resulting:

"the Supreme Court has repeatedly emphasized that the *Rooker-Feldman* doctrine is "confined to cases of the kind from which the doctrine acquired its name: cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments." *Exxon*, 544 U.S. at 284, 125 S.Ct. 1517; *see Lance v. Dennis*, 546 U.S. 459, 460, 464, 126 S.Ct. 1198, 163 L.Ed.2d 1059 (2006) (per curiam); *Skinner v. Switzer*, 562 U.S. 521, 532, 131 S.Ct. 1289, 179 L.Ed.2d 233 (2011). In other words, the doctrine simply precludes federal district courts from exercising what would be, in substance, appellate jurisdiction over final state-court judgments. *See Thana v. Bd. of License Comm'rs*, 827 F.3d 314, 319 (4th Cir. 2016) ("The doctrine goes no further than necessary to effectuate Congress' allocation of subject matter jurisdiction between the district courts and the Supreme Court.")."

Hulsey v. Cisa, 947 F.3d 246, 250 (4th Cir. 2020). Considering Rooker sued the court citing state court judgement violated constitutional right, and considering Feldman sued the court citing the state court order violated Fedearl law, those 2 scenarios are similar or identical to the Section above where I will be petitioning to SCOTUS citing the specific languages in the state court orders violated constitutional rights. In contrast to the petition action to the SCOTUS, in this case in this court: I am Not seeking this court to take any appeal of any unfavorable state-court decision (as stated clearly earlier, appeal of those decisions is to SCOTUS). Because of this reason, in the allegations I made and the relief I sought in 1AC, I did not even include state court judgements, to ensure this court has none of those decisions to review.

Contrary to MTD, here in this case in this court, I am not complaining injuries arising from the state court decision, I am seeking remedies for defendants' act of civil conspiracy, business conspiracy, bribery of state officials into corruption, § 1983 claims based on violations of federal laws. Seeking this court to vacate the state court orders, judgement, rulings, opinions and rationales is not to seek such based on any review of state court's judgement, but based on state courts was completely out of the jurisdiction when they decided on the case because prior to, during, and after that decision money transfer and money promised and demanded have already be made which obligated the judge and justices to use their official position conduct personal illegitimate deeds. Therefore, § 1983 claim in this case here is to seek remedies and recover damages not from state judgement but from defendants' conduct of bribery and corruptive illegal practice and other wrongdoings. Because when state officials engaged in bribery, they no longer have any jurisdiction adjudicating those state cases, therefore their adjudication and ruling on those state cases must be nulled and voided in their entirety to begin with thus there is no need to force this court into any review of those state court judgment. My claims are not bared by *Rooker–Feldman* doctrine … "did not bar former employee's civil rights suit against employer, ….where did not claim that state court decision itself caused him injury, but rather alleged that employer discriminated against him in violation of federal and state law." Davani v. Virginia Dep't of Transp., 434 F.3d 712 (4th Cir. 2006)

Also, Rooker-Feldman does not apply because I am not complaining about injuries caused by state-court judgments rendered before this court's proceedings commenced, I am not inviting this court to review those judgments, and I am not asking this court to reject those judgments based on any review of those judgements that I did not even request this court to do,

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"The *Rooker-Feldman* doctrine was not applicable as a bar" when "action did not ask district court to conduct appellate review of a final judgment from state's highest court, and instead was challenging action of state administrative agency." U.S. Const. Amend."

1; 28 U.S.C.A. § 1257(a); 42 U.S.C.A. § 1983; Md. Ann. Code art. 2B § 16-101. Thana v. Bd. of License Commissioners for Charles Cty., Maryland, 827 F.3d 314 (4th Cir. 2016) and

"This case does not fall within the *Rooker-Feldman* doctrine's narrow scope, for multiple independent reasons. First and foremost, Hulsey is not complaining of an injury caused by a state-court judgment. *See Exxon*, 544 U.S. at 284, 125 S.Ct. 1517. In the federal complaint, Hulsey sought damages, disgorgement, and injunctive relief against the Limehouses and their co-defendants for alleged RICO violations, fraud, and abuse of process, among other allegations. Hulsey does not "seek[ ] redress for an injury caused by the state-court decision *itself*," *Davani*, 434 F.3d at 718 (emphasis added), but rather for injuries caused by the defendants' allegedly fraudulent conduct in prosecuting the defamation suits against him in state court."

Hulsey v. Cisa, 947 F.3d 246, 250 (4th Cir. 2020). And, even if state court's ruling are the symptoms of bribery and other wrongful conducts, that does not make state court's ruling the cause of my injury in this case in this court,

"Even if the denial of discovery in the default proceedings may have aided the defendants' alleged fraudulent concealment of evidence, that does not make the state court's discovery ruling the cause of Hulsey's injury"

Hulsey v. Cisa, 947 F.3d 246, 250 (4th Cir. 2020). My injuries may be ratified, acquiesced or left unpunished by state court decision without being produced by the state court judgement as in

"A plaintiff's injury at the hands of a third party may be "ratified, acquiesced in, or left unpunished by" a state-court decision without being "produced by" the state-court judgment. *Hoblock v. Albany Cty. Bd. of Elections*, 422 F.3d 77, 88 (2d Cir. 2005). Such is the case here."

Hulsey v. Cisa, 947 F.3d 246, 250 (4th Cir. 2020). 1AC showed: my injuries were caused by the defendants' corruption and fraud and other wrongdoings thus defendants' alleged use of the courts as a tool to defraud does not make the state court's ruling the cause of my injury,

"Hulsey's injuries were caused by the defendants' fraud, which was merely enabled by the state court's discovery ruling. The defendants' alleged use of the courts as a tool to defraud does not make the state court's ruling the cause of Hulsey's injury."

Hulsey v. Cisa, 947 F.3d 246, 251 (4th Cir. 2020). Summarily,

"Nor does Hulsey's federal lawsuit "invit[e] district court review and rejection" of a state-court judgment, as would typify an appeal. *Exxon*, 544 U.S. at 284, 125 S.Ct. 1517. This criterion is not satisfied by mere overlap between state-court litigation and the plaintiff's claim; the federal action must be filed "*specifically* to review th[e] state court judgment." *Thana*, 827 F.3d at 320." Hulsey v. Cisa, 947 F.3d 246, 251 (4th Cir. 2020)

Here, there is no overlap.

VI. The Court has subject matter jurisdiction because Commonwealth Defendants Do Not have sovereign immunity

The *Ex parte Young* exception to sovereign immunity permits this case in this court because this case seeks federal court commands a state official to refrain from violating federal law,

"The *Ex parte Young* exception to a State's sovereign immunity rests on the premise that when a federal court commands a state official to do nothing more than refrain from violating federal law, he is not the State for sovereign-immunity purposes. U.S.C.A. Const.Amend. 11."

Virginia Off. for Prot. & Advoc. v. Stewart, 563 U.S. 247, 131 S. Ct. 1632, 179 L. Ed. 2d 675 (2011). In addition, because Defendant James C. Clark left the door open for himself to correct his May 22, 2019 ruling by stating, twice, "until further order from this court" making this order a living and "ongoing injunction" in such a way so that there will be a day such like this when he can correct this order through "prospective relief": he refrained me and Did say: one day I will come and let you be free. Therefore, for Case 3662 Phase 4, there is a future activity that this court can encourage Defendant James C. Clark to do: let that "further order" arrive. For Case 1664, the situation is much clearer: Defendant James C. Clark presided over the case and stayed the case thus nothing is final there, preventing defendants and injuncting defendants to cure in

that case is 100% feasible because that case not only has a similar ruling as in May 22, 2019 order as described above, there are also definite "future conduct" by the defendant to violate the Constitution. Therefore, both Case 1664 and Case 3662 Phase 4 contain elements "engaging future conduct" and "ongoing violation" as in:

"In determining whether the doctrine of *Ex parte Young* avoids an Eleventh Amendment bar to suit, a court need only conduct a straightforward inquiry into whether the complaint alleges an ongoing violation of federal law and seeks relief properly characterized as prospective. U.S.C.A. Const.Amend. 11."

Virginia Off. for Prot. & Advoc. v. Stewart, 563 U.S. 247, 131 S. Ct. 1632, 179 L. Ed. 2d 675 (2011). Such allegation of an "ongoing violation" of law, the made-ready "prospective relief", and "future conduct" are contained in 1AC. Case 1664 is stayed and will command future violation of the Constitution is certain. Defendant James C. Clark set himself up to provide the prospective relief:

"Secretary of North Carolina Department of Health and Human Services (HHS) was properly named as defendant, in his official capacity, in Medicaid-eligible children's § 1983 action, asserting claims for prospective relief from which Secretary was not protected by Eleventh Amendment immunity, under *Ex parte Young* doctrine, based on HHS's allegedly ongoing violation of Due Process Clause and Medicaid Act, since Secretary was person responsible for assuring that HHS's decisions complied with federal law. U.S.C.A. Const.Amends. 11, 14; Medicaid Act, §§ 1902(a)(3, 17), 1905(r)(5), 42 U.S.C.A. §§ 1396a(a)(3, 17), 1396d(r)(5); 42 U.S.C.A. § 1983."

D.T.M. ex rel. McCartney v. Cansler, 382 F. App'x 334 (4th Cir. 2010). Therefore, this court has the jurisdiction and the power to grant prospective injunctive relief and injunctive relief:

"Federal courts may grant prospective injunctive relief against state officials to prevent ongoing violations of federal law." CSX Transp., Inc. v. Bd. of Pub. Works of State of W.Va., 138 F.3d 537 (4th Cir. 1998). Furthermore, state officers acting in their official capacity are not entitled to Eleventh Amendment protection:

"Claims of plaintiffs, against state, state agencies and education officials with respect to assertion that use of national teacher examinations for certification and pay purposes violated equal employment opportunities provisions of Civil Rights Act were not barred by the Eleventh Amendment. Civil Rights Act of 1964, § 701 et seq. as amended 42 U.S.C.A. § 2000e et seq.; U.S.C.A.Const. Amend. 11."

United States v. State of S.C., 445 F. Supp. 1094 (D.S.C. 1977), aff'd sub nom. Nat'l Educ. Ass'n v. South Carolina, 434 U.S. 1026, 98 S. Ct. 756, 54 L. Ed. 2d 775 (1978). Also, there are plausible causes that Judge and Justices acted in their individual capacity for actions including but not limited to taking bribes, giving out ruling to favor the bribers and bribers' associate while there is complete lacking of jurisdiction. Finally, as clearly shown in the 1AC, defendant James C. Clark accepted bribes and in return provided rulings to benefit the bribers and the bribers' associates, and in that process, he and the court violated by federal rights, leading to Section 1983 claims and other claims. Therefore, Federal issues are present here. Thus, Ex parte Young exception applies without a problem. Because certain conducts by the defendants were carried out not in their official capacity, they are also personally liable in this case.

VII. 1AC Stated a Claim – see above sections.

Conclusion (Note: I need to refine all pages above when I feel more recovered)

For the reasons set forth above, Plaintiff Alice Guan respectfully request this court to deny defendants' motion to dismiss plaintiff's 1st Amended Complaint.

Filed in person at the court on August 20, 2021.

