United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
April 1, 2022
Lyle W. Cayce
Clerk

No. 21-60640
Summary Calendar

CHAKAKHAN R. DAVIS,

Plaintiff—Appellant,

versus

DOLLAR GENERAL CORPORATION, L.L.C.,

Defendants—Appellees.

Appeal from the United States District Court
for the Southern District of Mississippi
USDC No. 3:20-CV-274

Before HIGGINBOTHAM, HIGGINSON, and DUNCAN, *Circuit Judges*.

PER CURIAM:*

Chakakhan Davis alleges that she was injured by the doors at two different Dollar General stores in Mississippi. The district court granted summary judgment to Dollar General, which Davis appealed. We affirm.

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

EXHIBIT "A"

I.

Davis alleges that she was injured in February 2019 when a manual push door at a Dollar General store jammed on her arm. Davis filed a customer injury claim with Dollar General. This claim was denied as false after a Dollar General Claims Representative reviewed surveillance footage demonstrating that Davis walked through the door without issue. Davis also alleges that she was injured by an electric-powered door at a different Dollar General store in 2020. She again filed a customer injury claim; this claim was also denied as false after a different Dollar General Claims Representative reviewed surveillance footage demonstrating that Davis walked through the door without issue. Dollar General also sent a letter to Davis, informing her that she was banned from all its stores and no longer an invitee to any of its stores.[1]

Proceeding *pro se*, Davis sued Dollar General and the two Claims Representatives, seeking five trillion dollars in damages.[2] Davis asserted claims for negligence, discrimination in violation of 42 U.S.C. § 1981 and Title II of the Civil Rights Act of 1964, and defamation. The district court granted summary judgment to Dollar General as to each of Davis's claims.

II.

We review *de novo* a district court's grant of summary judgment.[3] Summary judgment is proper "if the movant shows that there is no genuine

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[1] During the period from 2012 to 2016, Davis previously filed five other claims with Dollar General, all of which were denied.

[2] In her complaint and notice of appeal, Davis named "Dollar General Corporation, LLC" as the defendant. There appears to be no Dollar General Corporation, LLC, but this misnomer was resolved when the Dollar General Corporation—less the "LLC"—was served and participated in the proceedings below, thus there is no issue on appeal.

[3] *Martin Res. Mgmt. Corp. v. AXIS Ins. Co.*, 803 F.3d 766, 768 (5th Cir. 2015).

dispute as to any material fact and the movant is entitled to judgment as a matter of law."[4] A summary judgment ruling "will be affirmed by this court when the nonmoving party fails to meet its burden to come forward with facts and law demonstrating a basis for recovery that would support a jury verdict."[5] Additionally, we review the denial of a motion for reconsideration for abuse of discretion.[6]

III.

As a preliminary matter, we must address what is before us on appeal. In her brief, Davis's Statement of the Issues presents a multitude of issues from various points of the proceedings, but this list is not supported by her notice of appeal. "The notice of appeal must . . . designate the judgment, order, or part thereof being appealed[.]"[7] Davis's notice of appeal states that her appeal concerns only three orders: the grant of summary judgment to Dollar General, the denial of default judgment against Dollar General, and the denial of prospective relief. While we are not exacting in our reading of the orders specified in a notice of appeal,[8] we are mindful that "[t]he purpose of the notice of appeal is to provide sufficient notice to the appellees and the courts of the issues on appeal."[9] With no apparent intent to appeal other

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[4] FED. R. CIV. P. 56(a).

[5] *Little v. Liquid Air Corp.*, 37 F.3d 1069, 1071 (5th Cir. 1994).

[6] *In re Taxotere (Docetaxel) Prod. Liab. Litig.*, 966 F.3d 351, 361 (5th Cir. 2020).

[7] Fed. R. App. P. 3(c)(1)(b).

[8] *Warfield v. Fid. & Deposit Co.*, 904 F.2d 322, 325 (5th Cir. 1990).

[9] *R.P. ex rel. R.P. v. Alamo Heights Indep. Sch. Dist.*, 703 F.3d 801, 808 (5th Cir. 2012).

orders discernable in Davis's notice to appeal, we review the issues properly before us—the three orders presented in the notice of appeal.[10]

We affirm the grant of summary judgment to Dollar General. Dollar General presented video surveillance footage as well as affidavits to rebut each of Davis's claims. Davis failed to present evidence to create a genuine issue of material fact as to any of her claims and her bare assertions are insufficient to survive the summary judgment standard.[11]

We affirm the denial of Davis's motion for default judgment against Dollar General. Davis argued that she was entitled to default judgment as Dollar General had not responded to her complaint, but Dollar General had responded.

Finally, we affirm the denial of Davis's motion for prospective relief. Although Davis labeled her motion as a motion for prospective relief, the district court properly recognized that this was actually a motion for reconsideration under Federal Rule of Civil Procedure 59(e) and analyzed it as such.[12] As Davis failed to identify an intervening change in the controlling law, newly discovered evidence that was previously unavailable, or a manifest error of law or fact, the district court did not abuse its discretion in denying the motion.[13]

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[10] *McCardell v. U.S. Dep't of Hous. & Urb. Dev.*, 794 F.3d 510, 516 (5th Cir. 2015).

[11] *Little*, 37 F.3d at 1075.

[12] *Castro v. United States*, 540 U.S. 375, 381–82 (2003) ("Federal courts sometimes will ignore the legal label that a *pro se* litigant attaches to a motion and recharacterize the motion in order to place it within a different legal category . . . They may do so in order to . . . create a better correspondence between the substance of a *pro se* motion's claim and its underlying legal basis.").

[13] *Demahy v. Schwarz Pharma, Inc.*, 702 F.3d 177, 182 (5th Cir. 2012)

IV.

For the foregoing reasons, we AFFIRM, urging Davis to heed the words of caution of the district court: if a court finds that Davis "engaged in vexatious litigation or acted in bad faith," it "may issue monetary sanctions against her and issue an injunction barring her from filing any new lawsuit" without prior approval from the court.

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USDC No. 3:20-CV-274

Before HIGGINBOTHAM, HIGGINSON, and DUNCAN, *Circuit Judges.*

JUDGMENT

This cause was considered on the record on appeal and the briefs on file.

IT IS ORDERED and ADJUDGED that the judgment of the District Court is AFFIRMED.

IT IS FURTHER ORDERED that plaintiff-appellant pay to defendants-appellees the costs on appeal to be taxed by the Clerk of this Court.

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

April 01, 2022

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW

Regarding: Fifth Circuit Statement on Petitions for Rehearing or Rehearing En Banc

No. 21-60640 Davis v. Dollar General
USDC No. 3:20-CV-274

Enclosed is a copy of the court's decision. The court has entered judgment under Fed. R. App. P. 36. (However, the opinion may yet contain typographical or printing errors which are subject to correction.)

Fed. R. App. P. 39 through 41, and 5th Cir. R. 35, 39, and 41 govern costs, rehearings, and mandates. **5th Cir. R. 35 and 40 require you to attach to your petition for panel rehearing or rehearing en banc an unmarked copy of the court's opinion or order.** Please read carefully the Internal Operating Procedures (IOP's) following Fed. R. App. P. 40 and 5th Cir. R. 35 for a discussion of when a rehearing may be appropriate, the legal standards applied and sanctions which may be imposed if you make a nonmeritorious petition for rehearing en banc.

Direct Criminal Appeals. 5th Cir. R. 41 provides that a motion for a stay of mandate under Fed. R. App. P. 41 will not be granted simply upon request. The petition must set forth good cause for a stay or clearly demonstrate that a substantial question will be presented to the Supreme Court. Otherwise, this court may deny the motion and issue the mandate immediately.

Pro Se Cases. If you were unsuccessful in the district court and/or on appeal, and are considering filing a petition for certiorari in the United States Supreme Court, you do not need to file a motion for stay of mandate under Fed. R. App. P. 41. The issuance of the mandate does not affect the time, or your right, to file with the Supreme Court.

Court Appointed Counsel. Court appointed counsel is responsible for filing petition(s) for rehearing(s) (panel and/or en banc) and writ(s) of certiorari to the U.S. Supreme Court, unless relieved of your obligation by court order. If it is your intention to file a motion to withdraw as counsel, you should notify your client promptly, **and advise them of the time limits for filing for rehearing and certiorari**. Additionally, you MUST confirm that this information was given to your client, within the body of your motion to withdraw as counsel.

