original

No. 21-7532

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Palani Karupaiyan, *Petitioner,*

Vs.

INTERNATIONAL SOS;
ACCESS STAFFING, LLC;
KAPITAL DATA CORP;
DESSI NIKOLOVA, Individually and in her official capacity as director, product engineering of the international SOS;
GREGORY HARRIS, Individually and in his official capacity as team leader, mobile applications of the international SOS;
KUMAR MANGALA, Individually and in their official capacity as founder and CEO of the Kapital Data Corp;
MIKE WEINSTEIN, Individually and in his official capacity as principal product engineering of the Access Staffing LLC,

Respondents.

PETITION FOR A WRIT OF CERTIORARI

to the United States Court of Appeals
for the Third Circuit

Palani Karupaiyan.
Pro se, Petitioner,
Email: palanikay@gmail.com
212-470-2048(m)

I. QUESTIONS PRESENTED

a) In Civil rights complaint, when the Plaintiff alleged that Joint-employers did not pay to the plaintiff is enough for FCP Rule 8(a)'s short and plain statement requirement?

Conley v. Gibson, 355 US 41 - Supreme Court 1957 @ 48 "Following the simple guide of Rule 8 (f) that "*all pleadings shall be so construed as to do substantial justice*"

Sullivan v. Little Hunting Park, Inc , 396 US 229 - Supreme Court 1969 @ 239-240

W]here federally protected rights have been invaded, it has been the rule from the beginning that courts will be alert to adjust their remedies so as to grant the necessary relief. And it is also well settled that where legal rights have been invaded, and a federal statute provides for a general right to sue for such invasion, federal courts may use any available remedy to make good the wrong done." Id., at 684.

b) When the complaint survived for motion under FCP Rule 12(b)(6), Dist Court dismissed the complaint under Rule 8(a) and USCA 3rd circuit affirmed under Rule 8(a) is error?

Davis v. Ruby Foods, Inc., *269 F. 3d 818 - Court of Appeals, 7th Cir 2001* @ 821

"If the [trial] Court understood the allegations sufficiently to determine that they could state a claim for relief, the complaint has satisfied Rule 8." Kittay v. Kornstein, 230 F. 3d 531 - Court of Appeals, 2nd Circuit 2000 at 541

c) When the plaintiff Independent Software engineer is not paid by the joint-employers for his Computer Software work to them. Should the Dist Court & USCA 3rd deny the copyright ownership to the plaintiff independent software engineer?

The *Copyright Act of 1976 (Act 1976*
17 U. S. C. §§ 201(a),
17 U.S.C. § 102(a).
U.S. Const. art. I, § 8, cl. 8

Community for Creative Non-Violence v. Reid, 490 US 730 –Supr. Ct 1989

d) United States Court of Appeals' one judge alone deliver the opinion for a unanimous Court?

I (a) PARTIES TO THE PROCEEDING

All parties appear in the caption of the case on the cover page

I (b) No related case(s)

II. Table of Contents

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[1] USCA 3rd circuit ruled as Reconsideration motion.

III. Table of Authorities

Cases

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IV. Petition for Writ Of Certiorari

Petitioner respectfully prays that a Writ of Certiorari issue to review the opinion/judgment/order below.

V. Opinions Below

a) The NOT PRECEDENTIAL opinion of the United States Court of Appeals 3rd Cir. appears at Appendix: A to the petition.

Docket- 21-1853

Opinion By GREENAWAY, Jr., PORTER, and NYGAARD, Circuit Judges.

b) USCA 3r Cir. Order Denying Rehearing Penal and En Banc appears at Appendix: E. Judge Nygaard's vote is limited to panel rehearing only.

c) The United States District Court (ED-PA)'s Order of dismissing the complaint appears at Appendix: C to the petition.

Docket - 19-2259 - Hon. Petrese B. Tucker, U.S.D.J.

d) The United States District Court (ED-PA)'s Order denying for reconsideration appears at Appendix: D to the petition.

Petitioner is *pro se* and unaware the US District Court orders were published or not.

VI. .Jurisdiction

The date on which the United States Court of Appeals decided my case was Dec 22, 2021 at Appendix: A ***Pet.App-1a***

A timely filed petition for rehearing was denied by the United States Court of Appeals on Jan 19 2022, and a copy of the Order denying rehearing appears at Appendix: E. ***Pet.App-18a***.