Respectfully Yours,

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Alice Guan, or Yue Guan, pro se

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CERTIFICATE OF SERVICE

I hereby certify that on August 20, 2021, a copy of the foregoing and the attachments have been mailed and emailed to all counsels to:

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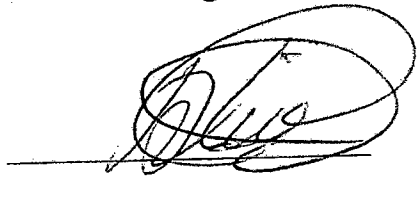

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IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF VIRGINIA

Alice Guan	)	
Plaintiff,	)	
v.	)	**Civil Case No. 1:21-CV-752-RDA-TCB**
Gary Bell, et al.	)	
Defendants.	)	

Proposed RESPONSE IN OPPOSTITION TO DEFENDANTS GARY BELL, SERGEY KATSENELENBOGEN AND JEN KIM'S ("EMPLOYEE DEFENDANTS") MOTION TO DISMISS ("MTD") PLAINTIFF'S 1ST AMENDED COMPLAINT ("1AC")

Plaintiff, Alice Guan (I, me, my), hereby submits aforementioned response in opposition, and in support of such, I respectfully state the following in which, I have employed the same terminologies as defined in 1AC:

In the attached Exhibit A herein, I have identified by underlining all facts and content stated by the Employee Defendants with which I disagree. Exhibit B attached herein is my Affidavit that set forth my version of the facts (most of which is already contained in 1AC) which are utilized here in this writing.

Although MTD raised new facts, referenced exhibits, or made certain statements by Employee Defendants' counsels, for the purposes of deciding a motion to dismiss, the District Court may not consider exhibits offered by the movants as attachment when the contents of the exhibits are in dispute. Marshall v. Marshall, No. 3:20CV442 (DJN), 2021 WL 785090 (E.D. Va. Mar. 1, 2021); District court would not consider alleged facts that went beyond scope of those pled in the 1AC to dismiss the 1AC, as in: District court would not consider alleged facts that went beyond scope of those pled in complaint or first amended complaint in adjudicating

alleged infringers' motion to dismiss trademark infringement claims. Fed.Rules Civ.Proc.Rule 12(b)(6), 28 U.S.C.A. Buffalo Wings Factory, Inc. v. Mohd, 622 F. Supp. 2d 325 (E.D. Va. 2007); Statements by counsel that raise new facts constitute matters beyond the pleadings and cannot be considered on a motion to dismiss for failure to state a claim. Fed. R. Civ. P. 12(b)(6). Marshall v. Marshall, No. 3:20CV442 (DJN), 2021 WL 785090 (E.D. Va. Mar. 1, 2021).

It is important to note that MTD has two major errors: it stated that AdSTM corporation control is determined by stock ownership, it also stated that this Federal case is to litigate that ownership. Both statements are incorrect. According to records and 1AC and this response, control of AdSTM is determined by the Decree, specifically the Amendment in the Decree, and that control is independent from ownership; here in federal court, I am litigating defendants' wrongful conduct of civil conspiracy, business conspiracy, abuse of process, bribery, corruption, Section 1983 claims, etc., among others, but not ownership. Therefore, any of MTD's arguments based on those 2 errors fail.

I. State Case 3662 Phase 2 between My Ex-husband Bing Ran and Me Where My Petitioned Case Has Already Concluded Has Resulted In a Decree Which Is A Law and An Edict That Governs AdSTM to State That I Have the Control of Management and Direction of AdSTM

State Case 3662 started in 2007 when it was a simple divorce case between me and my ex-husband Bing Ran. The divorce decree incorporated a PSA that was notarized by me and Bing Ran during our separation in December 2006. After the divorce was finalized in 2007, the case stayed dormant for 7 years. This portion of the case is defined as Case 3662 Phase 1.

On October 15, 2008, I and Bing Ran notarized a so-called October 15, 2008 Amendment ("Amendment") to amend the PSA. But we did not bring it to the court to be incorporated into the divorce decree at that time.

In October 2014, I filed Petition for Rule to Show Cause alleging my ex-husband Bing Ran caused underpayment to me. This part of the litigation is defined as Case 3662 Phase 2. The issue of if Bing Ran is AdSTM's 51% owner was litigated in Case 3662 Phase 2 because that potentially could have affected how much payment Bing Ran owes me for underpayment.

Defendant James C Clark wrote an opinion in December 2015, ruled on May 13, 2016 to incorporate the Amendment into the divorce decree and based on that Amendment (which dictates that I and Bing Ran must have equal payment from our co-owned company AdSTM, thus the underpayment was calculated without depending on ownership percentage), Defendant James C Clark ruled on a certain amount Bing Ran owed me as a judgment, and then in the same order, Defendant James C. Clark ruled I breached the Amendment. May 13, 2016 order did not rule if Bing Ran is 51% of AdSTM, and did not need to rule such.

I appealed May 13, 2016 order. Judge Alston, along with Defendant Chafin, were two of the 3 judges oversaw the appeal of that May 13, 2016 ruling and they granted me complete victory on all of my assignments of errors, including I did not breach the Amendment.

In the 1st Amended Complaint, the divorce decree with the incorporated Amendment are collective defined as the Decree, the Law, and the Edict that govern who is legally permitted to control the management and directions of AdSTM: Decree states clearly that person is me, and my control of management and direction of AdSTM is not dependent on how many stock share I have in AdSTM or how many stock share Bing Ran has (there are only 2 owners).

Decree states I delegate management functions to Bing Ran but I retain the veto right to his decisions. Decree states only Bing Ran and I can be on the Board, and only Bing Ran and I can serve as the President, the CEO, the other important positions in AdSTM. Decree states it takes

a certain required votes to remove the management delegation function or remove any one of us from any of those officer positions. Decree dictates: the control and management provisions and officer and Board member position provisions are independent from ownership.

Case 3662 Phase 2 closed when Bing Ran did not appeal the Court of Appeal's decision.

Case 3662 Phase 3 is defined as the remand after appeal plus adjudicating the amount Bing Ran owes me in the more recent years since the May 13 2016 judgement order. Defendant James C Clark made ruling on the amount Bing Ran owes me. Case 3662 Phase 3 is closed.

Thus, Case 3662 Phase 2 led to a Decree Which Is A Law and An Edict That Governs AdSTM to State That I Have the Control of Management and Direction of AdSTM independent from how much stock I own, a Decree that was established by Defendant James C. Clark and upheld by the Court of Appeal of Virginia.

Per Decree, I am the only person who is legally permitted to control the management and direction of AdSTM and that control is independent from how much stock I own. Per the Decree, I make all decisions for AdSTM as well, even though I delegate management functions to Bing Ran but I retained veto right to any of his decisions.

II. Sergey and Gary and Jen

Sergey was hired when AdSTM won a new NRC nuclear contract. Gary was hired when AdSTM won a new PMMAC DOD defense contract. Jen Kim was hired when a person Esther in accounting left. Later, with my approval, Sergey was promoted to become the Vice President overseeing only the nuclear work; Gary was promoted to become the Vice President overseeing only the PMMAC DOD work; Jen was promoted to be the accounting manager to ensure books

and records are accurate and complete and invoices are sent out and payment are received, and employees and bills are paid on time.

Sergey and Gary and Jen are the typical Virginia at-will employees in AdSTM, free to be employed and free to leave the employment at will. They are required to perform the specifically prescribed and limited duties and responsibilities in the nuclear, defense, and accounting areas, respectively, and to comply with all AdSTM rules and laws and code.

Sergey and Gary and Jen were not authorized to interfere with any higher management topic or ownership topic, and they were never permitted to legally represent AdSTM's or Bing Ran's or my interests. They each know about the Decree and have seen the Amendment.

III. Case 3662 Phase 4 and Case 1664

In 2018, Bing Ran casted all of his vote to vote himself off all positions in AdSTM. He also voted to no longer take the management functions I used to delegate to him. I later also voted to agree with his voting. Thus, in AdSTM, there was 100% vote to stop management function delegation from me to Bing Ran and to remove Bing Ran from all of his AdSTM positions.

Upon Bing Ran's complete departure, I became the only member of the Board per the Decree, I became the only officer of AdSTM per the Decree, and independent of those and independent of how much stock I have I also become the only person who is legally permitted to perform management functions and make decisions for AdSTM per Decree. Gary Bell and Jen Kim provided affidavits to the federal government stating Bing Ran has already completely left from AdSTM, etc., he no longer can exercise influenced on AdSTM. I did not promote Sergey or Gary or Jen to any other position, so they as 2 VPs and a manager, were required to report to me directly. Bing Ran's previous positions prescribed by the Decree legally remained vacant.

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To further ensure Employee Defendant are fully aware of the Decree, I informed them verbally and/or by writing in late 2018 and in January 2019 that the Amendment is incorporated into the divorce decree and is the law governing the management in AdSTM, I am the only board member, the only officer, and I am legally the only one permitted to control the management and directions of AdSTM and perform all management functions.

Sergey and Gary and Jen started to ignore me then turned totally against me in mid-January 2018. Soon after that, Bing Ran filed a petition against me in Case 3662 in February 2019, a case defined herein as Case 3662 Phase 4. I was sued by my own company AdSTM in Case 1664. Sergey and Gary and Jen are not parties in Case 1664 or in Case 3662 Phase 4.

The conduct or transaction or occurrence in Case 3662 Phase 4 and in Case 1664 that give rise to the claim or cause action, as admitted and agreed to by the Employee Defendants in their MTD, is: I am 49% owner of AdSTM, which is a fact made suddenly by Defendant James C. Clark at the bench when he was signing a pre-typed order in February 2019 by hand writing such sudden decision into the order to utilize it to injunct me in that same order, without holding any evidential hearing on stock share issue. The February order in Case 3662 Phase 4 became the foundation for the May 22, 2019 order, which I appealed. Defendant James C. Clark's May 22, 2019 Order for Case 3662 Phase 4 speaks for itself. Defendant James C. Clark also presided over Case 1664, made rulings and stayed Case 1664 in or about 2019.

In December 2019, it was discovered in Protorae law firm office that Employee Defendants conspired to seize AdSTM control from me, they obtained support from 4 attorneys from Protorae (Brian Chandler, Scott Dinner, John Monica, and Michael Stamp) and Bing Ran, they fabricated Bing Ran being 51% and used that fabrication to bypass the Decree, bribed Defendant James C. Clark to go with this fabrication to name me as 49% owners and will bribe higher

officials in higher courts to also go along with this scheme that is built on conspiracy and fraud and corruption. They have plenty money to bribe, they use the money they took from my personal property.

On appeal, SC of VA ruled, twice, Orders from SC of VA speak for themselves.

IV. The Only Court Can Review SC of VA's Orders for Case 3663 Phase 4 Is SCOTUS

Petition for Writ in SCOTUS is to assume Official Defendants in this case had the jurisdiction adjudicating Case 3662 Phase 4. Under that assumption, Petition for Writ to SCOTUS seeks SCOTUS's review of the state court orders on constitutional and statutory violations such as: due process, ruling on ownership lacking any evidential hearing, freedom of speech, freedom of movement, freedom of association, civil rights, constitutional issues associated with SC of VA issuing affirm and wholly adoption of lower court ruling but only with one small paragraph without offering any its own opinion. Petition to SCOTUS can only seek review of the specific languages in the orders for remand relieves, it cannot seek adjudication and remedies from corruption and conspiracy and bribery and other wrongful conducts committed by the defendants as alleged in this case. I have filed an application for a 60-day time extension to SCOTUS in August 2021, a copy sent to opposing counsels for that case.

V. This Case Is Not to Review State Court Orders and Filing this Case Was Timed to Have Maximum Evidence Available So This Court Can Effectively Adjudicate and Try by Jury to Provide Remedies and Damages Caused by the Alleged Wrongdoings and to Vacate the State Court Orders that Were Procured by Bribery

One of Employee Defendants' victory dates and one major kick back payment likely was in late June 2021 if the typical 90 days pass and if I do not submit Petition for Writ to the SCOTUS. Although the 90 days has been extended to 150 days due to COVID, it appears that some legal

professionals and public did not know the extension. June 2021, I filed Complaint in this case, a prime time when maximum amount of evidence on corruption is available to be discovered.