The judgment entered provides that plaintiff-appellant pay to defendants-appellees the costs on appeal. A bill of cost form is available on the court's website www.ca5.uscourts.gov.

Sincerely,

LYLE W. CAYCE, Clerk

By: _____
Nancy F. Dolly, Deputy Clerk

Enclosure(s)

Ms. Chakakhan R. Davis
Mr. Matthew D. Miller

United States Court of Appeals for the Fifth Circuit

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Before HIGGINBOTHAM, HIGGINSON, and DUNCAN, *Circuit Judges.*

JUDGMENT

This cause was considered on the record on appeal and the briefs on file.

IT IS ORDERED and ADJUDGED that the judgment of the District Court is AFFIRMED.

IT IS FURTHER ORDERED that plaintiff-appellant pay to defendants-appellees the costs on appeal to be taxed by the Clerk of this Court.

EXHIBIT "B"

IN THE UNITED STATES COURT OF APPEALS
(FOR THE FIFTH CIRCUIT)

CHAKAKHAN R. DAVIS — PETITIONER - APPELLANT (S)

Vs.

USDC Civil Action No. *3:20-cv-274-KHJ-LGI*
Fifth Circuit No. *21-60640*

DOLLAR GENERAL CORPORATION, LLC., ET AL. — RESPONDENT - APPELEE (S)

MOTION TO STRIKE THE APPELLEES AND ITS COUNSELS PRINCIPAL BREIF AS A SANCTION

(EXPEDITED CONSIDERATION REQUESTED)

Pursuant to Rule 32.5 of the Fifth Circuit Rules., Rule 46 of the Fifth Circuit Rules., Rule 3.3 of the Model Rules of Professional Conduct., Section 28 U.S.C. § 1657 of the United States Constitution., et al., the Petitioner – Appellant respectfully files this Motion to Strike the Appellees and its Counsels Principal Brief. In Support hereof, the Appellant would show unto this *Honorable Court* the following:

Accordingly, on January 10th 2022 the Appellants Principal Brief and Record Excerpts was Filed in this Case. Shortly afterwards, the Appellees and its Counsel were Granted additional Time from this Court on or about January 12th 2022 to File their Principal Brief and Record Excerpts in this Proceeding. Specifically, it was on February 15th 2022 when they filed both of their Appellate Documents before this Court. By way of Rule 28 (c) of the Fed. R. App. P., / 5th Cir. Rule. 31 the Appellant in this action has (21) twenty-one days to Timely File an Reply Brief in this Case. However, this Court on February 22nd 2022 had allowed the Appellant until March 22nd 2022 to File an Reply Brief in this Proceeding. Thus, this Court should revisit it's Case Precedents regarding an Party (ies) willful non-compliance with the Federal Rules of Appellate Procedure as well all other Rules which require adequate Briefing by the Party (ies) before the Fifth Circuit. The Time has come in the instances that is also presented in the Case *Sub Judicice.* Therefore, instead of the Appellant Filing an Reply Brief in this Proceeding, the many willful

misrepresentations of this Case Factual Background as well as Legal Arguments raised in the Appellants Brief which the Appellees Principal Brief makes mention of, may be best Remedied by the instant Filing of this Motion. See, e.g., 5th Circuit Rule 46. This is so, because the Appellees and its Counsel has stood firmly on the many willful misrepresentations found in their Principal Brief after having been provided Notice of the need of Corrections from the Petitioner which has multiplied this Case Proceedings unreasonably and vexatiously. See also, e.g., Texas Alliance for Retired Americans; Sylvia Bruni; DSCC; DCCC v. Ruth Hughs, in her official capacity as the Texas Secretary of State, Appealed from the United States District Court for the Southern District of Texas., USDC No. 5:20-CV-128., 5th Cir. Cause No. No. 20-40643 (3/11/2021). Particularly, on February 23rd 2022 the Appellant had conferred with the Appellees and its Counsel as an "Good Faith" effort to resolve this Dispute without having to File this Motion to Stricken their Principal Brief. See, ***Exhibit "A"*** attached hereto. In Response, Counsel for the Appellees on February 24th 2022 forwarded the Petitioner an email which stated that they did not see a reason to make any revisions to the Appellees Principal Brief. See, ***Exhibit "B"*** attached hereto. Therefore, this Motion is not only Timely but proper before this Court. Summarily, in Texas Alliance for Retired Americans; Sylvia Bruni; DSCC; DCCC v. Ruth Hughs, in her official capacity as the Texas Secretary of State, after the Appellants had notified the Appellees that they intended to file a Motion for Sanctions based on their lack of Candor and violation of the Local Rules, this Court held that the Appellees could have withdrawn their Motion, but Instead, stood firmly by the false and misleading misconduct that multiplied the Proceedings unreasonably and vexatiously. Consequently, this Court Sanctioned the Appellees and its Counsel in that Case as set forth in ***Exhibit "C"*** attached hereto. See also, e.g., Section 28 U.S.C. § 1927; Automation Support, Inc. v. Humble Design, L.L.C., 982 F.3d 392, 395 (5th Cir. 2020); Engra, Inc. v. Gabel, 958 F.2d 643, 645 (5th Cir. 1992); Renobato v. Merrill Lynch & Co., 153 F. App'x 925, 928 (5th Cir. 2005) and Rule 3.3 of the Model Rules of Professional Conduct regarding Candor Toward the Tribunal. For the following reasons, this Court would properly Stricken the Appellees and its Counsels Principal Brief from this Case in its entirety.

1. **THE APPELLEES PRINCIPAL BRIEF DOES NOT ONLY CONTAIN INTENTIIONAL FALSE, MISLEADING AND HARASSING CONCLUSORY LEGAL ARGUMENTS IN IT, BUT DOES NOT COMPLY WITH THE FEDERAL RULES OF APPELLATE PROCEDURE AND FIFTH CIRCUIT RULES.**

For example, in Foot Note No. 3 on Page 15 of the Appellees and its Counsels Principal Brief (Document No. 00516203705), they specifically stated the following:

> That Davis also argues, for the first time on appeal, that the videos of her entering the two stores are insufficient because they have a glare and do not have any sound.

But then again, see Page 28-29 where the Appellees and its Counsel conceded as follows:

> Davis's Motion for Prospective Relief does not present any information to show any basis for relief under any of the three prongs required by Rule 59 (e). It does not provide any change in the controlling law or present any newly discovered evidence. Davis's Motion simply argues, without providing any legal basis, that the District Court's Order and Final Judgment were manifestly in error.
>
> Davis's Motion did not provide any legal basis upon which any such manifest error could be found. She argued that the Magistrate Judge did not have the authority to deny certain Motions. She argued that the proper Defendant is the non-existent entity, "Dollar General Corporation, LLC." She argued that the video footage of the two alleged premises-liability incidents were not proper evidence because one had no sound and one had a glare. She argued that Calvin Billingsley never advised her by letter or phone that she was banned from Dollar General Stores. She demanded Rule 11 sanctions against Dollar General Corporation and its counsel. (See ROA.506-541). None of that shows any "manifest error."