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

VII. CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Title –VII

Title VII of the Civil Rights Act of 1964
42 U.S.C. 2000e

Copyright

U.S. Const. art. I, § 8, cl. 8
The *Copyright Act of 1976*
17 U. S. C. §§ 201(a),
17 U.S.C. § 102(a).
Community for Creative Non-Violence v. Reid, 490 US 730 -1989 ("*Reid*")

VIII. Statement of the Case.

Dist Court Proceeding

The petitioner Palani Karupaiyan ("Petitioner", "plaintiff"), filed civil right/ Title VII claims, unpaid/no payment, Copyright ownership complaint with US district for Easter Pennsylvania (Dist Court. "PAED") against the Joint-employers INTERNATIONAL SOS ("isos"); ACCESS STAFFING, LLC ("access"); KAPITAL DATA CORP ("Kapital"); DESSI NIKOLOVA, Individually and in her official capacity as director, product engineering of the international SOS; GREGORY HARRIS, Individually and in his official capacity as team leader, mobile applications of the international SOS; KUMAR MANGALA, Individually and in their official capacity as founder and CEO of the Kapital Data Corp; MIKE WEINSTEIN, Individually and in his official capacity as principal product engineering of the Access Staffing LLC.

Im pro se and English is not petitioner mother langue nor medium of school language. I found a sample complaint from internet and modified the complaint for my need. Also found a form for employment

discrimination complaint from US Courts' site internet and filed this forms, filed the complaint against the employers.

Along with complaint, plaintiff filed email consent form for receiving docket entries thru email.

On May 6 2029, On District Court dismissed the complaint without prejudice and ordered the plaintiff to amend the complaint with 30 days. See below ECF-46

05/06/2020	46	ORDERED THAT PLAINTIFF'S AMENDED COMPLAINT IS DISMISSED WITHOUT PREJUDICE. IT IS FURTHER ORDERED THAT WITHIN 30 DAYS PLAINTIFF SHALL FILE A SECOND AMENDED COMPLAINT. DEFENDANTS MOTIONS TO DISMISS, PLAINTIFF'S MOTION FOR ACCEPTING ADDITIONAL EVIDENCE AND ADDITIONAL SIX MOTIONS, AND FOR ADDITIONAL TIME ARE ALL DENIED AS MOOT. THE CLERK OF COURT IS DIRECTED TO CORRECT PLAINTIFF'S NAME ON THE DOCKET. ETC.. SIGNED BY HONORABLE PETRESE B. TUCKER ON 5/6/2020.5/6/2020 ENTERED AND COPIES E-MAILED. NOT MAILED TO PRO SE.(sg,) (Emailed to litigant on 06/16/2020 per chambers) Modified on 6/16/2020 (nd,). (Entered: 05/06/2020)

Because of unavailability of email notification to prose with PACER of EDPA and Im homeless no address, due to Pandemic this order never reached the plaintiff. Same reasons, In the past district Court orders also did not reach the plaintiff. In fact the employer did not pay me so the home is evicted so plaintiff was not able to get the Dist Court order thru postal mail.

At times corona virus was on peak, Due to my diabetic, situs inversus DNA ill-formed lung, heart problem petitioner was at highest risk.

Before **May 06, 2020** order reaching the plaintiff, Defendants including Access filed motion to dismiss the complaint under Fed. R. Civ. P. 8(a), Fed. R. Civ. P. 12(b)(6), Fed. R. Civ. P. 41(b)/ *Poulis v. State Farm Fire and Cas. Co., 747 F. 2d 863 - Court of Appeals, 3rd Circuit 1984* and *Briscoe v. Klaus, 538 F.3d 252, 262 (3d Cir. 2008)* 's six factors analysis as below.

> *(1) the extent of the party's personal responsibility; (2) the prejudice to the adversary caused by the failure to meet scheduling orders and respond to discovery; (3) a history of dilatoriness; (4) whether the conduct of the party or the attorney was willful or in bad faith; (5) the effectiveness of sanctions other than dismissal, which entails an analysis of alternative sanctions; and (6) the meritoriousness of the claim or defense.*

When I tried to reach the Court for ordered date May 06 2020 , on Jun 16 2020, Dist court(chambers) entered the order in docket ECF-46(above picture), emailed me so I was not able to file the amended complaint with 30 days as Dist Court order which is not diabetic, disabled, unemployed, homeless plaintiff's fault.

On Mar 22, 2021 filed motion of 50% copyright ownership of the software(s) and application plaintiff developed for the joint-employers and on Mar 25 2021, plaintiff filed a summary judgement for claims against all defendants and filed motion.

For the 50% copyright ownership motion and Motion for summary judgment, the defendants stated that because of SAC is untimely(which

is not my fault) and/or *Poulis's* 6 factor analysis complaint does not have threshold so they do not need to respond my motion for copyright and summary judgment.

On Apr 22 2021 Dist Court dismissed the 2nd amended complaint ("SAC") as defendants requited the court, denied 50% ownership of copyright motion, and denied the summary judgment against the defendants. App.7a.

Timely appellant filed notice of appeal. Also filed proposed complaint with District Court which is ruled by USCA as reconsideration. When reconsideration is denied, App.16a, appellant filed amended notice of appeal.

USCA 3rd Circuit proceeding

On appeal appellant passed every six factors of *Poulis* and *Briscoe.* On Dec 22, 2021, USCA for 3rd circuit NOT PRECEDENTIAL opinioned that Petitioner's SAC violated the Rule 8. App.4a.