Considering the reporting of corruption and bribery to the FBI and the fact that Michael Stamp, who as an attorney in Protorae being one of the persons involved in the corruption and bribery, has moved on to become a deputy director of the Department of Justice overseeing the FBI; considering any reporting to the Virginia state is to report to Virginia Attorney General's office, whose lawyers are currently defending all of the Justices and Judge and courts in this case; considering all these lead to the high likelihood that the corruption and bribery will not be investigated by the FBI or by VA state. That makes this court be the only place where I can have a fair chance where discovery can be done, remedies for the harms and injuries of those wrongful conducts can be provided, discovered information can be used to take actions on the defendants in other proceedings to prevent other persons like me to be victimized by the same defendants.

Currently, Official Defendants are already very concerned about discovery. After I merely filed a motion to seek the court provide a scheduling order, in response to oppose that in document #63, Official Defendants demanded the court prohibit any discovery. Defendants do not want to answer the allegations in 1AC because if they deny those allegations, they commit perjury, if they admit those allegations, they admit criminally wrongdoing. So, all Defendants filed Motion to Dismiss (see Doc #40, 41, 43, 44) insisting this case be dismissed with prejudice so that their corruption and bribery can be forever concealed.

This case is not reviewing state orders. Dismissing this case means this court is ignoring the corruption and other wrongdoings that have caused harms and injury, is turning away from providing legal remedies to a 1st Amended Complaint that is adequality pled, is leaving the

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victim here continue suffer, and is leaving the door open for other people to be victimized in the state courts, failing the role to bring justice to protect the public and private citizens.

For these above reasons alone, MTD must be denied.

VI. All of My Claims Are Sufficiently Stated In the 1st Amended Counterclaim

Employee Defendants attempts to dismiss all claims in 1AC by Rule 12(b)(6). Federal Rule of Civil Procedure ("Fed. R. Civ. P.") 8(a)(2) states: a complaint should contain "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(d)(1) further states: "[e]ach allegation must be simple, concise, and direct." Contrary to MTD's claims, my 1st Amended Complaint contains more than what is required by Rule 8(a), it included the required alleged facts giving to plausible entitlement of relief. See 1AC.

As seen in the allegation section and claim and cause of action section in 1AC, adequate facts and elements for cause of action have been adequately pled giving rise to plausible entitlement to relief. Here, my 1st Amended Complaint has clearly identified Employee Defendant's actions and how those actions are wrongful, it has more than sufficient statements of the claims. Those statements are Clearly stated, not unintelligible, not confusing, and they meet the "short and plain" Fed. R. Civ. P. requirements to put Employee Defendants on fair notice of the charges against them in a clear and unambiguous way and to show I am entitled to relief.

MTD likely is concerned about the 1st Amended "Complaint 'lack of detail.'" Epos Tech., 636 F. Supp. 2d at 63 (citations omitted). But SCOTUS stated in Swierkiewicz v. Sorema N.A., 534 U.S. 506, 512 (2002) that Complaint should not be a collection of detailed facts and that a complaint only need to "give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests"; accord Atchison, Topeka & Santa Fe Ry. v. Buell, 480 U.S. 557,

568 n.15 (1987) (under Federal Rule 8, claimant has "no duty to set out all of the relevant facts in his complaint"). "Specific facts are not necessary in a Complaint; instead, the statement need only 'give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" See Epos Tech., 636 F. Supp.2d 57, 63 (D.D.C. 2009) (quoting Bell Atlantic v. Twombly, 550 U.S. 544, 555 (2007)). MTD should then be motion for more definite statement.

As clearly seen, Fed. R. Civ. P. regards complaint as a "notice pleading" and does not demand any evidentiary facts in any complaint because disputed facts and dispose of claims are part of the proceedings involving discovery and motions for summary judgement. Discovery and summary judgment motions will define disputed facts and dispose of unmeritorious claims. See Swierkiewicz, 534 U.S. at 512. Courts have found that if the information sought by the motion is obtainable through discovery, the motion should be denied. See, e.g., Towers Tenant Ass'n v. Towers Ltd. P'ship, 563 F. Supp. 566, 569 (D.D.C. 1983) (denying motion for a more definite statement because details such as "dates, times, names and places" are "the central object of discovery, and need not be pleaded").

All claims in 1AC meet all the above Rule and laws. Therefore, MTD should be denied.

VII. PLAINTIFF'S CLAIMS ARE NOT BARRED BY CLAIM AND ISSUE PRECLUSION

Rule 1:6, the current VA governing law of claim preclusion, requires "...final judgment, ... the same opposing party, same conduct, transaction or occurrence" Marshall v. Marshall, No. 3:20CV442 (DJN), 2021 WL 785090, at *21 (E.D. Va. Mar. 1, 2021).

Among Case 3662 Phase 4 and Case 1664, Case 1664 has not reached final judgement. Therefore, CLAIM AND ISSUE PRECLUSION is irrelevant to this federal case relative to Case 1664.

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As MTD stated, state cases used AdSTM stockownership as the occurrence or transactions or conduct that give rise to the claims or cause of actions there in the state cases.

Here in this case in Federal court, stock ownership is not litigated. To the extent if any discussion of ownership is mentioned it is only mentioned to describe to this court that, 1). as Employee Defendants have already stated in the MTD, ownership was the occurrence or transaction or conduct that give rise to the claim or cause of actions in the state court cases; 2). Ownership was the tool defendants used in their conspiracy, bribery, corruption, wrongdoings.

Here in this case in this court, I am litigating fraud, tort, abuse of process, civil conspiracy, business conspiracy, bribery and corruption of state officials that lead them to break the law, the decree, and edict. Therefore, the occurrence or transactions or conduct in this case is completely different from that of the state cases. And Furthermore:

Employee Defendants are not parties to Case 3662 Phase 4 and Case 1664.

One of the fundamental prerequisites to the application of the doctrine of res judicata is that there must be an identity of parties between the present suit and the prior litigation asserted as a bar; a party to the present suit, to be barred by the doctrine, must have been a party to the prior litigation, or represented by another so identified in interest with him that he represents the same legal right. Sup.Ct.Rules, Rule 1:6. Raley v. Haider, 286 Va. 164, 747 S.E.2d 812 (2013). The touchstone of privity for purposes of res judicata is that a party's interest is so identical with another that representation by one party is representation of the other's legal right. Raley v. Haider, 286 Va. 164, 747 S.E.2d 812 (2013)

MTD categorized Employee Defendants as privities of Bing Ran and AdSTM in ownership issue. Because I am not litigating ownership in this federal case, MTD's privities statement fails. Somehow, MTD continue incorrectly states corporate control issues is determined by ownership.

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Corporate control is determined by the Decree and is independent from ownership.

Nevertheless, on any AdSTM or Bing Ran issues or interests litigated in the state cases Case 362 Phase 4 or Case 1664, because Employee Defendants are not owners, cannot legally be corporate officers or board members or management control per the Decree, they in no way can share the same legal interest or the same legal right with Bing Ran or with AdSTM. Their only legitimate interest is to perform their job duties within nuclear, or defense, or accounting areas and get paid by doing that job while they are obligated to comply and abide with all AdSTM rules and laws, with the flexibility that if they do not like any aspect of their work, including who is their supervisor or who they need to report to, they can freely quit and seek other employment. Besides that, between them and AdSTM, or between them and Bing Ran, also considering Bing Ran already resigned all positions and management functions in 2018, there is absolutely no "contractual relationship,...." or owing any kind of ".... legal duty to each other or have another legal relationship such as co-ownership" as defined by *Columbia Gas Transmission, LLC v. David N. Martin Revocable Trust*, 833 F.Supp.2d 552, 558 (E.D.Va. 2011). Thus, Employee Defendants are not privities of anyone or any party in the state cases that commenced in 2019.

Therefore, contrary to MTD, my claims here in this court are not barred by claim and issue preclusion and res judicata does not apply here.

VIII. My 1AC IS Not BARRED BY THE ROOKER-FELDMAN DOCTRINE

Whether ROOKER-FELDMAN DOCTRINE is applicable can only be considered if the state case has concluded prior to the commencement of the district case. Because Case 1664 has been stayed and has not concluded yet, ROOKER-FELDMAN DOCTRINE is irrelevant here in respect to Case 1664. Thus, claims here should proceed relative to Case 1664 without the

concern of ROOKER-FELDMAN DOCTRINE. Even if Case 1664 concluded, but it is not, for the same reasons explained for Case 3662 Phase 4 below, this doctrine does not apply here.

For Case 3662 Phase 4, a case that has already been concluded, I am not seeking to take an appeal of an unfavorable state-court decision to this court (as stated clearly earlier, appeal of those decisions is to SCOTUS). Because of this reason, in the allegations I made and the relief I sought in 1AC, I did not even include state court judgements, to ensure this court has none of those decisions to review.

Contrary to MTD, I am not litigating ownership issues in this court. Rather, I am alleging civil conspiracy, business conspiracy, bribery of state officials into corruption, § 1983 claims based on corruptive conduct, among others.

§ 1983 claim in this case alleges state officials have already committed corruption by receiving and by agreeing to receive bribes from private citizen before, during, and after those state officials adjudicated or entered final judgement in the state cases resulting in violating my Federal rights.

§ 1983 claim in this case here is to seek remedies and recover damages not from state judgement but from defendants' conduct of bribery and corruptive illegal practice and because when state officials engaged in bribery, they no longer have any jurisdiction adjudicating those state cases, therefore their adjudication and ruling on those state cases must be nulled and voided in their entirety to begin with thus there is no need to force this court into any review of those state court judgment. My claims are not bared by *Rooker–Feldman* doctrine … "did not bar former employee's civil rights suit against employer, ….where employee did not claim that state court decision itself caused him injury, but rather alleged that employer discriminated against

him in violation of federal and state law." Davani v. Virginia Dep't of Transp., 434 F.3d 712 (4th Cir. 2006)

Also, Rooker-Feldman does not apply because I am not complaining about injuries caused by state-court judgments rendered before this court's proceedings commenced, I am not inviting this court to review those judgments, and I am not asking this court to reject those judgments based on any review of those judgements that I did not even request this court to do, "The *Rooker-Feldman* doctrine was not applicable as a bar" when "action did not ask district court to conduct appellate review of a final judgment from state's highest court, and instead was challenging action of state administrative agency." U.S. Const. Amend. 1; 28 U.S.C.A. § 1257(a); 42 U.S.C.A. § 1983; Md. Ann. Code art. 2B § 16-101. Thana v. Bd. of License Commissioners for Charles Cty., Maryland, 827 F.3d 314 (4th Cir. 2016)

IX. EMPLOYEE DEFENDANTS' ACTIONS ARE SUBJECT TO A § 1983 CLAIM

MTD claims that because Employee Defendants are private citizens and have no official state position, count against them should be dismissed. This is incorrect. As pled in 1AC, Employee Defendants conspired and bribed public officials and took other wrongful acts, thus Employee Defendants' (as Private party's) joint participation with state officials in deprivation of constitutional right (or Federal rights) proves sufficient to hold them liable under section 1983; private actor must have acted together with or obtained significant aid from state officials. 42 U.S.C.A. § 1983. Marshall v. Marshall, No. 3:20CV442 (DJN), 2021 WL 785090 (E.D. Va. Mar. 1, 2021). Employee Defendants were state actors because they corruptly conspired with a judge to issue an injunction. Ononuju v. Virginia Hous. Dev. Auth., 103 Va. Cir. 57, reconsideration denied, 103 Va. Cir. 57A (2019).

X. DIVERSITY JURISDICTION EXISTS

As 1st Amended Complaint stated, there exists several bases for this court to possess the jurisdiction: § 1983 CLAIM, subject matter jurisdiction, diversity jurisdiction, etc. MTD challenged diversity jurisdiction, but concealed Defendant Sergey is a Florida Permanent resident, as stated in 1AC and as shown in the Exhibit of 1AC showing his recent residency record kept by Virginia State Corporation is a Florida address.