The Appellees and its Counsel also stated in their Principal Brief that the Appellant spends much of her time in the Appellant's Principal Brief arguing that the District Court's Text-Only Order (on 2/5/2021) (ROA.4) and Text-Only Order (on 7/14/2021) (ROA.8) were erroneous but did not Appeal either of these Rulings of the Magistrates Judge. See, Document No. 00516203705 at Page 29. Briefly, the timely set of Written Objections that the Appellant had made within (14) fourteen days unto both of these Judicial Rulings of Judge Lakeysha Greer Isaac in the U.S. District Court had preserved the Issues for purposes of this Appeal. See, e.g., ***Exhibit "D"*** attached hereto; Thomas v. Arn, 474 U.S. 140, 155, 106 S. Ct. 466, 475, 88 L.Ed.2d 435 (1985) and Nettles v. Wainwright, 677 F.2d 404, 408 (5th Cir.1982)(en banc), involving a Habeas Petition, where this Court approved the Waiver Rule of Lewis, and stated that it refused to "sit idly by and observe the 'sandbagging' of District Judges when an Appellant fails to Object to a Magistrate's Report in the District Court and then undertakes to raise her and/or his Objections for the first time" on Appeal. Overall, this Court has stated that if a Party Timely Objects to the Magistrate Judge's Report and Recommendations, that the District Court must "make a *De Novo* determination of those portions of the Report or specified . . . Recommendations to which Objection is made." 28 U.S.C. § 636 (b) (1) (C); see also Fed. R. Civ. P. 72 (b) (3). Further, that if a Party (ies) Objections is Timely, that it only must determine

"whether the District Judge . . . engaged in *De Novo* review . . . . and if it did not, must Remand." See also, e.g., United States v. Wilson, 864 F.2d 1219, 1221 (5th Cir. 1989). Accordingly, the Appellants Principal Brief properly ask this Court to determine whether or not Rule 72 of the Fed. R. Civ. P., required the United States District Courts Judge to conduct an *De Novo* Review of the Magistrate Judges Text Orders after Timely Written Objections were Filed specifying the Grounds of Legal Error. See, e.g., Stephen C. Walker v. Michael D. Savers, Et al., Appealed from the United States District Court for the Northern District of Texas USDC No. 2:11-CV-94., 5th Cir No. 13-10408, where this Court stated that if Walker were correct that he had Timely made Written Objections unto the Magistrate Judges R & R., then the Question is whether the District Court "ma[de] a *De Novo* determination of" the Objected-to portions of the Magistrate Judge's Report. See also, e.g., Section 28 U.S.C. § 636 (b) (1) (C). Therefore, the Plaintiff has not raised these Points of Legal error for the first time on Appeal. Id. The Law is well settled that an Party need only File an Timely set of Written and Specific Objections unto an Magistrate Judge's Order or Report and Recommendations in order to preserve the Right to Appeal. To the extent, the Objecting Party is also to be mindful of the purpose of such Objections. The United States Supreme Court has aptly stated that their purpose is to provide the U.S. District Court "with the opportunity to consider the specific contentions of the Parties and to correct any errors immediately." See, e.g., United States v. Raddatz, 447 U.S. 667 (1980) and United States v. Walters, 638 F.2d 947 (6th Cir. 1981). And by the U.S. District Courts Judge not having entered a Judicial Ruling on neither set of the Written Objections that the Petitioner had Filed in this Case unto the MJ's Text Orders, it was impossible for her to make reference to any Orders entered by Judge Kristi H. Johnson on the Requests in the Notice of Appeal. See, Document No. 00516203705 at Page 29 as follows:

> "A Notice of Appeal must designate the Judgment or Order being Appealed, otherwise, this Court may lack Jurisdiction to Review the Order." Sanders v. Christwood, 858 F. App'x 698, 700 and n.13 (5th Cir. 2021) (citing Fed. R. App. P. 3(c)(1)(B); Warfield v. Fid. & Deposit Co., 904 F.2d 322, 325 (5th Cir. 1990). Although this Court liberally construes a Notice of Appeal, it typically does not exercise Jurisdiction to Review an Order outside of an explicitly Designated Order in the Notice of Appeal. Id. at 700 and n.14 (citing Warfield, 904 F.2d at 325).

In fact, the U.S. Supreme Court upheld this Rule in Thomas v. Arn, 474 U.S. 140 (1985). The Supreme Court noted that "[t]he Filing of Objections to a Magistrate's Report enables the District Judge to

focus attention on those Issues – Factual and Legal – that are at the heart of the Parties' Dispute." Id. at 147. The Appellant in this action, highly concedes that there is no Case Law cited in the Appellees Principal Brief and/or either the Case Law in which is cited in Support of this part of the Appellees Principal Brief, is knowingly incorrect and/or wholly irrelevant as to why this Court cannot consider the Text Only Orders of Judge Lakeysha Greer Isaac. See also, e.g., State v. Lindsey, 394 S.C. 354, 714 S.E.2d 554 (Ct. App. 2011) (an Issue is deemed abandoned and will not be considered on Appeal if the Argument is raised in a Brief but not supported by Authority). Conversely, the Appellees Legal Argument that the Appellants Principal Brief raise New Legal Arguments for the first Time on Appeal and many more cannot be supported by any Citation to the Record, Case Law (s), Statute (s), or other Authority (ies) for which is applicable and could be adopted by this Court. See, e.g., Rule 28 (a) (8) (A) of the Fed. R. App. P., (requiring Appellant's Argument to contain "Appellant's contentions and the reasons for them, with citations to the Authorities and parts of the Record on which Appellant Relies"). This Factual Assertion is made by the Appellant, due to the Trial Court Records which tend to show that she has not raised any New Legal Arguments for the first Time on Appeal. Id. Rather similar, Rule 28 (b) of the Fed. R. App. P., which governs an Appellee's Brief must conform to the requirements of Rule 28 (a) (1)–(8) and (10). Except, that none of the following need appear unless the Appellee is dissatisfied with the Appellant's statement: (1) the Jurisdictional Statement; (2) the Statement of the Issues; (3) the Statement of the Case; and (4) the Statement of the Standard of Review. Nevertheless, the Plaintiffs Motion for Sanctions that were Ruled on by the U.S. Magistrate Judge was never mooted in this Case. This is particularly true since Judge Lakeysha Greer Isaac were without Jurisdiction to enter a Ruling directly on the Dispositive Sanctions Request. And that's due to no Referral Order having been entered by the U.S. District Courts Judge in this Case, which is also absent of the Parties Expressed and/or Implied Consent for Judge Lakeysha Greer Isaac to conduct any and/or all of this Case Proceedings. See, e.g., Roell v. Withrow, 538 U.S. 580 (2003). Articulately, throughout the Appellees and its Counsels Principal Brief, they also take a similar approach by knowingly misstating that the Plaintiff had only made mention of Dolgencorp, LLC., as the Proper Respondent in this Suit twice in a Pleading Filed before the U.S. District Court. See, Document No. 00516203705 at Page 23. This Defendant were repeatedly stated by the Plaintiff as Dollar General Corporation, LLC., in Pleadings

Filed in District Court as well as Motion for Reconsideration. See, ***Exhibit "E"*** attached hereto. Therefore, the Appellant having stated in her Principal Brief that she had referred to Dolgencorp, LLC., in this Suit as "Dollar General Corporation, LLC is also not asserted for the first time on Appeal." To be exact, there is a wide array of Conclusory and/or Speculative Arguments that the Appellees and its Counsel have made in their Principal Brief (Document No. 00516203705). Concisely, they both have not thoroughly set forth their Legal Argument (s), by citing to places in the Record that would support any of their alleged Factual Assertions, and Relevant Case Law (s), Statute (s), or other Authority (ies) for which would otherwise be applicable and could be considered by this Court. This Court has likewise held that there are numerous ways that an Party can fail to adequately Brief her and/or his Legal Argument (s) on Appeal. See, e.g., JTB Tools & Oilfield Servs., L.L.C. v. United States, 831 F.3d 597, 601 (5th Cir. 2016) (failure to "offer any Supporting Argument or citation to Authority" or to "identify Relevant Legal Standards and any Relevant Fifth Circuit Cases") (quotation omitted); United States v. Rojas, 812 F.3d 382, 407 n.15 (5th Cir. 2016) (failure to offer Record citations); United States v. Charles, 469 F.3d 402, 408 (5th Cir. 2006) ("A single Conclusory Sentence in a footnote is insufficient to raise an Issue for Review."); Yohey v. Collins, 985 F.2d 222, 224–25 (5th Cir. 1993) (failure to include Argument in the Body of the Brief) and Brinkmann v. Dallas Cnty. Deputy Sheriff Abner, 813 F.2d 744, 748 (5th Cir. 1987) (failure to address the District Court's analysis and explain how it erred).

2. THE APPELLEES PRINCIPAL BRIEF AT PAGE 17 ALSO ASK THIS COURT TO TAKE JUDICIAL NOTICE OF IRRELEVANT AND NON-RECORD-MATERIAL THAT IT NEVER PLED IN ANY PLEADING BEFORE THE U.S. DISTRICT COURT.