Timely appellant filed Petition for Panel and En Banc rehearing with USCA with following 6 challenges.

6 challenges in Petition for Panel and En Banc rehearing

a) The Plaintiff's SAC/Reconsideration should be reviewed under Rule 20 along with Rule 8 when the defendants were Joint employers.

Dist Court dismissed the complaint for Rule 8 violation which is error.

Under Rule 8, Plaintiff complaint should be Short and plain. In *Garrett v. Wexford Health, 938 F. 3d 69 - Court of Appeals, 3rd Circuit 2019* @ 94

> *"We first consider Rule 8's "short" statement requirement. Certainly, there can be no single "proper length" for stating a particular claim. The level of factual detail will vary with the complexity of the claim asserted. Moore, supra, § 8.04[1][d]."*

In this case, the plaintiff is pro se and mother tongue is not English speaking. Every allegation/facts are short which is drafted with best effort of the plaintiff. In finding plaintiff's complaint legally sufficient, Supreme Court found that pro se pleadings should be held to "*less stringent standards*" than those drafted by attorneys (*Haines v. Kerner, 404 U.S. 520 (1971)*). Nowhere in the District Court orders stated that this plaintiff did not take sufficient effort to amend the complaint.

In *Garrett* , @ 96

> They argue that Garrett is "incapable or not willing to abide by the Court's instructions." Corr. Def. Supp. Br. 26. We disagree. It is apparent that Garrett made a genuine effort to revise his FAC to respond to the Magistrate Judge's critique of the TAC. This is simply not a case in which leave to amend was previously given and the successive pleadings "remain prolix and unintelligible." *See Salahuddin*, 861 F.2d at 42.
>
> In conclusion, there are claims in Garrett's pro se FAC against the Corrections Defendants that satisfy the "short and plain statement"

> requirement. Fed. R. Civ. P. 8(a)(2). While the complaint is far from perfect, we cannot agree with the Magistrate Judge's assessment, adopted by the District Court, that "Plaintiff's factual and legal allegations are, to a substantial extent, incomprehensible" and that the FAC contains "virtually no detail as to who did what and when." JA 22. We are always mindful that the abuse of discretion standard of review is highly deferential. And we are not unsympathetic to the difficulties and frustrations the Magistrate Judge experienced in managing a case that involved various iterations of a complaint. Yet we simply cannot conclude that the District Court's sweeping dismissal of all the claims in the FAC was a [29] proper exercise of discretion. We will therefore vacate and remand the matter for further proceedings.

This case plaintiff pro se, non-English mother tongue put every genuine effort to amend the complaint which undisputable.

District Court ruled in Ecf-70 that

> *"The Access Defendants contend that, "the SAC consists of nonsensical paragraphs, seemingly out of place and unnecessary exhibits, and lengthy ramblings," and despite that length, "Neither the allegations, nor the causes of action, nor the parties against whom Plaintiff purports to bring these allegations, are clearly delineated." Def.'s Mot. To Dismiss (ECF 57). We agree"*

Because these reasons the entire complaint should be dismissed. The defendant did not harassed by the complaint. If the part of complaint is non-essential, either the Dist Court or defendant should file a motion to strike down that part only. *In* Davis v. Ruby Foods, Inc., *269 F. 3d 818 - Court of Appeals, 7th Circuit 2001 @820-821*

> *"Rule 8, so far as bears on this case, requires that the complaint contain "a short and plain statement of the claim showing that the pleader is entitled to relief" and that "each averment of [the complaint] shall be simple, concise, and direct. "Fed. R. Civ. P.*

8(a)(2), (e)(1). Mr. Davis's complaint does not satisfy these requirements (themselves, be it noted, rather repetitious — and is "averment," an archaic word of no clear meaning, simple, concise, and direct?). The complaint is not short, concise, or plain. It is 20 pages long (though in a large typeface — at least 14-point), is highly repetitious, and includes material which, though sometimes charming is irrelevant (another example is the allegation that Davis is an FBI informant). There are some downright weird touches, such as the repeated assertion that Davis and his alleged harasser are, respectively, a "naturally occurring man" and a "naturally occurring woman," as if Davis were concerned about the standing of clones and transsexuals. (Rightly concerned—see ***Ulane v. Eastern Airlines, Inc., 742 F.2d1081, 1084 (7th Cir.1984); Sommers v. Budget Marketing, Inc.,667 F.2d 748, 750 (8th Cir.1982) (per curiam); Holloway v.Arthur Andersen & Co.,566 F.2d 659, 661 (9th Cir.1977).*** *) It *820 nevertheless performs the essential function of a complaint under the civil rules, which is to put the defendant on notice of the plaintiff's claim. Leatherman v. Tarrant County Narco Intellig & Coordi Unit, 507 U.S. 163, 168, 113 S.Ct. 1160, 122 L.Ed.2d 517 (1993) Bennett v. Schmidt, 153 F.3d 516, 518-19 (7th Cir.1998); Ostrzenski v. Seigel, 177 F.3d 245, 251 (4th Cir.1999).*