The primary issue here is whether Defendant Sergey is a Virginia Resident. In MTD, Employee Defendant Sergey concealed his Florida citizenship from this court. When Court has the knowledge that Defendant Sergey is a citizen of Florida which is different from the state of citizen of Plaintiff, court retain diversity jurisdiction as the Court concludes that: (i) Saucedo is a Mexican citizen and not a New Mexico citizen.. thus concludes that it has diversity jurisdiction over this case. McDaniel v. Loya, 304 F.R.D. 617, 620 (D.N.M. 2015)

Employee Defendants claims on MTD page 10 that complete diversity is required in this case if the case is to continue reside in Federal court. That is incorrect, considering the above. Also, Article III permits federal jurisdiction: ... in cases with minimum diversity, i.e., those in which any one party is a citizen of a different state than any opposing party... U.S.C.A. Const. Art. 3, § 2, cl. 1; 28 U.S.C.A. § 1332(a)(1). De La Rosa v. Reliable, Inc., 113 F. Supp. 3d 1135 (D.N.M. 2015)

Therefore, based on the above and the fact that this case was originally filed in this court, and I did not file this case in state court then requesting removing it to the federal court, there is diversity jurisdiction.

XI. THE 1983 CLAIM HAVE MERIT AND THE COURT SHOULD EXERCISE SUPPLEMENTAL JURISDICTION ON STATE CLAIMS

My 1983 claims have merits, as stated above and in 1AC and in Exhibit B attached herein, and this court has jurisdiction. This court should also exercise supplemental jurisdiction on all state claims and other Federal claims in 1AC. Considering if state claims are adjudicated in the state court, they sooner or later will be adjudicated by the same state officials who are the defendants in this case and have been alleged in this case to have committed bribery and other wrongdoings when they were adjudicating earlier state cases Case 3662 Phase 4 and Case 1664, transferring state claims to state courts would not be fair.

As stated above, contrary to MTD, this case is not a re-litigation of state cases and is not recalculating ownership in AdSTM. Federal actions here do not concern AdSTM ownership issues and the issues this case concerns is different from the ownership issues contained in the state court. Not only issues between this case and state cases are completely different, but parties are also not the same neither.

This court exercising jurisdiction on state claims saves judicial economy and provide fairness to the litigants and others, and will lead to uniformity in adjudicating all claims that rest upon same or similar conducts or occurrences pled in 1AC (which are different from claims and conduct and occurrences in the state cases), determining whether to exercise supplemental jurisdiction, a district court should undergo a flexible balancing analysis in which it should consider and weigh the values of judicial economy, convenience, fairness, and comity. 28 U.S.C.A. § 1367(a). Salim v. Dahlberg, 170 F. Supp. 3d 897 (E.D. Va. 2016). The district court's decision to exercise supplemental jurisdiction is purely discretionary and does not constitute a jurisdictional issue. 28 U.S.C.A. § 1367(a). Salim v. Dahlberg, 170 F. Supp. 3d 897 (E.D. Va. 2016). Thus, I respectfully request this court retain jurisdiction on all claims.

XII. THE STATE LAW AND OTHER FEDERAL CLAIMS HAVE MERIT THUS THE COURT SHOULD EXERCISES JURISDICTION OR SUPP JURISDICTION ON ALL

a. Plaintiff Has Standing to Assert a Business Conspiracy Claim and the Claim is Not Barred by Intracorporate Immunity

First of all, I as the owner, as the only director, as the only officer and the only person empowered per and by the Decree to have legal authority to control the management and direction of AdSTM absolutely have standing in this claim, business conspiracy or conspiracy claim belongs to owner who has suffered injuries, as in Trademark owners' allegations that former employees, while still employed by restaurant, conspired to misappropriate and copy restaurant's trade secrets and proprietary information, lure away employees, copy business format, and imitate and infringe trademarks, and conspired with third parties to achieve unlawful means, were sufficient to plead conspiracy claim under Virginia Business Conspiracy Act. West's V.C.A. §§ 18.2–499, 18.2–500. Buffalo Wings Factory, Inc. v. Mohd, 622 F. Supp. 2d 325 (E.D. Va. 2007)

Secondly, the "intra-corporate immunity" doctrine, which states that conspiracy between corporation and agents of corporation acting within scope of employment is legal impossibility, has an exception: if an employee, officer, or agent has an independent personal stake in the conspiracy, a conspiracy with the corporation may be found. Buffalo Wings Factory, Inc. v. Mohd, 622 F. Supp. 2d 325 (E.D. Va. 2007). In this case, as pled, Employee Defendants have independent personal stake in the conspiracy, and in conspiracy among themselves, therefore, there is no intra-corporate immunity available for them.

Thirdly, this case did not plead AdSTM is conspiring with the Employee Defendants. This case pled conspiracy and business conspiracy among 3 AdSTM employees only. This case also pled those 3 employee Defendants acted outside of the scope of their employment. Thus, intra-corporate immunity, which involves complaint naming corporation as defendant and

alleging it conspired with its agent who is acting in the scope of their employment, does not even apply in this case. Employee Defendants conspired as under Virginia statute, a "business conspiracy" arises when two or more persons combine, associate, agree, mutually undertake or concert together for the purpose of willfully and maliciously injuring another in his reputation, trade, business, or profession by any means whatsoever. West's V.C.A. § 18.2–499. Harrell v. Colonial Holdings, Inc., 923 F. Supp. 2d 813 (E.D. Va. 2013)

Furthermore, when Employee Defendants hired Protorae law firm as purported AdSTM legal counsel, those Employee Defendants acted outside of the scope of their employment and conspires with Protorae and its attorneys . 1AC stated adequate factual basis that more than satisfied Rule 8(a) and has given Defendants "fair notice of what the . . . claim is and the grounds upon which it rests.'" See Epos Tech., 636 F. Supp.2d 57, 63 (D.D.C. 2009) (quoting Bell Atlantic v. Twombly, 550 U.S. 544, 555 (2007)).

Therefore, Plaintiff Has Standing to Assert a Business Conspiracy Claim and the Claim is valid, and it is Not Barred by Intracorporate Immunity.

b. I Alleged a Viable Claim for Abuse of Process (I need do refine my response)

1AC has alleged Employee Defendant's ulterior motives and purposes, e.g., they illegally wanted to illegally seize the control of AdSTM from me and illegally take control of the $2.3M of my property. They have no authority in AdSTM whatsoever to initiate any legal actions by using AdSTM's name or to proceed with serving me. But in order to achieve their ulterior motives, they conspired with Protorae and its attorneys, fraudulently used the process that is not proper as in the regular prosecution of the proceedings. After process was issued, employee defendant continued their corruption and bribery practice to accomplish that ulterior motive: to

obtain control and my assets illegally. Because 1AC pled (1) the existence of an ulterior purpose, and (2) an act in the use of the process not proper in the regular prosecution of the proceedings. Montgomery v. McDaniel, 271 Va. 465, 628 S.E.2d 529 (2006), the claim is valid.

c. I Have Standing to Assert an Accounting Claim

AdSTM is operated by the Decree. Decree dictates I legally have the legal control of AdSTM. Decree also dictates that I have access to all record in AdSTM, including those records that were kept by employees. Therefore, I have the absolute standing to assert an accounting claim. (I need to add more here to these claims here.....)

d. False representation claim Also Can Be Regarded as actual fraud and constructive fraud and breach of contract and Negligence and defamation claim

1AC contained both Federal Claims and State Claims. Some claims are claims other than Virginia claims and clarifications can be provided. This is a valid claim because I have pled defendant intentionally and knowingly made a false representation of a material fact with intent to mislead resulting reliance by the party mislead, and resulting damage to the party misled. Cars Unlimited II, Inc. v. Nat'l Motor Co., 472 F. Supp. 2d 740 (E.D. Va. 2007).

Defendants is bound by employment contract and fiduciary duty and loyalty to abide AdSTM rules and laws, including the Decree. Defendant violated the Decree and caused damages. (I need to add elements to these claims here.....).

e. Bribery Also Can Be Regarded as theft and defamation claim

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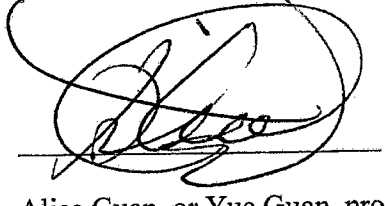
CERTIFICATE OF SERVICE

I hereby certify that on August 19, 2021, a copy of the foregoing and the attachments have been mailed and emailed to all counsels to:

Counsel for GARY BELL, SERGEY KATSENELENBOGEN AND JEN KIM, James B. Kinsel, PROTORAE LAW PLLC 1921 Gallows Road, Ninth Floor Tysons, Virginia 22182 Tel.: (703) 749-8507 Fax: (703) 942-6758 at: jkinsel@protoraelaw.com

Counsel for the Circuit Court of the City of Alexandria and James C. Clark, Calvin Cameron Brown, Office of the Attorney General, 202 North 9th Street Richmond, Virginia 23219 Telephone: (804) 786-4933 (this phone number gives out a different number and does not identify attorney Brown as the recipient) at Email at: cbrown@oag.state.va.us



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No. 20-

IN THE

SUPREME COURT OF THE UNITED STATES

ALICE GUAN (YUE GUAN),

Applicant,

v.

Bing Ran

Respondent.

Sworn Statement by Petitioner on the Content of Her Oral Argument in Front of a 3-Justice Panel of the Supreme Court of Virginia

1. I am Alice Guan.
2. I am the Petitioner in this case.
3. I have personal knowledge of the fact in this sworn statement.
4. I am a citizen of the United States and is protected by the Federal laws.
5. Before Supreme Court of Virginia made its January 11, 2021 judgment, it scheduled me for a10-minutes Oral Argument. The following is the text of exactly what I presented to a panel of 3 justices: the Honorable William C. Mims, the Honorable Stephen R. McCullough, the Honorable Leroy F. Millette:

Thank you, your honor. Good afternoon, Justices. May I please the court. My name is Alice Guan. My case is of public importance. The lower court's order

violated the 1st and the 14th Amendments of the Constitution. It violated Title VII of the civil rights Act. And it treated me like a criminal in a civil case through the permanent injunction order. It altered the contract and the divorce decree without the consent of both parties. And it made ruling absolutely absent of any laws and facts.

My case is associated with the management of my company AdSTM, a company I formed in 1996 with me as the 100% stock owner for 12 years with annual revenue about $16M sustained for several years. Then I sold 49% of the stock to my Ex-husband after the divorce. The divorce decree originally contained a parental and support agreement as well as property settlement agreement collectively called the PSA. On the day prior to the expiration of child support, and child custody issues, I and my ex-husband amended the PSA with a document called the October 15th, 2008 Amendment.

The lower court on May 13, 2016 incorporated the amendment into the divorce decree, to make the decree conform to the amendment. There are three key provisions of the Amendment, provisions 3, 4, and 5.

Provision 3 states there are only 2 shareholders in AdSTM, I and my ex-husband, I own 51%.

Provision 4 states, there are only two board members in AdSTM, I and my Ex-husband.

And Provision number 5 states there are only two people who can manage AdSTM, with me holding the management rights with my ex-husband receiving management functions that is delegated by and from me, and I have the veto right on all of my ex-husband's decisions.

In addition, Provision 5 states, the delegation and the veto rights can not be removed unless with 2/3 of voting stock.

The spirit of the Amendment was I and my ex-husband would manage and operate our company through our amendment without submitting the amendment to the court, but if he or I breach the amendment, then the amendment is null and void, then we go back to use the PSA which is intact within the divorce decree. But per my ex-husband's motion which is in Appendix page 69, he motioned the court to incorporate the amendment into the decree so the decree conform with the amendment, The Court did, in 2016.