For the forgoing reasons set forth above the Appellant fully reincorporates them here as if they are republished, except in the Appellees and its Counsels Principal Brief also improperly ask this Court to take Judicial Notice of a slew of Non-Record-Material that were not Requested by this Court nor attached to and/or cited in any Pleading that they Filed before the U.S. District Court, thereby expanding the Record beyond what was before the U.S. District Court when it Ruled. They further ask this Court to consider the Irrelevant and Non-Record-Material in assessing whether the U.S. District Courts Order granting Summary of Judgement to the Nonparty Defendant Dollar General Corporation should be affirmed. For example, in Rosenberg v. Rosenberg, 511 So. 2d 593 (Fla. 3rd DCA 1987), the Court observed that Counsel's Motion

Requesting the Court to take Judicial Notice of a series of Newspaper Articles was "completely inappropriate," noting that Appellate Review is limited to the Record as made before the Trial Court at the time of the entry of a Final Judgment or Order complained of. This Principle has been reaffirmed by Courts in Florida repeatedly, most recently in Beshears v. State, _ So. 3d. _, 2018 WL 4168637 (Fla. 1st 2018). In Beshears, quoting Rosenberg, the Court found that Websites relied upon by the State did not appear in the underlying Record, and as a result the Court was without Authority to consider them. This Court and others similarly situated have held the same Legal Principal. See, e.g., U.S. ex rel. Wilkins v. United Health Grp., Inc., 659 F.3d 295, 303 (3d Cir. 2011) ("[W]e think that ordinarily a Court of Appeals should not take Judicial Notice of Documents on an Appeal which were available before the District Court who decided the Case but nevertheless were not tendered to that Court, the precise situation here."); Bd. of Miss. Levee Comm'rs v. EPA, 674 F.3d 409, 417 n.4 (5th Cir. 2012) (holding that "a Party may not avoid the Rule against Supplementing the Record with a Document not before the District Court by Requesting that the Appellate Court take Judicial Notice of the Document."); Conaway v. Polk, 453 F.3d 567, 579 n.14 (4th Cir. 2006) ("Because these [Local Rule 28 (b)] attachments were not submitted to the District Court, we have not considered them in resolving this Appeal") and Rohrbough v. Wyeth Labs., Inc., 916 F.2d 970, 973 n.8 (4th Cir. 1990) ("[W]e decline to consider the Letter as well as the other Documents not considered by the District Court."). The Cases in which the Appellees and its Counsel cite in support of its contention that this Court may take Judicial Notice of Public Records on file in the Offices of the Secretaries of State regarding DGC is also not properly stated before this Court. In George v. SI Grp., Inc., 2021 U.S. App. LEXIS 32629, *5 n.3 (5th Cir. Nov. 2, 2021) (citing Fed. R. Evid. 201 (b), on Appeal, it was initially unclear whether there was Complete Diversity of Citizenship between all the Parties and this Court Requested Supplemental Briefing on the Issue. In Response, the Parties Filed Supplemental Letter Briefs. Though, this Court required the Parties in this Legal Dispute in its Briefing Notice to state whether or not Complete Diversity of Citizenship existed between the Parties for purpose of this Appeal, it did not ask the Appellees and its Counsel to make mention of the Non-Party Defendants Citizenship. As correctly reflected, in the Jurisdictional Statement of the Appellants Principal Brief, the Defendant Dollar General Corporation, LLC (Dollgencorp, LLC)., who is named in the Complaint and could be held Liable for the Incident in Question

is a Single Member Kentucky Limited Liability Company. The Parties may in consequence often seek to Supplement the Appellate Record with New Material that meets the requirements of Rule 201 of Fed. R. Evid. Similarly, in Swindol v. Aurora Flight Scis. Corp., 805 F.3d 516, 518-19 (5th Cir. 2015), on Appeal because the Appellate Record was deficient, this Court similarly Ordered the Parties to file a Joint Letter Brief regarding Jurisdiction. Further, after the Parties had Stipulated to the Jurisdictional Facts "not subject to Reasonable Dispute" set forth in Publicly available Documents, this Court in Swindol took Judicial Notice of those Facts according to Rule 201 (b) (2) of the Fed. R. Evid., and relied on Section 28 U.S.C. § 1653. Judicial Notice may not be taken on Appeal of information just because it is found in a Publicly available Record. Indeed, if the Appellees' expansive interpretation were correct, then the Record would never be closed, and on Appeal, Judicial Notice could always be taken of New Evidence extracted from "Public Records." See, e.g., Colonial Leasing Co. of New England v. Logistics Control Group Int'l, 762 F.2d 454, 461 [5th Cir. 1985]. Clearly, the Appellees and its Counsel have failed to properly ask this Court to take Judicial Notice of the Irrelevant and Non-Record-Material contained in their Principal Brief Filed before this Court on February 15th 2022. This Court who has not raised the matter *Sua Sponte* and/or required the Parties to File a Supplemental Jurisdictional Statement of Facts should generally require the Appellees and its Counsel to File a Motion to Supplement the Trial Court Records and/or an Motion that ask it to take Judicial Notice of the New and Irrelevant Material that they have stated meets the requirements of Rule 201 of Fed. R. Evid. See also, Document No. 00516203705 at Pages 2 and 17. This Court on August 24th 2021 only stated in its Briefing Notice that "for Diversity of Citizenship purposes, the Citizenship of a Limited Liability Company is determined by the Citizenship of all of its Members." As such, it required the Parties to Brief the Issue of "whether Complete Diversity exists amongst the Parties to this Suit." Id. In Response, the Appellees and its Counsel in their Principal Brief knowingly misstated that no Limited Liability Company has been named as a Defendant in this Civil Dispute. See, Document No. 00516203705 at Page 2. Nevertheless, there was no reason for the Appellees and its Counsel to even make mention of any Public Records or Documents from the State of Tennessee Secretary of State Office for this Court to take Judicial Notice of the Non-Party Defendants (Dollar General Corporation's) Citizenship for purposes of establishing Complete Diversity of Jurisdiction. See, Section 28 U.S.C. § 1332 of the United States Constitution and

Vantage Trailers, Inc. v. Beall Corp., 567 F.3d 745, 748 (5th Cir. 2009), regarding Conclusory and General Jurisdictional Statements made by an Party. The Non-Party Defendant Dollar General Corporation is not named in the Trial Courts Complaint as a Defendant and therefore the Corporate Entity (ies) State of Incorporation and Principal Place of Business is Irrelevant to the Facts of this Dispute. See, e.g., Norris v. Hearst Trust, 500 F.3d 454, 461 n.9 (5th Cir. 2007).

3. THE APPELLEES AND ITS COUNSEL KNEW THAT THEIR MISREPRESENATIONS WERE MANIFESTEDLY FALSE, BUT THEY YET PROCEEDED WITH FILING A FRIVIOLOUS PRINCIPAL BRIEF BEFORE THIS COURT WHICH HAS MULTIPLIED THIS PROCEEDING UNREASONABLY AND VEXATIOUSLY.

For the forgoing reasons set forth above the Appellant fully reincorporates them here as if they are republished, except throughout the Appellees and its Counsels Principal Brief, they mischievously and falsely alleges that the Appellants Principal Brief presents only Conclusory allegations and misguided Arguments. As set forth above, in their Principal Brief they later made reference to Pleadings Filed by the Appellant in the United States District Court which tend to suggest that they knew that no New Legal Arguments have been raised by her for the first time on Appeal. See also, 5th Cir. R. 27.2.9. Sanctions are warranted in this Case to deter future violations by the Appellees Counsel and others similarly situated. See, e.g., Rule 3.3 of the Model Rules of Professional Conduct and 5th Cir. Rule 32.5. On the other hand, there is a long line of Case of where an Plaintiffs incorrect naming of an Defendant was allowed to prevail, though her and/or his Complaint had not Pled the correct name of the Defendant. This action were done by the Courts since the Relation Back Rule generally apply to such Cases. See, e.g., Rule 15 (c) of the Fed. R. Civ. P., Travelers Indemnity Co. v. United States ex rel. Construction Specialties Co., 10th Cir. 1967, 382 F.2d 103; Wynne v. United States ex rel. Mid-States Waterproofing Co., Inc., 10th Cir. 1967, 382 F.2d 699; Wirtz v. Mercantile Stores, Inc., E.D. Okla. 1967, 274 F. Supp. 1000; Marino v. Gotham Chalkboard Mfg. Corp., S.D.N.Y. 1966, 259 F. Supp. 953 and Infotronics Corp. v. Varian Associates Corp., S.D. Page 585 Tex. 1968, 45 F.R.D. 91, where the Plaintiff had actually Sued and Served the correct Party in which s/he intended to Sue, but mistakenly used the wrong name of the Defendant. All of the Courts, held that the Defendants, of course, had Notice of the Suit within the Statutory Period and was not prejudiced by a technical change in the style of the action under Rule 15 (c). The Law is well settled, that