*Indeed, because of its prolixity, it gives the defendant much more information about the plaintiff's conception of his case than the civil rules require (****see the very brief model complaints in the Forms Appendix to the rules****). And it appears to state a claim that would withstand challenge under Fed.R.Civ.P. 12(b)(6).*

The question we must decide, therefore — surprisingly one of first impression in this circuit — is whether a District Court is authorized to dismiss a complaint merely because it contains repetitious and irrelevant matter, a disposable husk around a core of proper pleading. As our use of the word "disposable" implies, we think not, and therefore that ***it is an abuse of discretion.***

In our many years of judging, moreover, we cannot recall many complaints that actually met the standard of chaste, Doric simplicity implied by Rule 8 and the model complaints in the Forms Appendix. Many lawyers strongly believe that a complaint should be comprehensive rather than brief and therefore cryptic. They think the more comprehensive pleading assists the judge in understanding the case and provides a firmer basis for settlement negotiations. This judgment by the bar has been accepted to the extent that complaints signed by a lawyer are never dismissed simply because they are not short, concise, and plain

But the complaint contains everything that Rule 8 requires it to contain, and we cannot see what harm is done anyone by the fact that it contains more. Although the defendant would have been entitled to an order striking the irrelevant material from the complaint, Fed.R.Civ.P. 12(f), we doubt that it would have sought such an order, unless for purposes of harassment, because the extraneous allegations... cannot harm the defense. They are entirely ignorable. Excess burden was created in this case not by the excesses of Davis's complaint but by the action of the defendant in moving to dismiss the complaint and the action of the District Court in granting that motion.

Were plaintiffs' confessed overdrafting their only sin, we would be inclined to agree that dismissal was an overly harsh penalty." Kuehl v. FDIC, supra, 8 F.3d at 908 *. See also* Simmons v. Abruzzo, 49 F.3d 83, 87 (2d Cir.1995) *. Indeed; the punishment should be fitted to the crime, here only faintly blameworthy and entirely harmless.*

To the principle that the mere presence of extraneous matter does not warrant dismissal of a complaint under Rule 8, as to most generalizations about the law.

We also take this opportunity to advise defense counsel against moving to strike extraneous matter unless its presence in

the complaint is actually prejudicial to the defense. Stanbury Law Firm, P.A. v. IRS, 221 F.3d 1059, 1063 (8th Cir.2000) (per curiam)

So District Court dismissing the SAC for the Access request is abuse of discretion.

In Simmons v. Abruzzo, 49 F. 3d 83 - Court of Appeals, 2nd Cir. 1995 @87

When a complaint fails to comply with these requirements, the District Court has the power, on motion or sua sponte, to dismiss the complaint or to strike such parts as are redundant or immaterial. See Salahuddin v. Cuomo, 861 F.2d at 42

This is especially true when the complaint states a claim that is on its face nonfrivolous. Indeed, in vacating the with-prejudice dismissal in Salahuddin v. Cuomo, we indicated that since the 15-page complaint, though prolix, gave the defendants notice of the substance of certain claims that were not frivolous on their face, a with-prejudice dismissal of even a subsequent similar amended complaint would be inappropriate. See 861 F.2d at 43 (suggesting that if future amended complaint failed to comply with Rule 8, Court could simply strike redundant or scandalous matter, leaving the nonfrivolous claims to be litigated).

So District Court dismissing the SAC for the Access request is abuse of discretion

In *SEWRAZ v. Long, Court of Appeals, 4th Circuit 2011,*

Regarding the length and complexity of Sewraz's complaint, the substantive portions of his complaint comprised 265 paragraphs in thirty-three pages. While Sewraz's computation of damages and specifics as to all of his losses were more detailed and repetitive than necessary in a complaint, his actual claims were easy to understand and were comprehensible without difficulty or guesswork.

Turning to the other factors, we find that the Defendants could easily determine what causes of action applied to them and what factual allegations supported each cause of action. While a defendant would likely need to read the complete factual background in order to see the big picture alleged, the facts are intelligible and clearly delineated as to each defendant. In addition, because Sewraz was proceeding prose, his complaint was entitled to greater leeway. See Toevs v. Reid, 267 F. App'x 817, 819-20 (10th Cir.2008) (finding dismissal of twenty-three-page pro se complaint that was "not a model of conciseness" but "alleged violations of identifiable. . . rights supported by factual assertions tethered to particular defendants "was an abuse of discretion).

Based on the foregoing, we conclude that the District Court abused its discretion in dismissing the complaint for failure to comply with Rule 8(a). Given that the complaint was clear and understandable and gave Defendants appropriate notice of the claims against them, the dismissal was improper. See Garst, 328 F.3d at 378(holding that a Court could not dismiss a complaint merely because it contains repetitious and irrelevant matter, as "surplusage in a complaint can be ignored").