About 2 years after the lower court made the divorce decree conform with the Amendment, therefore replacing the corresponding terms in the PSA regarding the management of AdSTM, my ex-husband in 2018 resigned all of his roles and positions. With his action, he voted to remove the delegation of the management functions from me to him. I voted and agreed. Therefore with 100% vote, the delegation function from me to him has been removed. From there on, I started to assume all of the management functions in AdSTM. All of my actions have been in conformance with the Amendment which is a court order, as part of the divorce decree.

In February 2019, after my Ex-husband has abandoned his roles and responsibilities for more than 8 months in AdSTM, he filed a motion, he filed a petition for rule to show cause in the lower court, when he had no legal standing to do so. He asked the court to deem my actions breaching of the amendment, he asked the court to go back to the PSA to the terms and provisions that have already been replaced by the amendment. The court granted everything my ex-husband wanted, including a last minute handwritten proposed order regarding he is 51% owner of AdSTM. The court did so without any laws and evidence.

Court's injunction order and order in general overstepped the fundamental right of civil liberties that I have, it created undue interference with AdSTM's function. The court egregiously deprived my rights of freedom of speech, freedom of association, freedom of expression, and freedom of movement. The lower court locked me down permanently and banned me from going to my own workplace, from association or interaction with anyone in my company, from any form of speech and expression in my own company, which is a significant amount of time and a significant portion of my life. Lower court also egregiously deprived my private own property and my ability and my rights to protect my property and my investment in my company. Furthermore, lower court deprived my right that is guaranteed by the amendment which is the divorce decree.

The lower court erred and rewarded the litigant who has no standing under provisions 3, 4, 5, 12 and 13 because the litigant, my ex-husband, has abandoned all of his roles in the company 8 months prior. Lower court erred by signing a last-

minute proposed order giving my ex-husband 2 extra percent of the stock share absent of law and absent of evidence. The lower court erred by bringing the obsolete provisions from the PSA back to life after the very same lower court has amended those provisions with the Amendment. The lower court erred by changing the private contract or its meaning without both parties' consent. The divorce decree is an important part of family law, the lower court erred by changing the divorce decree or its meaning without the consent of both parties. And most significantly, the lower court knew the contract and the divorce decree, the lower court read the contract in open court, and knew what they meant. But the lower court nevertheless ruled against its plain meaning under the clear objections from me.

There are not only Federal questions within this case, but also questions on contract laws, family laws, judiciary duties of a court that are common to all of the states' procedures and laws, as well as to Federal procedures and laws. These are all matters with public importance. Those are matters of interpretation of Justice to all citizens in the United States. I pray the court agree to review the merit of my case. Thank you, Justices.

Certificate

I, Alice Guan, sworn under the penalty of perjury that the above statement is true per my best knowledge.

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Alice Guan

August 23, 2021

No. 20-

IN THE
SUPREME COURT OF THE UNITED STATES

ALICE GUAN (YUE GUAN),

Applicant,

v.

Bing Ran

Respondent.

On Petition for Writ of Certiorari to the Supreme Court of Virginia

APPENDIX (Total 95 Pages)

Volume 3 of 3

For the

Petition for Writ of Certiorari

8/23/2021

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Record No. 200995

IN THE SUPREME COURT

OF

VIRGINIA

ALICE JIN-YUE GUAN

Appellant

v.

BING RAN

Appellee

Appeal of Orders
From the Circuit Court of the City of Alexandria
Circuit Court No. CL07003662
(Hon. James Clark)

PETITION FOR REHEARING EN BANC

(related SCVA order dated Jan 11, 2021) (per Rule 5:20)

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Imagine you are gagged with duct tape and bound with metal chains, your personal property in millions of dollars is stolen, you are permanently discriminated in workplace, prior contractual agreement you signed does not count, prior orders of the courts do not count, your Decree of Divorce does not count, and all these happened to you because you took actions to fulfil your duties and responsibility per the contractual agreement, per the orders of the courts, per Decree of Divorce, per Federal laws, and per the laws applicable to all 50 states. Lower Court's order and Supreme Court of Virginia's January 11, 2021 order (which refused my Petition to Appeal) affirming lower court's order (here both orders are collectively called the "Order") set a Precedence which unintentionally not only created an inconsistency with the fundamental doctrines and laws on validity and enforceability of contractual agreement, of orders of the courts, of decree of divorce across all 50 states in the US, but also created a contradiction with Constitution's 1st Amendment and 14th Amendment, with the Right of Freedom of Association, with Title VII of Civil Rights Acts, with Anti-Discrimination Act, and with IRS Codes. When this case is cited as a Precedence in future cases, severe consequences such as the ones described above can occur to people in VA and in the US without just and contrary to these long-existing and robust Laws.

One unintended consequence of the Precedence set by the Order allows a party's behavior of creating illegal, illegitimate, fraudulent rules and documents etc.

to defeat prior existing agreement, orders and Decree. It supported my ex-husband's same behavior of falsifying documents and giving misrepresentations over the span of 35 years, 1). at our marital home; 2). in his importing businesses where discovered documents show he was charged for breach of contract and conversion and fraud and misrepresentation, 236 F.3d 938 (8th Cir. 2001) Oriental Trade Co. Inc., v. Sam G. Firetti and Bing Ran; 3). in AdSTM; 4). in Qi Tech and ForeData companies as the United States government alleged in a pending Qui Tam lawsuit against him and others, Case 1:18-cv-00795-CMG-MSN.

This case relates to AdSTM, a company I founded in 1996, owned, established and built, then later co-owned in 2008 with my ex-husband Bing Ran ("Bing"). In AdSTM, Bing treats me and influence others to treat me with the same/similar home behavior as demonstrated in the record of completely depriving my own financial rights, bully, abuse, violence, battery, forming agreements then violate each.

According to Federal law (such as IRS Code) and the laws universal to all 50 states, AdSTM as an S corporation splits its profit between 2 owners. In AdSTM: revenue – expenses = profit, all profit belongs to individual owners as their own personal properties, revenue – expenses – profit that belongs to owners = 0. AdSTM is to have zero-bottom line. Bing's personal property from the profit is Bing's property pool, my personal property from the profit is my property pool. During the July 2008- July 31, 2017 nine-year period, AdSTM generated revenue of about

$14M - $16M per year with profit margin between 3% to at least 8%. AdSTM's profit is estimated to be about $825,000 per year. During these 9 years: the total estimated profit AdSTM made is about $7,5000,000, about $3,750,000 of which is Bing's private property pool, about $3,750,000 of which is my private property pool.

Lower court through two previous trials (for the time period ending July 31, 2017) found that Bing's property pool has already paid Bing a certain amount, my property pool has already paid me a lesser amount, lower court issued judgement so that the amount from my property pool paid to me is equal to the amount paid from Bing's property pool to Bing.

Besides the amount of each of our personal property pool that has already been paid to each of us, through July 31, 2017, Bing's pool is supposed to have about $2,563,000 remaining but he has taken all the money in his pool as loans to himself prior to July 31, 2017. My pool is supposed to have about $2,563,000 but Bing has taken $181,000 from my pool as loans to himself, the remaining amount of my personal property pool has been placed in AdSTM's Fidelity Investment account by Bing which had a balance of $2,382,901.42 on July 31, 2017.

During trials, Bing testified to the following loans that he paid himself without any promissory notes: about $550K prior to October 2014, $1,431 in Jan 2015, $20,000 in March 2015, $70,000 and $9,193 in April 2015, $168,328 in June 2015,

$455,879 in July 2015, $10,000 in October 2015, $811,727 in Feb. 2016, $301,430 in Oct 2016, $346,410 in July 2017. Total is $2,744,000. The legal effect of the lower court's order as well as the Court of Appeal's order deemed those are legitimate loans and those loans continued to remain as Bing's personal property.

What Bing and I had was an abusive marriage where Bing deemed his battery of me is none of Fairfax County police's business and he ordered police officer go away. I obtained temporary protective order against Bing. At home, he would make agreements with me, then he would make up new rules to violate those agreements leading to a cyclic behavior of abuse and violence towards me. His abuse and violence did not stop after we separated and later divorced in 2007. From October 2014 and on, he dared to play in the same way against me in court.

I have always served as the President and CEO since the beginning of AdSTM in 1996 and 10 years later, AdSTM was generating about $16,000,000 annual revenue performing government contracts in 5 Federal Agencies. Soon after Bing and I separated in 2006, we signed a PSA (which gave our residence house to me) and he began to attempt wrestling control of AdSTM from me. The PSA was incorporated into our divorce decree in 2007. On October 15, 2008, Bing and I signed the famous October 15, 2008 amendment to amend the PSA. We planned not to incorporate this amendment into the Divorce Decree but abide to it, including I sell him my residence house at half of the market price which I did. We agreed

that in the event one of us breach the amendment, then all deals have to be called off and the Decreed PSA governs. Bing and I entered litigation in October 2014, the order from that litigation was appealed, appellant court made reversal and remanded the case. The result of the original litigation, the appeal and the remand solidified the Golden Ruler status of the amendment (the "Golden Ruler" or "Golden Ruler Amendment"): on May 13, 2016, it was incorporated into the Decree of Divorce retroactively with an effective date of October 15, 2008 to amend the PSA. Not only the Golden Ruler permanently replaced the corresponding terms in the PSA, but it also added provisions. Bing tried multiple times to deem it breached by me or by him. He was not successful. The Golder Ruler Amendment, as a contractual agreement, as orders by the courts, as a Decree of Divorce, according to the fundamental doctrine and the laws of the 50 states, does not, cannot, shall not be do away or expire, any other rules or documents created after October 15, 2008 that are not in conformance with it should be deemed not valid.

The Golden Ruler Amendment states: A). I, as an individual, not tied to or depend on my officer positions or my board positions or how much stock I own in AdSTM, have the ultimate saying in the management of AdSTM, I "delegate functions" in management to Bing, any decision made by Bing must receive agreement from me before decision implementation, I have the right to "veto" any of his decisions. If I veto his decisions, he can suggest another decision and seek

my approval, and again, no decision can be implemented unless I approve it. It takes 2/3 of stock share in agreement in order to remove the "delegate functions" provision or to remove the "veto" provision. B). I will always be the President and the Secretary; Bing will always be the Chairman of the Board and Treasure. C). The Board can only consist of me and Bing unless 100% stock share agree otherwise. D). On dealing with stock share, conditions to purchase stock is unchanged in PSA but the timing of purchase changed: after the date when AdSTM finishes its last 8(a) contract (which according to AdSTM's contract performance data the date is in September 2012), or after Bing applies to the SBA and can secure his own minority status with the SBA to receive his certification on qualifying AdSTM as the 8(a) entity (Bing never received such certification from the SBA possibly due to his lack of courage to apply or due to his qualification not adequate in the eyes of the SBA), whichever is earlier, 2% of my stock can be sold to him, if other stock purchase conditions in PSA are met.

For each of A), B), C), and D), Bing used the typical practice he perfected through many years: he created documents and structures and rules to defeat the Golden Ruler. I Petitioned to the Court in 2019 and condemned his such actions.

For item D) above, in a prior litigation proceeding, Bing presented a document purportedly signed by me to sell 2% of my stock to him in 2010. That purported document is not only not in compliance with the Golden Ruler on the timing of stock

purchase, it also does not meet the purchase requirement outlined in the PSA: Bing must fully dedicate his full time to AdSTM in supporting me in running the business. Discovered record shows that Bing did not dedicate his full time to AdSTM in supporting me. In 2009, he involved himself with Qi Tech LLC, became Qi Tech's CEO, Director, and started to have ownership in Qi Tech. Records show Bing signed government contracts as Qi Tech LLC's CEO or its Director, Bing single handedly opened Qi Tech LLC bank accounts, Bing signed hundreds of Qi Tech LLC's checks, many were to pay Bing himself. Bing also formed Virsys and VirTrade and conducted businesses there. Thus, the purported stock sale document should be thrown out.