substitution of a completely New Defendant creates a New Cause of Action. Id. See also, People of the Living God v. Star Towing Co., 289 F. Supp. 635 (E.D. La. 1968); Ronda Stacker, Individually, and as Next Friend of Jarvis Brandon, Jr., v. Dollar General Corporation and John Does 1-10, CCCC Cause No. 2019-60, date filed May 13th 2019., where the very same Counsel who are representing the Appellees in this Case had correctly sought to substitute Dolgencorp, LLC in the place of Dollar General Corporation upon the basis that DGC did not own, operate and/or control the DG Store where the subject incident had occurred. Similarly, in Patricia Hillard, as natural mother of Minor Child, Michael Hillard. Jr., v. Dollar General Corporation as set forth in *Exhibit "E"* attachments., the Plaintiffs Complaint had alleged that DGC had owned, operated and controlled the DG Store were the Plaintiffs injury had occurred and the Law firm of Copeland Cook and Taylor, PLLC underwent an similar approach. Articulately, in those Cases Counsel for the Appellees in this Proceeding had voluntarily identified Dolgencorp, LLC., as the Proper Respondent whenever a Plaintiffs Complaint had named Dollar General Corporation as a Defendant. While, this Case is somewhat distinguishable from those two Case., the Defendant Dollar General Corporation, LLC (Dolgencorp, LLC) is an existing Party to this Suit. See, e.g., Krupski v. Costa Crociere S.p.A., 560 U.S. 538, 555–57 (2010) (quoting Black's Law Dictionary 1092 (9th ed. 2009), where the Court explained the meaning of a mistake and that whether an Amended Pleading Relates Back depends on "what the Prospective Defendant knew or should have known" and "not what the Plaintiff knew or should have known." Id. at 548. See also, ***Exhibit "F"*** attached hereto. Likewise, in this action the Appellees and its Counsel knowingly misstates in their Principal Brief that the Courts USM's did not Serve Process upon Dolgencorp, LLC on January 26th 2021. Id. See also, Document No. 00516203705 at Page 11 as follows:

> Davis did not Serve Process on Dolgencorp, LLC, and it has never Appeared or Filed any Pleadings in this Case
>
> .

In light of that, the Non-Party Defendant "DGC" does not have an Registered Agent by the name of Corporation Service Company located at 1201 Hays Street in Tallahassee, FL. Id. See also, *Exhibit "A" attachments*. Moreover, the Appellant in the United States District Court would have not been required to substitute Dolgencorp, LLC in the place of Dollar General Corporation, LLC. This blanket assertion made by the Appellees and it's Counsel is further evidence of the egregiousness of their deliberate false and

misleading misrepresentations unto this Court. Clearly, the Plaintiff in this action would have only been required to correctly name "Dolgencorp, LLC" in the Complaint as "Dolgencorp, LLC" instead of "Dollar General Corporation, LLC." Id. See also, Rule 15 (c) of the Fed. R. Civ. P., and *Exhibit "E" through "F" attachment's*. For example, in Montalvo v. Tower Life Bldg., 426 F.2d 1135 (5th Cir. 1970), the Plaintiffs named "Tower Life Building" as a Defendant, instead of "Tower Life Ins. Corp." Montalvo, 426 F.2d at 1137-38. This Court allowed an Amended Pleading to Relate Back because *Inter Alia* "the Company knew or should have known that the Plaintiff had every intention of bringing Suit against their Employer – whatever the Employer's proper Legal name might have been." Id. at 1147. See also, Ala. & Vicksburg Ry. Co. v. Bolding, 13 So. 844, 846, 69 Miss. 255 (1891), where the Court allowed execution of a Judgment in which the Plaintiff sued "A. & V. Railroad Company," even though the correct name "Alabama & Vicksburg Railway Company" was not Pleaded. Bolding, 13 So. at 846. Moreover, after Service of Process was issued in this Case, the Defendant Dollar General Corporation, LLC (Dolgencorp, LLC), had appeared before the United States District Court throughby frivolously Filing a Motion for an Extension of Time. However, this action were followed by the Notice of Appearance that were Filed in this Proceeding by Dolgencorp, LLC's Counsel of Record on May 11th 2020. See, *Exhibit "F" attachments*. Though, this Court in Texas Alliance for Retired Americans; Sylvia Bruni; DSCC; DCCC v. Ruth Hughs, in her official capacity as the Texas Secretary of State stated that a finding of bad faith is not required when imposing Sanctions for a violation of the Court Rules, as further Authority for this Request the Petitioner cites to all of those Principles of Law followed therein and the Appellees Principal Brief. In the Appellees' and its Counsels Principal Brief they also knowingly misstated that New Legal Arguments were raised by the Appellant for the first time on Appeal as an outright flagrant attempt to mislead this Court into believing such had truly occurred. These deliberate false and misleading misrepresentations by the Respondents and its Counsel is identical to what they both had underwent before the United States District Court due to the Plaintiffs Complaint having referred to Dolgencorp, LLC as Dollar General Corporation, LLC. The Defendants and its Counsel Principal Brief acknowledges that the Non-Party Defendant (Dollar General Corporation) is not an Limited Liability Company. Further, that the Proper Respondent in this Suit (Dolgencorp, LLC) who owned, operated and/or controlled both of the DG Store Locations mentioned in the Complaint and been

correctly Served with Process is a Limited Liability Company. See, *Exhibit "E" through "F" attachments* and Document No. 00516203705 at Page 17 as follows:

> ~~Dollar General Corporation is a Corporation formed under the laws of the State of Tennessee with its principal place of business in Tennessee~~. **Dolgencorp, LLC, is a Limited Liability Company formed under the Laws of the Commonwealth of Kentucky with its Principal Place of Business in Tennessee.** Dollar General Corporation and Dolgencorp, LLC, are separate and Distinct Business Entities.

In Fact, had the Appellees and its Counsel alleged contention that the Petitioner had only Pled causes of action in the Trial Courts Complaint agianst Dollar General Corporation been actually true, then the proper Remedy was to File a Motion to Dismiss for the Courts lack of Personal Jurisdiction over its Corporate Entity instead of a Motion for Summary of Judgement. See, e.g., Goodyear Dunlop Tires Operations, S.A. v. Brown, 564 U.S. 915, 919 (2011), holding that for a State to have the power to hear Claims against a Defendant, that the Defendant's ties with the State must be so pervasive that he is "essentially at home" there; *Exhibit "E" through "F" attachments* and Document No. 00516203705 at Page 7 where the Appellees and is Counsel stated as follows:

> Dollar General Corporation does not own, occupy, operate, or control the Dollar General stores in Port Gibson and Utica, Mississippi. (ROA.243 (¶ 12).

But regardless of how the Plaintiffs Complaint and other Pleadings Filed before the U.S. District Court and this one refers to Dolgencorp, LLC., the Summons Served upon it Registered Agent on January 26th 2021 should add further potency that the Plaintiff only named and intended to sue its Corporate Entity in the Complaint who is a Limited Liability Company. See, *Exhibit "A" attachments* and *Exhibit "E" through "F" "attachments*. And by way of the aforementioned Legal Argument of the Appellees and its Counsels that's mentioned at Page 7 of their Principal Brief, it was reasonable clear that there is only an articulable nexus between the Claims mentioned in the Trial Courts Complaint with Dolgencorp, LLC., who is a LLC. See, e.g., Document No. 00516203705 at Page 10 and King Cty. v. IKB Deutsche Industriebank AG, 769 F. Supp. 2d 309, 315 (S.D.N.Y. 2011) (dismissing Class Action Complaint against Individual Defendants for lack of Personal Jurisdiction because Defendants' conduct lacked an articulable nexus to the Plaintiffs' Claims). On the other hand, the Appellant has never attacked the United States District Court Judges

(KHJ/LGI) on Appeal or otherwise with any contentions of fraud, defamation, and/or bad faith. See, e.g., *Exhibit "A" attachments* and Document No. 00516203705 at Page 12 as follows:

> In her Appellant's Brief and other pleadings, Davis accuses Dollar General Corporation, Lisa White, David Bengtson, undersigned counsel, District Judge Kristi H. Johnson, Magistrate Judge LaKeysha Greer Isaac, and District Judge Henry T. Wingate of fraud, defamation, and/or bad faith.