So dismissing SAC under *SEWRAZ also Dist Court's abuse of discretion.*

In *Schaedler v. Reading Eagle Publication, Inc.*, 370 F. 2d 795 - Court of Appeals, 3rd Circuit 1967 @798

Rule 12(e) authorizes a motion for a more definite statement if the complaint is "so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading." It does not expressly authorize the dismissal of the complaint on noncompliance with an order granting the motion, but provides that "the Court may strike the pleading to which the motion was directed or make such order as it deems just."

....an effort is made to comply with the order of the Court granting it, the insufficiency of the effort does not justify automatic dismissal of the action.

In the present case any inadequacy of the effort to amend the complaint must be judged in the extenuating circumstances that it was written by a lay litigant appearing pro se and that there is no reason to question the good faith of his attempt to comply with the Court's order.

Under *Schaedler* Dist Court dismissing the SAC is abuse of discretion

b) District Court ruling that the SAC does not specify which of the defendants each of the counts is directed toward is error when defendants were joint-employer

See few claims of plaintiff in Reconsideration ECF-81, page-45, **Count-11 failure to** hire where plaintiff claimed ISOS failure to hire and paragraph 39 plaintiff is unemployed.

The foregoing paragraphs are realleged and incorporated by reference herein.

173. On Mar 2nd week, when I applied the fulltime with ISOS.(job id 19713), ISOS refused to hire me. For this job I have more experience and expertise and skilled than the job needed.

174. Also as promised, ISOS failed to hire and/or promote me from Contract to hire TechLead. For this Tech Lead job I have all experience and expertise and skilled.

175. Because of the race, color, retaliation, age, disability, genetic illness of the plaintiff, retaliation, defendant ISOS refused to hire/failure to promote the plaintiff.

176. The Defendant ISOS, conduct as alleged above constitutes refused to hire/refused to promote in violation of Title VII, ADA/ADAAA, GINA, and the ADEA, PA human rights.

Count:24. Failure to pay/failure to timely pay.

232 The foregoing paragraphs are realleged and incorporated by reference herein.

233 Isos, access, Kapital refused to pay/refused timely pay, telling the plaintiff go to hell when plaintiff needed money for deadly medical expense.

234 The Defendant's ISOS, access , Kapital alleged above constitutes failure to pay/failure to timely pay in violation of Title VII, PHRA,RICO /false claim act or any plaintiff claimed acts.

235 Plaintiff prays this Court for order the defendants following for failure to pay/failure to timely pay wrongdoing

Joint employers refused to pay the plaintiff see Para 77 Mike Weinstein denied payment, para 84 Kumara Mangala denied payment, Para-86 Dessi Nikolova denied payment.

Under Rule 20, In *Harnage v. Lightner, 916 F. 3d 138 - Court of Appeals, 2nd Cir 2019* @ 142-143

> *While we construe pro se pleadings liberally, "the basic requirements of Rule 8 apply to self-represented and counseled plaintiffs alike." Wynder v. McMahon, 360 F.3d 73, 79 n.11 (2d Cir. 2004) . Under Rule 8, a pleading must contain "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). To satisfy this standard, the complaint must at a minimum "disclose sufficient information to permit the defendant to have a fair understanding of what the plaintiff is complaining about and to know whether there is a legal basis for recovery. "Kittay v.Kornstein, 230 F.3d 531, 541 (2d Cir. 2000) (internal quotation marks omitted).*
>
> *To wit, Harnage repeatedly sought treatment from MacDougall-Walker medical staff members including: Dr. Pillai, Dr. O'Hallaran, Dr. Nagvi, P.A. Kevin McChrystal, P.A. Rob, LisaCaldonero, Nurse Caroline, Nurse Nikki, Nurse Marissa, Nurse Miya, Nurse James, Janes 1-5, and Johns 1-5. He alleges that he failed to "receive effective or proper medical treatment for his constipation" from these defendants. See Harnage v.Lightner, No. 3:16cv1576(AWT), Dkt. No. 11 ("Am. Compl."), ¶¶ 25, 27.*

*These defendants also allegedly failed to provide Harnage with the prescriptions he had been promised, or refills thereof. Id.¶ 28. According to the amended complaint, it was due to these defendants' "deliberate indifference to [his] serious medical needs"—as evidenced by their failure to ever examine Harnage prior to January 2014—that Harnage's condition deteriorated. Id.¶ 29. The amended complaint further alleges that defendant*142 Rikel Lightner repeatedly ignored Harnage's requests to correct the facility's medical deficiencies. Id. ¶ 41. Finally, with respect to Lisa Caldonero, L.P.N. Francis, P.A. Rob, RN Heidi Greene, and Jane 1, the amended complaint alleges that these defendants imposed conditions on the plaintiff beyond what was authorized by Administrative Directive 8.9, which in turn made it more difficult for Harnage to file Health Services Reviews in connection with this condition. Id.¶ 44.*

Rule 20 permits joinder of multiple defendants if "any right to relief is asserted against them jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions and occurrences" and "any questions of law or fact common to all defendants will arise in the action." Fed. R. Civ. P. 20(a)(2).