In the legal proceedings commenced in 2019 that led to this appeal, no evidence was presented in court on the stock share issue, but at the moment when the lower court was about to sign the computer printed order, Bing's counsel in one split second of impromptu added one Handwritten sentence regarding the stock share. Lower court signed. The Order is based on the complete void of any evidence, it formed a contradiction with the terms and conditions required for the 2% stock purchase as specifically stated in PSA and in Golden Ruler, and it formed a contradiction with the basic doctrine on evidence that is universal to all 50 states.

For item C) above, Bing presented to the lower court several Board composition documents that were dated in 2014 and later, none include my name as

a board member. Those documents were not in compliance with the Golden Ruler thus should be thrown out.

For Item B) above, record shows that Bing produced documents to name Jen Kim as the secretary and later to name her as the President of AdSTM. These documents contradict with the Golden Ruler thus should be thrown out.

For item A) above, Bing first created a new stock share status for himself in 2014, then named himself only as the Board, then added Sergey Katsenelenbogen onto the Board, then created a fraudulent, illegal, and illegitimate AdSTM by-law. This AdSTM by-law stripped all of the President's power and responsibilities outlined in AdSTM's original true by-law. All of these created by Bing and Bing's other illegal, fraudulent, fictitious documents and structures were illegitimate because the way they were created and their contents are contrary to the Golden Ruler, thus they should be thrown out.

Discovered records show that Bing's behaviors in Qi Tech LLC and in ForeDate caused him to be a defendant in a Qui Tam lawsuit; in 2018, Bing and Gary Bell and Jen Kim and Sergey Katsenelenbogen's actions caused AdSTM lose the Top-Secrete Facility Clearance I earned for AdSTM in AdSTM's early days, caused AdSTM lose half of its contracts and half of its employees. In the end, facing his own doing causing such destruction to AdSTM, Bing agreed to resign all of his

officer positions, board positions, any and all management functions, for which I agreed.

Golden Ruler states, there is only one person I can delegate management function to, that person was Bing prior to his complete departure from AdSTM, after Bing chose to leave and I agreed, thus more than 2/3 of stock share have been in agreement that I no longer need to delegate any function to him; all management and leadership rest upon my shoulders and I have the complete liberty to manage AdSTM in any way I chose to. All of my actions have been completely in compliance with the Golden Ruler, including paying myself loan from my own property pool with promissory notes in accordance with IRS Codes on loans. Bing, even though he no longer has any role in AdSTM, he thus without any legal standing filed Petition to prevent me from managing the company and he demanded the court to deprive millions of dollars of my own personal property and to rule I have no role in AdSTM and to believe in his management delegation made prior to his complete departure from AdSTM to Gary and Sergey and Jen and that these 3 people have all the power in AdSTM, and I have none. Not only Golden Ruler states Bing not allowed to implement any decision unless I approve and that he does not have rights or authority to further delegate the functions I delegated to him, but also Virginia laws state once a person leaves his position, any delegation or appointment he made

become void and null. Bing's position and claim and argument should be thrown out because they are contrary to the Golden Rulers.

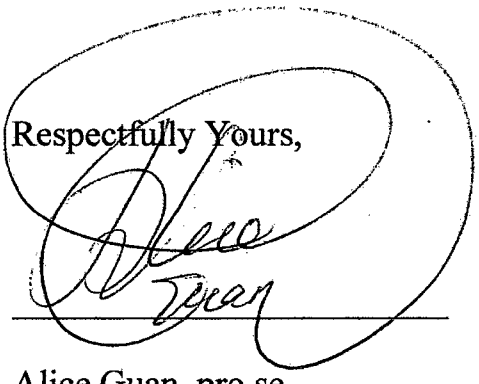
Sadly, Order agreed with Bing and then gave Bing what he wanted and some more. The Order disregarded the contractual agreement, the Golden Ruler, the PSA, prior orders of the courts relating to the Golden Ruler, and the Decree of Divorce. The Order basically rendered these documents useless by contradicting with the very basic and fundamental doctrine and laws on the validity and enforceability of contractual agreement, on the orders of the courts, on Decree of Divorce, and on S Corp, the very doctrine and laws long existed in all 50 states. The Order deprived my fundamental rights of civil liberty and my property, it created interference with AdSTM's operation. Order also created contradictions with IRS Codes on S Corp and on Loans, with Constitution's 1st Amendment on Freedom of Speech and with 14th Amendment on Freedom of Movement, with the right to freedom of association, with Title VII of Civil Rights Acts, with Anti-Discrimination Act in workplace. This Petition also raises a question on whether or not gender affects the justice that one seeks and receives in our society, gender of parties, of judges, and of justices.

WHEREFORE,

I respectfully and sincerely plead to the full Court to reverse the Order and grant this Petition for Rehearing.

January 25, 2021

Respectfully Yours,



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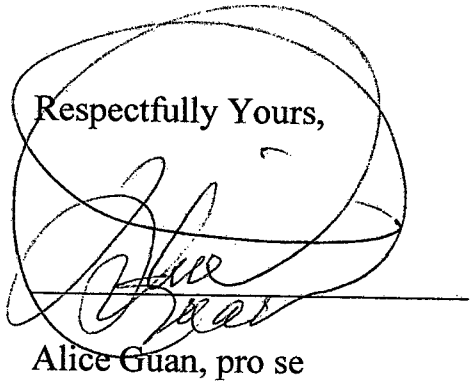
CERTIFICATE OF TRANSMISSION AND SERVICE

I hereby certify that, on January 25, 2021, I filed this Petition with the Court by emailing a PDF file of this Petition to scvpfr@courts.gov, in the same email, I also included Appellee's counsels, Chris Schinstock at cschinstock@schinstocklaw.com, and Kyle Bartol at kbartol@schinstocklaw.com.

January 25, 2021

Respectfully Yours,



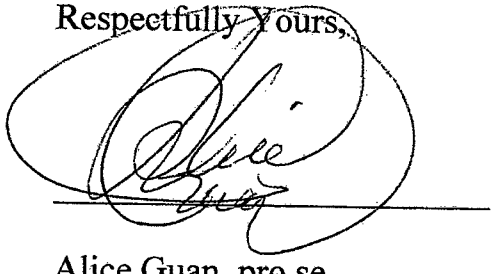
Alice Guan, pro se

CERTIFICATE OF COMPLIANCE WITH WORD COUNT AND PAGE LIMIT

I certify that this Petition complies with the type-volume limitation. This Petition 10 pages excluding cover page and certificates and signature, and it contains 2586 words and uses a Times New Roman 14-point font and contains 197 lines of text.

January 25, 2021

Respectfully Yours,



Alice Guan, pro se

80-A

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

ALICE GUAN, *Plaintiff*,	)	
v.	)	Case No. 1:21-cv-00752-RDA-TCB
GARY BELL, et al., *Defendants*.	)	

MEMORANDUM IN SUPPORT OF DEFENDANTS GARY BELL, SERGEY KATSENELENBOGEN AND JEN KIM'S MOTION TO DISMISS PLAINTIFF'S 1ST AMENDED COMPLAINT

Defendants Gary Bell, Sergey Katsenelenbogen and Jen Kim (hereinafter the "AdSTM Employees") file this Memorandum in Support of their Motion to Dismiss ("Updated Memorandum"), pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure, respectfully requesting the court to dismiss, with prejudice, the entirety of plaintiff's claims against the AdSTM Employees that are set forth in her 1st Amended Complaint ("Amended Complaint"). This Memorandum is updated from the AdSTM's memorandum in support of its initial motion to dismiss in order to address the four new counts (Counts I-IV) that are set forth in Plaintiff's 1st Amended Complaint (Dkt. 17) as well as the additional allegations.

Plaintiff, Alice Guan, attempts in her *pro se* Amended Complaint to do what the law does not permit: having a federal court provide appellate review of a final order entered by a Virginia state court that was appealed and affirmed by the Supreme Court of Virginia. Along with the AdSTM Employees, plaintiff named as defendants the Honorable James C. Clark of the Alexandria Circuit Court (18th Judicial Circuit of Virginia), who entered the May 22, 2019 Order

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("May 22 Order") about which plaintiff disagrees, and each Justice for the Supreme Court of Virginia as a result of that court affirming the May 22 Order. For that reason, and a host of other reasons set forth below, plaintiff's Amended Complaint should be dismissed with prejudice.

PROCEDURAL AND FACTUAL BACKGROUND

Plaintiff has spent years litigating myriad issues relating to her ownership interest in AdSTM, including litigating claims against her former husband, Bing Ran ("Mr. Ran"), and claims against AdSTM. AdSTM is a corporation formed under Virginia law, in the business of government contracts, owned by Mr. Ran and the plaintiff. Exactly which of either Mr. Ran or plaintiff was the majority owner, legally permitted to control the management and direction of AdSTM, was a critical issue that was hotly contested—and resolved by final order in Mr. Ran's favor—in the Virginia state courts.

Specifically, on May 22, 2019, the Honorable James C. Clark of the Alexandria Circuit Court entered an Order declaring plaintiff as the minority shareholder, owning 49% of AdSTM, and permanently enjoined her "from representing to third parties that she is the 51% majority shareholder of AdSTM, as she is 49%." Exhibit 1; Pl.'s Compl. Exhibit F. Plaintiff appealed that decision to the Court of Appeals for Virginia, which affirmed the domestic relations portion of the Circuit Court's ruling and transferred the corporate portion to the Supreme Court of Virginia. Exhibit 2. On January 11, 2021, the Supreme Court of Virginia found that "there is no reversible error in the judgment complained of. Accordingly, the Court refuses the petition for appeal." Exhibit 3; Pl.'s Compl. Exhibit H. The ownership issue was fully briefed by the plaintiff and Mr. Ran. *See* Exhibits 4 and 5.

Unsatisfied with her day in the Virginia court system, plaintiff now improperly attempts to re-litigate the same issues before this federal court. During the brief time since plaintiff filed

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her original complaint on June 23, 2021, plaintiff has also filed the following pleadings: 1) 1st Amended Complaint (Dkt. 17); 2) Motion to Add 5 Defendants (parties) (Dkt. 19); 3) Motion to Moot (Dkt. 18); and 4) Motion to Withdraw Motion to Add 5 Defendants (parties)) (Dkt. 37). This Updated Memorandum is filed within fourteen days after plaintiff amended her complaint.

STANDARD OF REVIEW

A 12(b)(6) motion should be granted where the plaintiff has failed to "state a plausible claim for relief" under Rule 8(a). *Walters v. McMahan*, 684 F.3d 435, 439 (4th Cir. 2012) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009)). To survive a motion to dismiss under Fed. R. Civ. P. 12(b)(6), a complaint must allege facts, as distinct from mere labels and conclusions, giving rise to a plausible, rather than merely conceivable, entitlement to relief. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007); *Ashcroft v. Iqbal*, 556 U.S. 662, 684 (2009); *Francis v. Giacomelli*, 588 F.3d 186, 193 (4th Cir. 2009) ("plaintiffs may [only] proceed into the litigation process when their complaints are justified by both law and fact." (parenthetical added for clarity)). Accordingly, each of the Counts of the Complaint should be dismissed for failure to state a claim pursuant to Fed. R. Civ. P. 12(b)(6) and the pleading standards set forth in *Twombly/Iqbal*. *Twombly*, 550 U.S. at 570; *Iqbal*, 556 U.S. at 684; *Willner v. Dimon*, 849 F.3d 93, 112 (4th Cir. 2017); *Francis*, 588 F.3d at 193.