The Appellants Principal Brief only makes the following Argument towards the U.S. District Court Judge:

> Besides, the Non-Party Defendants frivolous Motion to Dismiss and/or for Summary of Judgment detailing the false, inaccurate and misleading IFP Proceeding from the Case of Davis v. Walmart Stores East, LP., the Order that Judge Kristi H. Johnson entered on the Motion for Default is proof that the Appellant who are a non-prisoner IFP filer were denied access to the Court. ROA.237-239. Furthermore, that the Plaintiffs full and fair opportunity to present this Claim that has a non frivolous and arguable basis before the U.S. District Court **may have been intentionally hampered by the U.S. District Courts Judge**." This arbitrary action by the Trial Courts Judge does not comply with Section 42 U.S.C § 1981 and the Due Process Clause of the Fourteenth Amendment that grant people of color and those who qualify for Informa Pauperis Status equal access to the Courts. See also, United Mine Workers of America v. Illinois State Bar Association, 389 U.S. 217 (1967).

Whereas, the Order that Judge Kristi H. Johnson entered on the Plaintiffs Motion for Default Judgment agianst Dollar General Corp, LLC / Dolgencorp, LLC states the following:

> Plaintiff Chakakhan Davis is a repeat visitor to the Southern District of Mississippi. According to Judge Henry T. Wingate's count, she has filed eleven lawsuits in this District alone. **See Davis v. Hinds Community College, et al, Civ. Action. No. 3:19-CV-693-HTW-LGI, [93]. Judge Wingate recently held a Show Cause hearing with Ms. Davis to discuss her repeated and frivolous case filings**.

The United States District Courts Judge did not hear any Argument on any Claims Filed by the Petitioner within this Judicial District and only Arguments by both of the Party (ies) on the Defendants frivolous Motion to Dismiss during the erroneous / fraudulent "Show Cause Order Hearing" he conducted in Davis v. Hinds Community College. See, *Exhibit "A" attachments*. Nevertheless, there were subsequent Orders entered by Judge Henry T. Wingate before the United States District Court that contradicts the earlier Decision he entered in Davis v. Walmart Stores East, LP., which falsely stated that the Appellant had been actively dishonest and/or deceptive before the Court. Id. See also, e.g., ***Exhibit "G"*** attached hereto and CM/ECF Doc No's. 115, 116, 171, 175, 177 and 181 in Davis v. Walmart Stores East, LP., USDC Cause No. 3:14-cv-375-HTW-LGI. These Facts were also asserted in the Rebuttal Memorandum of Law in Support of the Plaintiffs Motion for Sanctions agianst the Defendants and its Counsel Filed before

the United States District Court in this Case. See, *Exhibit "G" attachments* which also makes mention of CM/ECF Doc No. 36 in Davis v. Dollar General Corporation, LLC., USDC Cause No. 3:20-cv-274-KHJ-LGI. Id at Page 6-7.

CERTIFICATE OF COMPLIANCE:

By way of this Motion or Pleading the Appellant do hereby certify that it complies with the type-volume requirements of Rule 27 (d) (2) (A). To be exact, this Motion contains 2867 words.

WHEREFORE PREMISES CONSIDERED, for the foregoing reason (s) the Plaintiff respectfully asserts that this Motion are not being filed for an improper purpose and Request this Court to grant it in its entirety and all other Relief (s) that this Court may deem just and proper according to this Case Facts.

This, the 25th day of February 2022.,

Respectfully Submitted,
MS. CHAKAKHAN R. DAVIS, APPELLANT

By: _____

32942 Hwy 18, Utica, MS 39175
chakakhandavis@yahoo.com

CERTIFICATE OF SERVICE

By my signature above, pursuant to ***Rule 25 (d)*** of the ***Fed. R. App. P***, I hereby certify that I have electronically filed an ***Motion to Strike the Appellees and its Counsels Principal Brief as a Sanction*** with the Clerk of the Fifth Circuit using the ECF system which should automatically send electronic notification of such filing to the following individual/s:

1. Mr. Matthew D. Miller,
   at mmiller@cctb.com; and
2. Mr. Nicholas K. Thompson
   at nthompson@cctb.com.

The Undersigned Counsel for the Defense.

This, the 25th day of FEBRUARY 2022.

Respectfully Submitted,
MS. CHAKAKHAN R. DAVIS, APPELLANT

CRD

United States Court of Appeals for the Fifth Circuit

No. 21-60640

CHAKAKHAN R. DAVIS,

Plaintiff—Appellant,

versus

DOLLAR GENERAL CORPORATION, L.L.C., ET AL

Defendants—Appellees.

Appeal from the United States District Court
for the Southern District of Mississippi
USDC No. 3:20-CV-274

ORDER:

[redacted]

IT IS FURTHER ORDERED that the Appellant's motion to strike the Appellee's brief is DENIED.

JAMES C. HO
United States Circuit Judge

IN THE UNITED STATES COURT OF APPEALS
(FOR THE FIFTH CIRCUIT)

CHAKAKHAN R. DAVIS — PETITIONER - APPELLANT (S)

Vs.

USDC Civil Action No. *3:20-cv-274-KHJ-LGI*
Fifth Circuit No. *21-60640*

DOLLAR GENERAL CORPORATION, LLC., ET AL. — RESPONDENT - APPELEE (S)

MOTION FOR RECONSIDERATION OF THIS COURTS ORDER DENYING MOTION TO STRIKE THE APPELLEES PRINCIPAL BRIEF AS A SANCTION

(EXPEDITED CONSIDERATION REQUESTED)

Pursuant to Rule 27 (b) of the Fed. R. App. P., Section 28 U.S.C. § 1657 of the United States Constitution, et al., the Petitioner – Appellant respectfully files this Motion for Reconsideration. Summarily, on or about February 25th 2022 the Petitioner filed a Motion to Strike the Appellees Principal Brief as a Sanction. This Court on February 28th 2022 denied the Motions Request that ought in Fairness, Equity and Justice be Reconsidered. See, ***Exhibit "1"*** attached hereto. Nevertheless, this Motion is Timely for this Court to appropriately Reconsider Striking the Appellees and its Counsels' Principal Brief. See, e.g., Rule 40 (a) (1) of the Fed. R. App. P., and Rules 27.2 of the 5th Cir. R's. Just like in Texas Alliance for Retired Americans; Sylvia Bruni; DSCC; DCCC v. Ruth Hughs, in her official capacity as the Texas Secretary of State, Appealed from the United States District Court for the Southern District of Texas., USDC No. 5:20-CV-128., 5th Cir. Cause No. 20-40643 (3/11/2021), this is also a proper Case in which to issue Sanctions against the Appellees and its Counsel. Particularly, by Striking their Principal Brief for not complying with the Rules of this Court and containing frivolous and/or conclusory Legal Arguments throughout its text which improperly ask this Court to Affirm the Lower Courts Decision. See, e.g., Document No. 00516203705, et seq. Accordingly, the basis in which this Court denied the Appellants Motion to Strike the Appellees Principal Brief on February 28th 2022 is incorrect and/or clearly erroneous for the following reasons:

