No. _____

In the Supreme Court of the United States

PIETRO PASQUALE ANTONIO SGROMO
(A/K/A PETER ANTHONY SGROMO) PETITIONER

VS.

TARGET BRANDS INC. RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE FEDERAL CIRCUIT – CASE NO.: 21–1702

PETITION TO A JUDGE TO REVIEW CLERK'S ORDER DISMISSING PETITION FOR A WRIT OF CERTIORARI BECAUSE THE "PETITION IS OUT–OF–TIME" – BY PRO– SE APPELLANT PIETRO PASQUALE ANTONIO SGROMO

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PRO– PER PETITIONER

QUESTIONS PRESENTED

A. Whether a motion motions captioned under "Rule 60(b)" are normally deemed Rule 59 motions?

B. Whether the filing of a Rule 60(b) motion suspends the finality of the original judgment for purposes of an appeal review?

PARTIES TO THE PROCEEDINGS

Petitioner (plaintiff in the district court, and mandamus petitioner in the court of appeals) is individual Pietro Pasquale Antonio Sgromo (a/k/a Peter Anthony Sgromo). Respondents are Target Brands Inc., Eureka Inventions LLC, Leonard Gregory Scott — additionally through indemnity to Target — Bestway (USA) Inc., Bestway (Hong Kong) Int'l Ltd.., and Bestway Inflatables & Materials Corp., (collectively "Bestway") Bestway (USA) Inc., Bestway (hong Kong) Int'l Ltd.., and Bestway Inflatables & Materials Corp., (collectively "Bestway"); Imperial Toy LLC, Peter Tiger Debtor–in–Possession and Ja–Ru Inc.

CORPORATE DISCLOSURE STATEMENT

Petitioner submits the following statement of corporate interests and affiliations for the use of the Justices of this Court: Petitioner has no corporate interests. Petitioners is not a publicly– held corporation or other publicly-held entity. Petitioner has no stock, so no publicly–held corporation or entity owns any stock in Petitioner.

LIST OF DIRECTLY RELATED PROCEEDINGS

Pietro Pasquale–Antonio Sgromo v. Leonard Gregory Scott, Eureka Inventions LLC, Federal Circuit Court of Appeals, Case No.: 21–1106— on appeal from the United States DistrictCourt for the Northern District of California, Case No. 4:19–cv–08170–HSG, Judge Haywood S.Gilliam Jr.— on petition to vacate JAMS Arbitration Reference No.: 1100080798, Hon. Harry Low (ret.);

Pietro Pasquale–Antonio Sgromo v. Target Brands Inc., Federal Circuit Court of Appeals, Case No.: 21–1702, on appeal from the United States District Court for the District of Minnesota in Case No.: 0:20–cv–01030–JRT–LIB, Judge John R. Tunheim;

In re: Pietro Pasquale–Antonio Sgromo, Federal Circuit Court of Appeals, Case No.: 21–116, on petition for writ of mandamus to the United States District Court for the Northern Districtof California in Nos. 4:15–cv–00701–JSW, Judge Jeffrey S. White, and 4:17–cv–00205–HSG, Judge Haywood S. Gilliam, Jr.;

Pietro Pasquale Antonio Sgromo v. Bestway Enterprise Co. Ltd., Bestway (Hong Kong) International Ltd., Bestway Inflatables and Material Corporation, Eureka Inventions LLC, HEB Grocery Company LP, Academy Ltd, Bestway Global Holding Company Inc., Target Stores Inc., Wal-Mart Stores, Inc., and Wal-Mart Stores Texas, LLC, The United States District Court for theEastern District of Texas – Marshall Division, Case No. 2:19–cv–00060–JRG–RSP, Judge RodneyGilstrap;

Pietro Pasquale–Antonio Sgromo v. Imperial Toy LLC & HEB Grocery Company, LP, United States District Court for the Eastern District of Texas – Marshall Division, Case No. 2:19–cv–00068–RSP, Judge Rodney Gilstrap;

Bestway (Usa), Inc., et al. v. Eureka Inventions LLC, Leonard Gregory Scott, Wagmore & Barkless LLC, Pietro Pasquale–Antonio Sgromo, United States Court of Appeals for the NinthCircuit, Case No.s: 18–16228, 18–17040, 19–15709, 19–15797, Before: Peter L. Shaw, AppellateCommissioner;

In re: Imperial Toy LLC, United States District Court Northern District of California– San Jose Division, Case No. 19–cv–08431–EJD.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. § 1651. This is a case in equity. The orders of the court of appeals was entered on January 13, 2022.

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INTRODUCTION

This is a petition to a Judge of this Honorable Court to review the Clerk of the Court's Order that "the Court no longer has the power to review the [Appellant's] petition for a writ of certiorari" because "the petition is out–of–time."