ARGUMENT

Nothing in the plaintiff's Amended Complaint changes the fact that her allegations suffer from numerous legal deficiencies, rooted in the fundamental legal doctrines that litigants are not permitted to re-litigate the same issue twice, federal courts are not permitted to sit as appellate courts of state courts, and 28 U.S.C. § 1983 actions, aimed at actors operating under the color of state law, are wholly inapplicable in this matter, much less against the AdSTM Employees.

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I. PLAINTIFF'S CLAIMS ARE BARRED BY CLAIM AND ISSUE PRECLUSION

Federal courts look to state law to determine whether a claim is barred by res judicata. *Davison v. Rose*, 2017 WL 3251293, at *6 (E.D. Va. 2017) ("In considering the preclusive effect of a state court's dismissal with prejudice, federal courts apply applicable state law rules."). The Supreme Court of Virginia, in *Funny Guy, LLC v. Lecego, LLC*, 293 Va. 135 (2017), conducted an extensive review of Virginia's res judicata jurisprudence and set the framework for determining whether a claim is barred by res judicata under Rule 1:6 of the Rules of the Supreme Court of Virginia. In doing so, the court summarized with approval two commentators' succinct summary of res judicata: "as Henry Black put it, litigants must 'make the most of their day in court"[1] and "[w]ith equal clarity, it could also be said: 'The law should afford one full, fair hearing relating to a particular problem—but not two.'"[2] Res judicata includes claim preclusion and issue preclusion, which both apply in this case.

In *Funny Guy*, the court made clear that "it does not matter that the second suit includes alternative legal theories or would require evidence not present in the first suit." *Funny Guy*, 293 Va. at 150. Rather, a court should follow the "same conduct, transaction or occurrence" test in Rule 1:6(a) of the Rules of the Supreme Court of Virginia to determine whether res judicata bars subsequent litigation. Rule 1:6(a), entitled "Res Judicata Claim Preclusion," provides:

> A party whose claim for relief arising from identified conduct, a transaction, or an occurrence, is decided on the merits by a final judgment, is *forever barred from prosecuting any second or subsequent civil action* against the same opposing party or parties on any claim or cause of action that *arises from that same conduct, transaction or occurrence*, whether or not the legal theory or rights asserted in the second or subsequent action were raised in the prior lawsuit, and regardless of the legal elements or the evidence upon which any claims in the prior proceeding depended, or the particular remedies sought.

[1] *Citing*, 2 Black, supra note 5, § 731, at 1096.
[2] *Citing*, Kent Sinclair, *Guide to Virginia Law & Equity Reform and Other Landmark Changes* § 11.01, at 246 (2006).

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(emphasis added). Further, Rule 1:6(d) specifies that "[f]or purposes of this [res judicata] Rule, party or parties include all named parties and those in privity."

"[D]eciding what constitutes a single transaction or occurrence under Rule 1:6 should be a practical analysis. The proper approach asks 'whether: (i) the facts are related in time, space, origin, or motivation; whether they form a convenient trial unit, and whether their treatment as a unit conforms to the parties' expectations or business understanding or usage." *Id.* at 154. The factors should be "considered 'pragmatically' with a view toward uncovering the true underlying dispute between the parties." *Id.* at 154-55.

Issue preclusion (sometimes called collateral estoppel) is:

> the preclusive effect impacting [ ] a subsequent action based upon a collateral and different cause of action." *Id.* at 671. In other words, when bringing a second cause of action "the parties to the first action and their privies are precluded from litigating any issue of fact actually litigated and essential to a valid and final personal judgment in the first action." *Id.*; *see also Funny Guy*, 293 Va. at 142 ("Issue preclusion bars re-litigation of common factual issues between the same or related parties." citing *Rawlings v. Lopez*, 267 Va. 4, 4–5 (2004)).

Simpkins v. Ocwen Loan Servicing, LLC, 2018 WL 11239080, at *3 (E.D.Va. 2018).

Here, when measured against the pragmatic approach set forth in *Funny Guy*, plaintiff has previously litigated each of her claims and the key fact of ownership filed in the case at bar. Motivating each of her claims and factual allegations is her underlying assertion that she is the true majority owner of AdSTM. This assertion was litigated and rejected by the Alexandria Circuit Court and affirmed by the Supreme Court of Virginia. This same prior decision is preclusive to plaintiff's claims not only as against the prior defendant, Mr. Ran, but also to his privities, which include each of the AdSTM Employees.

By her own words, plaintiff requests this court to "vacate the aforementioned state court orders, judgement, rulings, opinions, and rationales" from the Virginia state court litigation.

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(Am. Compl. at p. 43) ("WHEREFORE" clause (a)). Each count in the Amended Complaint arises from plaintiff's incorrect assertion that she is the 51% majority shareholder of AdSTM, despite the fact that her respective ownership in AdSTM was the subject of past adjudication in Virginia courts that ultimately determined plaintiff to be the 49% minority shareholder.

The May 22 Order not only found that plaintiff was the minority shareholder, owning 49% of AdSTM, it also "permanently enjoined, until further order of this Court from representing to third parties that she is the 51% majority shareholder of AdSTM, as she is 49%." Exhibit 1. The May 22 Order also barred plaintiff from contacting AdSTM's employees and attorneys: "A permanent injunction against the Plaintiff is hereby granted, until further order of this Court, enjoining her from having any contact with any AdSTM employees, attorneys and/or clients as well as enjoining her from having any physical access to any of AdSTM's offices and properties." *Id.* Thus, the May 22 Order fully addresses the same underlying dispute that plaintiff seeks to re-raise in this litigation: namely her contention that she is the true 51% owner. Her allegations fall squarely within the May 22 Order. For example, plaintiff alleges that the AdSTM Employees "conspired to deprive my rights in managing AdSTM," (Am. Compl. at ¶ 103). And she demands that AdSTM Employees "turn over to [plaintiff] all controls, all records, all facilities, all assets, all financial and business accounts, all contracts, all pending proposals, all customers, all pending customers, all teaming partners, all pending teaming partners of AdSTM," (Am. Compl. at ¶ 100). None of these demands are possible given the May 22 Order.

The res judicata and issue preclusion analysis precludes plaintiff's claims and key factual ownership assertion against the AdSTM Employees because the AdSTM Employees are in privity to the subject of the dispute that gave rise to the May 22 Order. Rule 1:6(a) and (d) provides that the term "party or parties" includes "all named parties and those in privity." In the

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context of res judicata or issue preclusion, privity "deals with a person's relationship to the subject matter of the litigation." *Manning v. South Carolina Dep't of Highway & Pub. Transp.*, 914 F.2d 44, 48 (4th Cir. 1990). "The touchstone of privity for purposes of res judicata is that a party's interest is so identical with another that representation by one party is representation of the other's legal right." *Lee v. Spoden*, 290 Va. 235, 248 (2015). "Virginia courts typically find privity when the parties share a contractual relationship, owe some kind of legal duty to each other, or have another legal relationship such as co-ownership." *Columbia Gas Transmission, LLC v. David N. Martin Revocable Trust,* 833 F.Supp.2d 552, 558 (E.D.Va. 2011).

When viewed pragmatically and within the expectations and business understanding of the plaintiff and Mr. Ran, regarding their litigation over the majority ownership of AdSTM, they necessarily understood that whomever prevailed in that dispute, establishing majority control, would be able to manage AdSTM and its employees. As it relates to the ownership dispute between its two owners, the plaintiff and Mr. Ran, AdSTM was in privity to that dispute and the accompanying ownership factual allegations because the outcome determined which party controlled AdSTM and directed its actions. Moreover, "[s]ince a corporation is merely a legal entity wholly created by law, it can only act though its agents, officers, and employees . . . ." *Selman v. Am. Sports Underwriters, Inc. et al.*, 697 F. Supp. 225 238 (W.D. Va. 1988). Therefore, as it relates to the AdSTM Employees, they are also in privity with the ownership dispute between Mr. Ran and the plaintiff because they should be treated either as a part of AdSTM – merely acting as its agents, officers, and employees – or considered to be equally close to the plaintiff and Mr. Ran's ownership dispute as AdSTM itself. As set forth in *Columbia Gas*, the relationship to the ownership dispute between Mr. Ran and the plaintiff is tied together with AdSTM and the AdSTM Employees by co-ownership (Mr. Ran and the plaintiff) and the legal

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duties, including fiduciary duties, the AdSTM employees owe to AdSTM. 833 F.Supp.2d at 558. As Mr. Ran and the AdSTM Employees are in privity with each other, plaintiff's Amended Complaint against the AdSTM Employees is barred by the doctrines of claim preclusion and issue preclusion underlying res judicata.

II. PLAINTIFF'S COMPLAINT IS BARRED BY THE ROOKER-FELDMAN DOCTRINE

Plaintiff's Amended Complaint in its entirety should be dismissed because it is plainly precluded by the Rooker-Feldman Doctrine. "This doctrine construes the federal jurisdictional statues as precluding the exercise of jurisdiction by district courts to hear 'cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments.'" *Field Auto City, Inc. v. Gen. Motors Corp.*, 476 F.Supp.2d 545, 551 (E.D. Va. 2007) (quoting *Exxon Mobil Corp. v. Saudi Basic Indus.*, 544 U.S. 280, 284 (2005)). The Rooker-Feldman doctrine applies "where a party in effect seeks to take an appeal of an unfavorable state-court decision to a lower federal court." *Field Auto City,* 476 F.Supp.2d at 551-52. There, the court held, relating to a similar § 1983 claim, that "district courts lack power to 'reverse or modify' a state court decree to 'scrutinize or invalidate' an individual state court judgment, or to 'overturn an injurious state court judgment.'" *Id.* at 552 (quoting *Adkins v. Rumsfeld*, 464 F.3d 456, 464 (4th Cir. 2006)).

Plaintiff's attempt to re-litigate what she considers a disadvantageous decision of the Circuit Court of Alexandria on the issue of corporate ownership – a decision ultimately determined by the Supreme Court of Virginia to be free of reversible error – is a patent violation of the Rooker-Feldman doctrine. Plaintiff's §1983 counts allege that the AdSTM Employees, the Circuit Court for the City of Alexandria, and all the justices of the Virginia Supreme Court

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violated her rights to controlling ownership in AdSTM. Plaintiff alleges that her harm is a result of the Virginia court rulings, which is her basis for adding both Judge Clark and the Justices of the Supreme Court of Virginia as defendants in this case. *See Field Auto City*, 476 F.Supp.2d at 554 (stating that the Rooker-Feldman doctrine is effective when "the injury complained of [is] . . . caused by the state court judgment"). In reality, the corporate ownership issue was the subject of Judge Clark's Order. Exhibit 1. And this ruling has been sustained at all levels of the Virginia judicial system. Exhibits 2 and 3. To allow plaintiff's § 1983 counts to go forward would force this court into an impermissible judicial review of state court judgments.

III. THE ADSTM EMPLOYEES' ACTIONS ARE NOT SUBJECT TO A § 1983 CLAIM

Plaintiff's § 1983 counts (Counts V, VI and VII) against the AdSTM Employees must be dismissed with prejudice because these individuals are merely private citizens working in the private sector, with no official state positions. By virtue of their positions and status, they are incapable of engaging in state action, as is required to set forth a § 1983 claim.

As this court stated in *Field Auto*, "[a] plaintiff suing under § 1983 must allege (and prove) that the defendants acted 'under color of law' to deprive plaintiff of its constitutional or federal statutory rights." *Field Auto City*, 476 F.Supp.2d at 554. A deprivation of rights is only actionable under § 1983 if: (i) it is 'caused by the exercise of some right or privilege created by the State or by a rule of conduct imposed by the state or by a person for whom the state is responsible,' and (ii) the party responsible for the deprivation is 'a person who can fairly be said to be a state actor.'" *Id.* (quoting *Am. Mfrs. Mut. Ins. Co. v. Sullivan*, 526 U.S. 40, 50 (1999)).