A. THERE IS A MANIFEST ERROR AND/OR A MISTAKE OF THE LAW FOUND IN THIS COURTS ORDER.

For example, under Rule 59 (e) of the Fed. R. Civ. P., a Manifest Error is defined as being "'[E]vident to the senses, especially to the sight, obvious to the understanding, Evident to the mind, not obscure or hidden, and is synonymous with open, clear, visible, unmistakable, indubitable, indisputable, Evidence, and Self-Evidence.'" See, e.g., In Re Energy Partners, Ltd., 2009 WL 2970393, at *6 (Bankr. S.D. Tex. Sept. 15, 2009) and Pechon v. La. Dep't of Health & Hosp., 2009 WL 2046766, at *4 (E.D. La. July 14, 2009) (Manifest error is one that "'is plain and indisputable and that amounts to a complete disregard of the Controlling Law'"). The Case Law, that is cited in Support of the Petitioners Motion to Strike the Appellees Principal Brief shows that this Court has completely disregarded their Principals of Law while entering a Ruling on the Request. Had this Court applied the Relevant and Controlling Case Law from this Circuit to the Facts of the Appellees and its Counsel Sanctionable misconduct, then it would have affected the outcome of the Decision it reached on February 28th 2022. Id. See also, e.g., See, ***Exhibit "2"*** attached hereto; Texas Alliance for Retired Americans; Sylvia Bruni; DSCC; DCCC v. Ruth Hughs, in her official capacity as the Texas Secretary of State, Appealed from the United States District Court for the Southern District of Texas., USDC No. 5:20-CV-128., 5th Cir. Cause No. 20-40643 (3/11/2021); JTB Tools & Oilfield Servs., L.L.C. v. United States, 831 F.3d 597, 601 (5th Cir. 2016) (failure to "offer any Supporting Argument or citation to Authority" or to "identify Relevant Legal Standards and any Relevant Fifth Circuit Cases"); United States v. Rojas, 812 F.3d 382, 407 n.15 (5th Cir. 2016) (failure to offer Record citations); United States v. Charles, 469 F.3d 402, 408 (5th Cir. 2006) ("A single Conclusory Sentence in a footnote is insufficient to raise an Issue for Review."); Yohey v. Collins, 985 F.2d 222, 224–25 (5th Cir. 1993) (failure to include Argument in the Body of the Brief) and Brinkmann v. Dallas Cnty. Deputy Sheriff Abner, 813 F.2d 744, 748 (5th Cir. 1987) (failure to address the District Court's analysis and explain how it erred). Likewise, Rule (s) 28 (a) (8) (A) of the Fed. R. App. P., and Rule 28 (b) of the Fed. R. App. P., which require an Appellee's Brief to conform to the requirements of Rule 28 (a) (1)–(8) and (10). However, Rule 28 (a) of the Fed. R. App. P., in pertinent part provides the following:

{T}hat the Appellant's Brief must contain, under appropriate Headings and in the Order indicated:

(8) The Argument, which must contain: (A) Appellant's Contentions and the reasons for them, with Citations to the Authorities and Parts of the Record on which the Appellant relies.

The Case Law in which the Appellees and it's Counsel cite in Support of their alleged contention that this Court cannot consider the Text Orders of Judge Lakeysha Greer Isaac is knowingly misstated and/or incorrect. See, e.g., Document No. 00516203705 at Page 29. In the Proceedings below, the Appellant had Timely Objected to both of the Text Orders of the U.S. Magistrate Judge which preserved her Right to Appeal those Judicial Rulings. See, e.g., *Exhibit "2" attachments*; Thomas v. Arn, 474 U.S. 140, 155, 106 S. Ct. 466, 475, 88 L.Ed.2d 435 (1985) and Nettles v. Wainwright, 677 F.2d 404, 408 (5th Cir.1982)(en banc), involving a Habeas Petition, where this Court approved the Waiver Rule of Lewis, and stated that it refused to "sit idly by and observe the "sandbagging' of District Judges when an Appellant fails to Object to a Magistrate's Report in the District Court and then undertakes to raise her and/or his Objections for the first time" on Appeal. Noneless, the Appellees and its Counsels Argument that New Legal Arguments were raised for the first time on Appeal by the Appellant are as well knowingly untrue. Id. The Fifth Circuits Case Law and Trial Court Records which is before this Court do not support neither of these frivolous Legal Arguments made by the Appellees and its Counsel in their Principal Brief and many more throughout its text. Id. Articulately, "Extraordinary and/or Exceptional Circumstances" in present in this Proceeding that warrants "Equitable Relief" from the erroneous Judgement this Court entered on the Petitioners Motion to Strike the Appellees Principal Brief. See, e.g., Templet v. Hydro Chem Inc., 367 F.3d 473, 478-79 (5th Cir. 2004) and Clancy v. Employers Health Ins. Co., 101 F.Supp.2d 463, 465 (E.D. La. 2000) (citing 11 CHARLES A. WRIGHT, ARTHUR R. MILLER MARY KAY KANE, Federal Practice Procedure § 2810.1, at 124 (2d ed. 1995).

B. THE APPELLEES AND ITS COUNSELS WILLFUL NONCOMPLIANCE WITH THIS COURTS RULES AND DELIBERATE FALSE AND MISLEADING MISREPRESENTATIONS CONTAINED IN THEIR PRINCIPAL BRIEF HAS MULTIPLIED THIS CASE PROCEEDINGS UNREASONABLY AND VEXATIOUSLY.

For the foregoing reasons set forth above, the Appellant reincorporates them here as if they are fully rewritten and/or published, except in Texas Alliance for Retired Americans; Sylvia Bruni; DSCC; DCCC v. Ruth Hughs, in her official capacity as the Texas Secretary of State, this Court found duplicative

misconduct of the Appellees and their Counsel in violation of its Local Rules and issued Sanctions. Especially, since the Appellees and its Counsel in that Proceeding could have withdrawn their misleading and redundant Motion to Supplement the Record when the error was pointed out to them by their Opposing Counsel. Id. The Appellant in this action on February 24th 2022 had likewise asked the Appellees and its Counsel to withdraw their willful misrepresentations of this Case Factual Background as well as Legal Arguments in their Principal Brief that they stated was raised by the Appellant for the first time on Appeal. This action by the Appellant, had simply asked the Appellees and its Counsel to make corrections to the known of misrepresentations and inaccuracies mentioned in their Principal Brief without Filing any Motion to Stricken their Principal Brief. On the same, the Appellees Counsel (Mr. Matthew D. Miller) stated that he would not withdraw the misrepresentations from the Appellees Brief that made the Motion to Strike appropriately Filed before this Court. The Appellees and its Counsels willful and persistent disregard of this Courts Rules as well as the American Bar Associations Rule of Candor toward the Tribunal, is Evidence that the misrepresentations contained in their Principal Brief were willful and/or particularity egregious. See, e.g., Rule 3.3 of the Model Rules of Professional Conduct, et seq.

1. **Besides Exceptional And / Or Extraordinary Circumstances Being Present For This Court To Reconsider Striking The Appellees And Its Counsels Principal Brief, A Manifest Injustice Would Continue To Occur If The Conclusory And Speculative Legal Argument (s) Contained Therein Are Allowed To Go Un-remedied.**

For the foregoing reasons set forth above, the Appellant reincorporates them here as if they are fully rewritten and/or published, except there would continue to be a Manifest Injustice committed in this Case, if the Appellees and its Counsel Principal Brief are not Strickened in its entirety. The Evidence of the Appellees and its Counsels deliberate false and misleading misrepresentations that is also attached to the Motion, was also overlooked by this Court while making a Ruling on the Request. See, *Exhibit "2" attachments*. This Legal Argument made by the Appellant should add further potency that the Order that this Court entered on the Motion to Strike is clearly erroneous / incorrect. See, e.g., Rule 59 (e) of the Fed. R. Civ. P., holding that the purpose of such Motions is to "calls into question the correctness of a Judgment; In re Transtexas Gas Corp., 303 F.3d 571, 581 (5th Cir. 2002) and City of Pub. Serv. Bd. v. Gen. Elec. Co., 935 F.2d 78, 82 (5th Cir. 1991), holding that to be 'clearly erroneous a Decision must Strike this Court as

more than just maybe or probably wrong, but must be dead wrong." Id. (cleaned up). In Fact, the Appellees and its Counsel who were on Notice of the misrepresentations contained in their Principal Brief could have not been prejudiced by the Courts grant act of the Request. This is particularly true, since they were allowed time for making the proposed corrections to their Principal Brief, but they simply refused to do so. The Appellant in this action, is the one who would endure unfair prejudice for having to prepare a Responsive Brief to the deliberate false and misleading misrepresentations contained in the Appellees and its Counsels Principal Brief. To be exact, there is a wide array of Conclusory and/or Speculative Legal Arguments that the Appellees and its Counsel rely on in their Principal Brief (Document No. 00516203705). The Legal Argument (s) that they have made are not thoroughly set forth therein, by citing to places in the Record that would support their alleged Factual Assertions, nor any Relevant Case Law (s), Statute (s), or other Authority (ies) for which would otherwise be applicable and could be considered by this Court. See, e.g., JTB Tools & Oilfield Servs., L.L.C. v. United States, 831 F.3d 597, 601 (5th Cir. 2016) and Alliance for Good Government v. Coalition for Better Government, Et al., Appealed from the United States District Court for the Eastern District of Louisiana USDC No. 2:17-CV-3679, 5th Cir. No. 20-30233 (5/19/2021), where this Court Affirmed the District Court's determination that the Case was Exceptional because Coalition Litigated in an unreasonable manner, including presenting meritless Defenses at the Summary Judgment stage, filing an unsupported Laches Defense, meritless Counterclaim, and a meritless Motion to Dismiss, and behaving unreasonably during Discovery by insisting on Proceeding with Depositions even after the District Court Granted Summary Judgment on Alliance's Federal Trademark Infringement Claim and Alliance dismissed its other Claims. In this action, the Appellees and its Counsels Principal Brief was Filed on February 15th 2022 which has made an Appellants Reply Brief due to be Filed with this Court within (21) twenty one days after Service. See, e.g., Rule 28 (c) of the Fed. R. App. P., and 5th Cir. Rule 31. The Appellant in this action should not be required to Respond to the clearly unsupported and meritless Legal Arguments that they both have presented in their Principal Brief. As further proof that the Appellees and its Counsel have not attempted to adequately Brief their Legal Arguments and that they are Conclusory,