We disagree with the District Court's conclusion that Harnage's complaint asserts more than one distinct claim against multiple defendants. The amended complaint alleges that the defendants' actions (or inaction) individually and cumulatively resulted in the denial of adequate medical care for Harnage's hemorrhoid condition prior to his first surgery. These allegations are thus sufficiently related to constitute a "series of transactions and occurrences."

As in Harnage, in this case the joint-employer collectively denied the payment to the plaintiff which gave fair notice to the defendants for plaintiff's claim.

c) District Court denying the request to appoint attorney prejudiced the plaintiff.

Plaintiff requested District Court appoint attorney which was denied. **ECF-43, ECF-46**. The same similar employment discrimination complaint, Dist Judge from 2nd circuit appointed a representative. (**ECF-81 page-7**) and the complaint was not dismissed. On Nov 30 2021 conference hearing, same Dist Judge from 2nd circuit appointed the attorney for further trail. Because of Dist Court did not appoint attorney to the plaintiff, this case come to appeal and affirmed.

d) When the complaint survived for motion under FCP Rule 12(b)(6), dismissing the complaint under Rule 8 is error

Defendant Access Staffing filed motion to dismiss under FCP Rule 12(b)(6) . **ECF-57**. Defendant Kapital Data filed motion to dismiss under FCP Rule 12(b)(6). On Apr 22 2021, District Court dismissed the 2nd amended complaint (SAC) under rule 8. **ECF-70**. When the SAC complaint survive for Rule 12(b)(6), same complaint should survive Rule 8 as well.

In *Davis* @ 821 "If the [trial] Court understood the allegations sufficiently to determine that they could state a claim for relief, the complaint has satisfied Rule 8." *Kittay v. Kornstein, supra, 230 F.3d* at

541. The joint-employer did not pay me is proper claim. International SOS failure to hire the plaintiff is properly claimed.

So appellant/plaintiff pray this Court to reconsider this Court opinion and District Court's dismissal.

e) Appellant pray this Court to Reconsider the opinion that Pltf SAC is untimely.

On May 06 2021 District Court ordered the plaintiff file amended complaint in 30 days **ECF-46**. Appellant/Plaintiff is homeless who did not get this Dist Court order thru postal mail or email until Jun 16 2021. See. Dist Court **Docket entry 46** which states that **"(Emailed to litigant on 06/16/2020 per chambers) Modified on 6/16/2020 (nd,)"**.

f) District Court denied of Plaintiff summary Judgement and motion for 50% copy-right of the software is error and this Court should reconsider it the affirmation on this matter.

Dist Court ruled that

> *"Plaintiff filed three motions for summary judgment and a motion to grant him fifty-percent (50%) copyright of International SOS' Mobile Assist application and Mobile Web Management application and fifty-percent (50%) ownership of Access Staffing and Kapital Data. (ECFs 53, 64, 65, and 68). These motions are premature and nonsensical because Discovery has not been conducted"*

Appellant/plaintiff claimed that the Joint-employer did not pay the independent software engineer which was agreed by the joint-employers defendant. *This is short and plain claim and fairly noticed to the defendant which did not violated the Rule 8 need.* When the plaintiff has such the complaint should not be entirely dismissed and this USCA should not affirmed by its opinion. Plaintiff is 40 times efficient than normal software engineers. Plaintiff was diabetic disabled, come to work when the vortex winter was -16 degree Fahrenheit, legs were numbed.

In *Davis* @ 821 "If the [trial] Court understood the allegations sufficiently to determine that they could state a claim for relief, the complaint has satisfied Rule 8." *Kittay v. Kornstein, supra, 230 F.3d* at 541

On Jan 19 2022 USCA denied appellant rehearing with Judge Nygaard's vote is limited to panel rehearing only. App.18a.

IX. REASONS FOR GRANTING THE WRIT

a) In Civil rights complaint, when the Plaintiff alleged that Joint-employers did not pay to the plaintiff is enough for FCP Rule 8(a)'s short and plain statement requirement?

The plaintiff worked as independent Software engineer to the Joint-employers (iSOS, Access, Kapital).