The AdSTM Employees are private individuals and corporate officers of AdSTM. The entirety of the actions about which plaintiff complains are that the AdSTM Employees were involved, as corporate officers and employees, in litigation tasks in AdSTM related litigation.

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They are not public employees under any stretch of the imagination. Furthermore, any argument that their actions are joint state action would be groundless "as the Supreme Court . . . made clear. . . 'merely resorting to the courts and being on the winning side of a lawsuit does not make a party a co-conspirator or joint actor with the judge.'" *Field Auto City*, 476 F.Supp.2d at 555.

IV. NO DIVERSITY JURISDICTION EXISTS

In addition to not pleading any viable federal question against the AdSTM Employees, diversity jurisdiction does not exist here because plaintiff alleges that she is a resident of the Commonwealth of Virginia (Am. Compl. at ¶ 1) and, at the same time, most of the defendants in this case are citizens of the Commonwealth of Virginia (Am. Compl. at ¶¶ 3 and 7). Plaintiff cannot merely state that diversity jurisdiction exists and make it so. (*See* Compl. at ¶ 11). As the United States Supreme Court has routinely held, "a congressional mandate that diversity jurisdiction is not to be available when any plaintiff is a citizen of the same State as any defendant." *Owen Equip. & Erection Co. v. Kroger*, 437 U.S. 365, 373 (1978). Plaintiff's own complaint demonstrates that complete diversity does not exist and this court consequently does not have diversity jurisdiction over this case.

V. THE COURT SHOULD DECLINE TO EXERCISE SUPPLEMENTAL JURISDICTION

As plaintiff's federal question claim of § 1983 are meritless and should be dismissed, Counts I to IV and VIII to XI, which are plaintiff's remaining alleged state law claims against the AdSTM Employees, should also be dismissed in an exercise of this Court's authority under 28 U.S.C. § 1367(c)(3) as good cause exists for declining supplemental jurisdiction. *See Shanaghan v. Cahill*, 58 F.3d 106, 110 (4th Cir. 1995) (discussing the wide latitude enjoyed by federal courts when determining whether to retain jurisdiction over a plaintiff's remaining state claim when all federal claims have been dismissed).

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As mentioned throughout this brief, plaintiff's claims are nothing more than her attempt to relitigate state law claims that were resolved against her. Dismissal of her state law claims "most sensibly accommodates a range of concerns and values" to the parties and the court, including convenience and fairness to the parties, the existence of any underlying issues of federal policy, comity, and considerations of judicial economy. *Id.* (referencing *Carnegie-Mellon Univ. v. Cohill*, 488 U.S. 343, 350 n. 7 (1988)). It is unfair to require the AdSTM Employees to relitigate claims relating to facts about which Virginia courts have exhaustively handled and conclusively resolved. Plaintiff simply refusing to accept the fact that the Virginia state courts have determined her to be a minority shareholder is not a legitimate justification to be in federal court. *See Allstate Ins. Co. v. Hechinger Co.*, 982 F. Supp. 1169, at 1175 (E.D. Va. 1997) (noting that abstention is proper if the federal action duplicates the state court proceeding, and that to qualify as duplicative, both cases need not be identical; rather, both cases must include substantially the same parties litigating substantially the same issues). AdSTM Employees, as well as this Court, have yet to expend significant resources in responding to plaintiff's baseless and vague state law claims that are mere distractions from plaintiff's main purpose in filing this Complaint: recalculating ownership in AdSTM. *Crumble v. Am. Bus. Mortg. Servs, Inc.*, 2003 WL 24198400, at *2 (E.D. Va. 2003) (relying on *Cohill*, 484 U.S. at 350 n. 7). Thus, the Court should decline to exercise supplemental jurisdiction and dismiss Counts I-IV and VIII to XI.

VI. THE STATE LAW CLAIMS ARE MERITLESS TO THE EXTENT THE COURT EXERCISES SUPPLEMENTAL JURISDICTION,

a. Plaintiff Lacks Standing to Assert a Business Conspiracy Claim and the Claim is Barred by Intracorporate Immunity

Plaintiff's conspiracy counts (Counts I and VIII) against the AdSTM Employees fail because (1) plaintiff does not have standing to file these conspiracy claims, individually; (2) any

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conspiracy claim is barred by the intracorporate immunity doctrine; and (3) plaintiff's claims are entirely frivolous and fail to allege factual support.

First, any business conspiracy claim would belong to AdSTM and not plaintiff, individually. *Johnson v. Bella Gravida*, 105 Va. Cir. 350, at * 3 (Va. Cir. Ct., July 20, 2020) (holding plaintiff shareholders lacked standing to bring a conspiracy lawsuit against company employees and claim must be brought through a derivative action). In her Amended Complaint, plaintiff added a new count (Count I) for "Conspiracy." This Count I has the same insufficient allegations as those set forth in her business conspiracy Count IV of her original Complaint and VIII of her Amended Complaint. The alleged damages in both conspiracy counts include as damages suffered the lost values of her "profit earning from AdSTM" and "lost the opportunity to generate contracts and increase revenue for AdSTM." Am. Compl. at ¶¶ 82 and 104. To the extent that any conspiracy claim exists – none does – these claims would properly belong to AdSTM and not the plaintiff. *Bella Gravida*, 105 Va. Cir. 350, at * 3.

Second, the doctrine of intracorporate immunity holds that "a conspiracy between a corporation and the agents of that corporation who are acting in the scope of their employment is a legal impossibility," *Selman*, 697 F. Supp. at 238, for the same reason as previously stated because "a corporation is merely a legal entity wholly created by law, it can only act though its agents, officers, and employees. This immunity is not destroyed when employees are sued as individuals." *Id.* Here, all employees were working on behalf of AdSTM and are protected by the intracorporate immunity doctrine. *Id.* and *Bella Gravida*, 105 Va. Cir. 350, at * 4.

Third, the plaintiff's conspiracy claims fall far short of the pleading standards required by Rule 8(a) and *Iqbal/Twombly*. Rather, her allegation are fanciful and entirely frivolous. Plaintiff fails to allege how the defendants unlawfully conspired with one another, much less allege

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conspiracy with the required particularity set forth in *BHR Recovery Communities, Inc. v. Top Seek, LLC*, 355 F.Supp.3d 416 (E.D. Va. 2018) (citing *Multi-Channel TV Cable Co. v. Charlottesville Quality Cable Operating Co.*, 330 F.Supp.2d 700, 706 (E.D. Va. 2004)). Her Amended Complaint alleges that the AdSTM Employees conspired with AdSTM's counsel without *any* alleged factual basis. There is nothing illegal in AdSTM hiring counsel.

b. Plaintiff Fails to Allege a Viable Claim for Abuse of Process

Plaintiff fails to allege a legal basis for abuse of process under Virginia law and this count should be dismissed. In Virginia, "[t]o prevail in a cause of action for abuse of process a plaintiff must plead and prove '(1) the existence of an ulterior purpose; and (2) an act in the use of the process not proper in the regular prosecution of the proceedings." *Montgomery v. McDaniel*, 271 Va. 465, 469 (2006). "A claim for abuse of process lies for 'improper use of the process after it has been issued.'" *Smith v. Miller and Smith at Pembroke, LLC*, 84 Va. Cir. 64, at *6 (Va. Cir. Ct., Dec. 14, 2011). At a minimum, in this case, plaintiff fails to plead any facts from which the court can infer that the AdSTM Employees improperly used process after it has been issued.

Plaintiff's abuse of process claim is that AdSTM filed a lawsuit against her at the AdSTM Employee's direction for the approximately $2.3 million she removed from AdSTM's bank account. (Compl. at ¶¶ 82-83). Plaintiff states no facts showing the AdSTM Employees improperly used process after it was issued, as Virginia law requires. It can only be inferred from her complaint that the alleged misuse of process is based upon the AdSTM serving a complaint and summons on her. (Compl. at ¶ 83). But this is not an improper use of process as "[t]he institution of legal proceedings—no matter the purpose—is insufficient to survive demurrer for abuse of process if the Defendant did not commit any abusive acts after the institution of legal proceedings." *Smith*, 84 Va. Cir. 64, at *6. The abuse of process count should be dismissed.

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c. ~~Plaintiff Lacks Standing to Assert An Accounting Claim~~

Plaintiff's claim for an accounting against the AdSTM Employees should be dismissed because any such claim can only be brought derivatively under Virginia law. The Supreme Court of Virginia has held that "corporate shareholders cannot bring individual, direct suits against officers or directors for breach of fiduciary duty, but instead shareholders must seek their remedy derivatively on behalf of the corporation." *Remora Invs., LLC v. Orr*, 277 Va. 316, 323 (Va. 2009) (citing *Simmons v. Miller*, 261 Va. 561, 576 (Va. 2001)). In *Simmons*, the court held that this same requirement exists in closely held corporations. *Simmons*, 261 Va. at 576. Here, plaintiff has failed to meet any of the requirements to file a derivative claim and instead is attempting a direct action against AdSTM's company officers. This is contrary to Virginia law and should be dismissed. Even if she somehow pled a harm cognizable under an Accounting theory, plaintiff's allegations would still fail under Rule 8(a) and *Iqbal/Twombly*.

d. False Representation is Not a Cause of Action Under Virginia Law

Plaintiff's Count VI against Gary Bell must be dismissed as there is no cause of action under Virginia law for false representation. In this count, plaintiff alleges that Gary Bell made false representations to the Commonwealth of Virginia concerning the identity of the corporate officers of AdSTM. (Compl. at ¶ 57). Although her allegation is untrue, plaintiff does not have a false representation legal claim under Virginia law relating to comments Mr. Bell made to the Commonwealth of Virginia. Count VI should therefore be dismissed with prejudice. Even if such a claim existed, plaintiff's allegations would still fail under Rule 8(a) and *Iqbal/Twombly*.

e. Bribery is Not a Cause of Action Under Virginia

Bribery is forbidden is Virginia as a punishable crime as set forth in Virginia Code § 18.2-438. It is not, however, recognized in Virginia as a private cause of action. Therefore,

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Count II of plaintiff's Amended Complaint should be dismissed with prejudice. Even if such a claim existed, plaintiff's allegations would still fail under Rule 8(a) and *Iqbal/Twombly*.

f. Interference with Decree Performance is Not a Cause of Action

Count IV, Interference with Decree Performance is not a recognizable cause of action under Virginia law, and should be dismissed with prejudice. Even if such a claim existed, plaintiff's allegations would still fail under Rule 8(a) and *Iqbal/Twombly*.

g. Plaintiff's Private Nuisance Claim Fails Because No Real Property is at Issue

Private nuisance under Virginia law relates to harm against one's enjoyment to real property. *See Martin v. Moore*, 263 Va. 640, 648 (2002). None of plaintiff's allegations relate to any real property. For that reason, Count III should be dismissed. Even if she somehow pled a harm cognizable under a Private Nuisance theory, plaintiff's allegations would still fail under Rule 8(a) and *Iqbal/Twombly*.

CONCLUSION

For the reasons set forth above, defendants, Gary Bell, Sergey Katsenelenbogen and Jen Kim, respectfully request this court to dismiss plaintiff's 1st Amended Complaint in its entirety.

Date: July 29, 2021

Respectfully submitted,

GARY BELL, SERGEY KATSENELENBOGEN AND JEN KIM
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CERTIFICATE OF SERVICE

I hereby certify that on July 29, 2021, a copy of the foregoing was filed with the Clerk of Court using the CM/ECF system, which will send notification of such filing (NEF) to counsel for the parties and a copy was served via email and first-class mail, postage prepaid to:.

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