See (Document No. 00516203705), Foot Note No. 3 on Page 15, where it was specifically stated by them as follows:

> That **Davis also argues, for the first time on appeal, that the videos of her entering the two stores are insufficient because they have a glare and do not have any sound.**

But then again, see Page 28-29 where the Appellees and its Counsel conceded as follows:

> **Davis's Motion for Prospective Relief** does not present any information to show any basis for relief under any of the three prongs required by Rule 59 (e). It does not provide any change in the controlling law or present any newly discovered evidence. **Davis's Motion simply argues, without providing any legal basis, that the District Court's Order and Final Judgment were manifestly in error.**
>
> Davis's Motion did not provide any legal basis upon which any such manifest error could be found. She argued that the Magistrate Judge did not have the authority to deny certain Motions. She argued that the proper Defendant is the non-existent entity, "Dollar General Corporation, LLC." **She argued that the video footage of the two alleged premises-liability incidents were not proper evidence because one had no sound and one had a glare.** She argued that Calvin Billingsley never advised her by letter or phone that she was banned from Dollar General Stores. She demanded Rule 11 sanctions against Dollar General Corporation and its counsel. (See ROA.506-541). None of that shows any "manifest error."

The same exist in this Case as in Alliance for Good Government v. Coalition for Better Government, Et al., since in the Proceedings below the Appellees and its Counsel had Filed a frivolous Motion for Summary of Judgment which has also multiplied this Case Proceeding unreasonably and vexatiously. Contrawise, the Nonparty Defendant "Dollar General Corporations" Citizenship that the Appellees and its Counsel has improperly asked this Court to take Judicial Notice of in their Principal Brief is wholly Irrelevant that has also played a part in multiplying this Case Proceeding unreasonably and vexatiously. See, e.g., Rule 30 (b) (2) of the Fed. R. App. P., which in pertinent part states that each Circuit must, by Local Rule, provide for Sanctions against Attorneys who unreasonably and vexatiously increase Litigation Costs by including unnecessary Material in the Appendix. This Court Briefing Notice on August 25th 2021 had only required the Party (ies) to state whether or not Complete Diversity of Citizenship existed between the Parties for purpose of this Appeal. {I}t did not ask the Appellant nor the Appellees and its Counsel to make mention of the Non-Party Defendants Citizenship who is not an Limited Liability Company. See, this Courts Briefing Notice which stated that "for Diversity of Citizenship purposes, the Citizenship of a Limited Liability Company is determined by the Citizenship of all of its Members." As correctly reflected, in the Jurisdictional

Statement of the Appellants Principal Brief, the Defendant Dollar General Corporation, LLC (Dolgencorp, LLC)., who is named in the Complaint and could be held Liable for the Incident in Question is a Single Member Kentucky Limited Liability Company. Therefore, there was no need for the Appellees and its Counsel to make mention of the Nonparty Defendants State of Incorporation and Principal Place of Business in their Principal Brief. See also, Mercury Air Group, 237 F.3d at 549 (quoting Edwards v. General Motors Corp., 153 F.3d 242, 246 (5th Cir. 1998), where this Court explained that a finding of "unreasonable" and "vexatious" multiplicative Proceedings necessitates "Evidence of bad faith, Improper Motive, or reckless disregard of the Duty owed to the Court"; Baulch v. Johns, 70 F.3d 813, 817 (5th Cir. 1995), holding that "underlying the Sanctions provided in Section 28 U.S.C. § 1927 is the recognition that frivolous Appeals and Arguments waste scarce Judicial Resources and increase Legal Fees charged to the Parties" and Gate Guard Servs., L.P. v. Perez, 792 F.3d 554, 561 n.4 (5th Cir. 2015), *holding that "vexatious conduct implies not only that a Litigant knew a Position was unfounded, but that her and/or his purpose was to create trouble or Expense for the Opposing Party which is present in this Case.*" See also, Document No. 00516203705 at Page 12 / 20, where the Appellees and its Counsel cite to the inaccurate and fraudulent IFP Proceedings conducted by Judge Henry T. Wingate in Davis v. Wal-Mart Stores, E. LP, 2019 U.S. Dist. LEXIS 132161, *5 (S.D. Miss. Aug. 7, 2019). By way of the Evidence attached in support of the Appellants Motion to Strike, this Court would be appropriately satisfied that she has shown that the Decision reached by Judge Henry T. Wingate in Davis v. Wal-Mart Stores East, LP., was based on fraud and a clearly erroneous factual determination of her Litigation History. See, e.g., Rodriguez v. Johnson, 104 F.3d 694, 696 (5th Cir. 1997). Re-collectively, the Appellant in this action has never been cited to as a frivolous, vexatious and/or bad faith Litigator in neither of those Cases mentioned in the Appellees and its Counsels Principal Brief. Id. Even if the Sanctions were warranted by Judge Henry T. Wingate toward the Petitioner in Davis v. Walmart Stores East, LP., this Court in Thomas v. Capital Sec. Servs., Inc., 836 F.2d 866, 882 n.23 (5th Cir. 1988), stated "that the Courts Imposition of Sanctions must not result in total, or even significant, preclusion of Access to the Courts." See also, *Exhibit "2" attachments*. The only Judges of the United States District Court who has ever initiated such and regarded to the Plaintiff as such, is

Judge Henry T. Wingate and Carltion W. Reeves. This prejudicial misconduct by both of them stemmed from the inaccurate and fraudulent IFP Proceedings that Judge Wingate conducted in Davis v. Walmart Stores East, LP., which were done by them to fraudulently attack the Appellants Credibility in other Cases and thus to unlawfully win Cases for the Defendants and their Counsel despite their merits. Id. See also, Document No. 9780905-2 [The Appellants Motion for an Extension of Time to File an Reply Brief which also asserts this fraudulent and oppressive Legal Argument made in the Appellees Principal Brief].

CERTIFICATE OF COMPLIANCE:

By way of this Motion or Pleading the Appellant do hereby certify that it complies with the type-volume requirements of Rule 27 (d) (2) (A). To be exact, this Motion contains 1953 words.

WHEREFORE PREMISES CONSIDERED, for the foregoing reason (s) the Plaintiff respectfully asserts that this Motion are not being filed for an improper purpose and Request this Court to Grant it in its entirety and all other Relief (s) that this Court may deem just and proper according to this Case Facts.

This, the 1st day of MARCH 2022.,

Respectfully Submitted,
MS. CHAKAKHAN R. DAVIS, APPELLANT

(Electronically Signed)

By: _____

32942 Hwy 18, Utica, MS 39175
chakakhandavis@yahoo.com

CERTIFICATE OF SERVICE

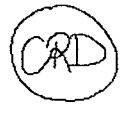
By my signature above, pursuant to ***Rule 25 (d)*** of the ***Fed. R. App. P***; I hereby certify that I have electronically filed an ***Motion for Reconsideration of this Courts Order denying Motion to Strike the Appellees Principal Brief as a Sanction*** with the Clerk of the Fifth Circuit Court of Appeals using the CM/ECF Fling System which automatically sent Electronic Notification of such filing to the following individual/s:

1. mmiller@cctb.com,
2. kpittman@cctb.com,
3. mmccullum@cctb.com, and
4. nthompson@cctb.com

Undersigned Counsel for the Appellees..

This, the 1st day of March 2022.,

Respectfully Submitted,
MS. CHAKAKHAN R. DAVIS, APPELLANT



CRD