The plaintiff alleged following in the SAC that

i) *On Mar 05 2019, When Mike and I had conversation I told him I need money buying medicine, Mike asked what for I need to buy medicine. I replied him that Im* ***diabetic which increase the risk of my genetic health*** *condition. Mike told "You go to hell"*

ii) *On Mar 05 2019 evening Kumar Mangala called me and told me to stop the car I travel to home because he wanted to talk to me. I told him that Im diabetic and have serious genetic medical condition and I wanted the payment as soon as possible. Kumar Mangala replied that I should go to hell and he should not arrange the payment as soon as possible because he wanted to deposit the money in saving account to gain 1% interest gain personally he should be benefitted.*

iii) *On Mar 06 2019, Dessi Nikolova told me that she should remove me immediately from work and I should get out of office immediately because Mike is unhappy with me because I asked the payment as soon as possible for medical treatment*

See Plaintiff affidavit that the joint-employers did not pay me.

App.25a So I did not file tax return because no-income so I did not get any pandemic benefit/relief as well.

Because of defendants joint-employer did not pay the plaintiff, plaintiff diabetic medicine need was not available, 2 urinal bladder started to dysfunction and 1 kidney started to bleed. **App.a20-a24**. (Ultrasound report). Due to DNA malformation, situs inversus totalis, these organs were unreplaceable, un-substitutable. Last week also plaintiff/petitioner had blood in the urine which brings the defendants make the petitioner life time pain and suffering damages. **App.a28**. Also they did not pay the plaintiff, it is slavery practice.

For Rule 8 short and plain statement requirement above is fairly enough and gave fair notice to the defendants.

In *Garrett v. Wexford Health, 938 F. 3d 69 -USCA, 3rd Cir 2019* @ 94

> *We first consider Rule 8's "short" statement requirement. Certainly, there can be no single "proper length" for stating a particular claim. The level of factual detail will vary with the complexity of the claim asserted. Moore, supra, § 8.04[1][d].*

Petitioner is raised from non-English speaking family and schooled in non-English medium, Tamil medium language. So plaintiff's above allegation did not violated the Rule 8 for the need of either short or plain statement.

When the Dist Court or defendants should have recognized unwanted in the SAC, they failed to strike down the unwanted information in the SAC.

In *Conley v. Gibson, 355 US 41 - Supreme Court 1957* @ fotenote-9 Rule 12 (f) (motion to strike portions of the pleading); same in *Davis* 269 F.3d 818 (2001) @ 821

> *"Although the defendant would have been entitled to an order striking the irrelevant material from the complaint, Fed. R. Civ. P. 12(f))"*

In Conley @ *48 ruled* "Following the simple guide of Rule 8 (f) that "*all pleadings shall be so construed as to do substantial justice*"

> *A document filed pro se is "to be liberally construed," Estelle v. Gamble, 429 U.S., at 106, 97 S.Ct. 285, and "a pro se complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers," ibid. (internal quotation marks omitted). Cf. Fed. Rule Civ. Proc. 8(f) ("All pleadings shall be so construed as to do substantial justice")"*

In *Sullivan v. Little Hunting Park, Inc., 396 US 229 - Supreme Court 1969* @ 239-240

> We had a like problem in *Bell v. Hood, 327 U. S. 678*, where suit was brought against federal officers for alleged *239 violations of the Fourth and Fifth Amendments. The federal statute did not in terms at least provide any remedy. We said: 239
>
> *"[W]here federally protected rights have been invaded, it has been the rule from the beginning that courts will be alert to adjust their remedies so as to grant the necessary relief. And it is also well settled that where legal rights have been invaded, and a federal statute provides for a general right to sue for such invasion, federal courts may use any available remedy to make good the wrong done." Id., at 684.*
>
> The existence of a statutory right implies the existence of all necessary and appropriate remedies. See *Texas & N. O. R. Co. v. Railway Clerks, 281 U. S. 543, 569-570.* As stated in *Texas & Pacific R. Co. v. Rigsby, 241 U.S.33, 39*:
>
> *"A disregard of the command of the statute is a wrongful act, and where it results in damage to one of the class for whose especial benefit the statute was enacted, the right to recover the damages from the party in default is implied . . . ."*

For above said reasons and principles, USCA 3rd circuit affirming the dismissal of SAC for rule 8 violation is error.

b) When the complaint survived for motion under FCP Rule 12(b)(6), Dist Court dismissed the complaint under Rule 8(a) and USCA 3rd circuit affirmed under Rule 8(a) is error?

When the defendants requested the Dist Court to dismiss my SAC by FCP Rule 8(a), FCP Rule 12(b)(6) and FCP Rule 41(b), the SAC survived under Rule 12(b) in the Dist Court itself and in the USCA 3rd circuit the SAC under Rule 41(b), *Poulis* or *Briscoe 's* 6 factor test succeeded. USCA 3rd Cir. affirmed the appeal Under Rule 8. App.4a.

In Davis v. Ruby Foods, Inc., *269 F. 3d 818 - Court of Appeals, 7th Circuit 2001* @ 821

> "If the [trial] Court understood the allegations sufficiently to determine that they could state a claim for relief, the complaint has satisfied Rule 8." *Kittay v. Kornstein, 230 F. 3d 531 - Court of Appeals, 2nd Circuit 2000* at 541, "Were plaintiffs' confessed overdrafting their only sin, we would be inclined to agree that dismissal was an overly harsh penalty." *Kuehl v. FDIC, supra, 8 F.3d* at 908. See also *Simmons v. Abruzzo, 49 F.3d 83, 87 (2d Cir.1995)*. Indeed; the punishment should be fitted to the crime, here only faintly blameworthy and entirely harmless".

In Davis @820

> *"It *820 nevertheless performs the essential function of a complaint under the civil rules, which is to put the defendant on notice of the plaintiff's claim. Leatherman v. Tarrant County Narcotics Intelligence & Coordination Unit, 507 U.S. 163, 168, 113 S.Ct. 1160, 122 L.Ed.2d 517 (1993)*

In *Conley v. Gibson, 355 US 41 - Supreme Court 1957 @ 48*

> *"Following the simple guide of Rule 8 (f) that "all pleadings shall be so construed as to do substantial justice,"*

For the above principles, in *Davis* the USCA 7th circuit reversed the Dist Court decision and in *Simmons* the USCA 2nd circuit conclude that the district court's dismissal of the amended complaint was an abuse of discretion.

In my appeal, USCA 3rd circuit affirmed the dismissal under Rule 8 when the complaint (SAC) passed Rule 12(b) is error.

c) When the plaintiff Independent Software engineer is not paid by the joint-employers for his Computer Software work to them. Should the Dist Court & USCA 3rd deny the copyright ownership to the plaintiff independent software engineer?

The plaintiff was hired by the joint-employers as independent software engineer. Plaintiff/petitioner worked/developed/programmed the Joint-employers' the (i) *International SOS' Mobile Assist application* and *(ii) Mobile Web Management application.* For these petitioner work, petitioner was not paid by the Joint-employer(s)

The defendant Joint-employer International SOS is using these applications as in their business and profited and benefitted.

By Petitioner's intellectual work (computer programing), other two Joint-employer Access Staffing and Kapital Data Corp as well benefitted/profited. These two joint-employers were IT Partner to ISOS. The petitioner has copyright ownership for his above said work/computer programs/applications under

i) U.S. Const. art. I, § 8, cl. 8

"To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries"

ii) The *Copyright Act of 1976 (Act 1976)*

iii) 17 U.S.C. § 102(a).

Computer programs are entitled to copyright protection as "literary works. Whelan Assoc. v. Maslow Dental Lab., *797 F.2d 1222, 1234 (3d Cir.1986)*

iv) *17 U. S. C. §§ 201(a)*, Initial Ownership (Ownership of copyright)

*"*Community for Creative Non-Violence v. Reid, *490 US 730 - 1989 @ 737, The Copyright Act of 1976 provides that copyright ownership vests initially in the author or authors of the work." 17 U. S. C.§ 201(a). As a general rule, the author is the party who actually creates the work, that is, the person who translates an idea into a fixed, tangible expression entitled to copyright protection. § 102".*

Petitioner request for 50% copyright ownership for these two computer applications under *Reid was denied by the Dist Court and USCA 3rd circuit.*

Now here in this Court, petitioner pray this Court for an order to owe the 50% copy right ownership of (i) *International SOS' Mobile Assist application and (ii) Mobile Web Management application which similar to this Court ruled in Reid @ 753 ruled for co-ownership of intellectual property.*

And petitioner pray this Court for an order that plaintiff should owe the 50% ownership of Access Staffing I LC and 50% Ownership of Kapital Data Corp same as Reid@753 because they benefitted by my intellectual work.

Also petitioner pray this Court for an order that his Summary Judgment should be granted since I have passed the Poulis 6 factor test in the USCA 3rd circuit.

d) United States Court of Appeals' one judge alone deliver the opinion for a unanimous Court?

In Article III courts, District Court single Judge alone deliver opinion/order. In US Supreme court, Chief Justice or Associate Justice alone delivered the opinion for a unanimous Court. See *Hamer v. Neighborhood Housing Services, 138 S. Ct. 13 - Supreme Court 2017 @* 17 GINSBURG, J., delivered the opinion for a unanimous Court.

In USCA 3rd circuit, my petition for Panel or En Banc rehearing, **Hon. Judge Nygaard's** vote is limited to panel rehearing only, App.18a So **Hon Judge Nygaard** should delivered the opinion for a unanimous Court (USCA) to my appeal.

X. CONCLUSION

For any and all foregoing reasons, Petitioner Palani Karupaiyan prays that this Court issue a Writ of Certiorari to review the Opinion/judgment/order of the United States Court of Appeals for the Third Circuit.

Respectfully submitted

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XI. Certificate of Compliance for Word Count and Font

I. Palani Karupaiyan, prose-petitioner under penalty of perjury that
a) The Petition for Writ of Certiorari has 6000 or less words count.
b) This Petition Prepared with Century Schoolbook font with size 14.

Respectfully submitted
Palani Karupaiyan