STATEMENT OF THE CASE

This is certainly an extraordinary case that if writ is not issued could lead to a decision that would turn 200 years of the Patent Act on its head— giving rise to oral patent assignments, non–exclusive rescinded licenses tantamount to patent assignments — even when the inventor– patent holder was not a party to the agreements.

Petitioner timely filed a 60(b) motion with the Federal Circuit (Case No.: 21–1702) on or about January 10, 2022. SgromoDecl., ¶1. On or about January 12, 2022 the Court denied the Petitioner's Rule 60(b) motion. Id., ¶2. On or about January 26, 2022 Petitioner then filed an "Emergency Petition Under Rule 20 for Extraordinary Writ Of Mandamus" with this Honorable Court but, was returned due to filing deficiencies. Id., ¶3. Because the writ became moot (Ibid.)— on or about March 21, 2022, Petitioner timely filed a Petition for Writ of Certiorari to this Honorable Court from the 21–1702 ORDER. Id., ¶4. However, on or about March 28, 2022 the Clerk returned the documents stating

that "[t]he papers are returned" because "[t]he petition is out–of–time" citing the Order of December 13, 3021 the Rule 60(b) motion sought to vacate— further citing Rules 13.1, 29.2 and 30.1 that "the petition was due on or before March 13, 2021." The Clerk *insists* the Petitioner's Rule 60(b) motion (Id., ¶¶1,6,7) neither tolled the statute of limitations for the appeal nor did it divest this Honorable Court's jurisdiction because the reply to the Petitioner's Rule 60(b) motion was in the form of a letter from the Clerk of the Court. Id., ¶2

LEGAL STANDARD

Federal Rules of Appellate Procedure 4(A)(vi) expressly states:

"Effect of a Motion on a Notice of Appeal.

(A) If a party files in the district court any of the following motions under the Federal Rules of Civil Procedure– and does so within the time allowed by those rules-the time to file an appeal runs for all parties from the entry of the order disposing of the last such remaining motion:

§ . . . §

(vi) for relief under Rule 60 if the motion is filed no later than 28 days after the judgment is entered." Id.

Further, the Rules of the Supreme Court of the United States (the "Rules) expressly state in relevant part:

"[u]nless provided by law" as an exception to the 90–day rule; Rules, §13.1;

"[b]ut if a petition for re–hearing is timely fled in the lower court by any party, . . . the time to file the petition for a writ of certiorari for all parties (whether or not they requested rehearing or joined in the petition for rehearing) runs from the date of the *denial of rehearing* or, if rehearing is granted, the subsequent entry of judgment." (emphasis added) Rules, §13.3.

LAW & ARGUMENT

In *Willie v. Continental*, the court held that any motion to amend a judgment except for a proper Rule 60(a) motion to correct purely clerical errors, is to be considered a Rule 59(e) motion. 784 F.2d 706, 707 (5th Cir. 1986) (en banc). "Virtually every circuit court has held that a motion that 'calls into question the correctness of a judgment should be treated as a motion under Rule 59(e), however it is styled.'" *Harcon Barge Co. v. D G Boat Rentals, Inc.,* 784 F.2d 665, 669–70 (5th Cir.) (en banc), cert. denied, 479 U.S. 930, 107 S.Ct. 398, 93 L.Ed.2d 351 (1986). This Court has ruled that "even motions captioned under Rule 60(b)" are normally deemed Rule 59 motions whilst noting that "[t]he lower courts have almost without exception treated these as Rule 59 motions, regardless of their label" (*Griggs v. Provident Consumer Discount Co.,* 459 U.S. 56, 67-68 (1982), citing 9 J. Moore,

B. Ward, J. Lucas, Moore's Federal Practice ¶ 204.12[1], p. 4-67, and n. 26 (1982))— and there is no longer a final judgment from which to appeal (*Osterneck v. Ernst Whinney*, 489 U.S. 169, 177 (1989)).

The treatise have noted that the interpretation of Rule 4(a)(4) by the courts creates new and serious pitfalls for *pro se* and other unsophisticated litigants— because the filing of a Rule 59(e) or a 60(b) motion "suspends the finality of the original judgment" for purposes of an appeal. The reports are filled with cases in which litigants filed post–judgment motions to "reconsider," to "vacate," to "set aside," or to "reargue" adverse judgments whilst unwittingly filing invalid notices of appeal— simply because they had previously filed a motion questioning a district court judgment which, unbeknownst to them, is a Rule 59 motion. *Timing of Appeals Under Rule 4(A)(4)*, 123 F.R.D. 371 (J.P.M.L. 1988). And if an appeal follows, the ruling on the motion merges with the prior determination, so that the reviewing court takes up only one judgment. 11 Wright & Miller § 2818, at 246; *Foman v. Davis,* 371 U.S. 178, 181, 83 S.Ct. 227, 9 L.Ed.2d 222 (1962); see also *Apel v. Wainwright,* 677 F.2d 116 (CA11 1982) ("[t]he mere failure to appreciate the distinction between a Rule 59 motion and a Rule 60(b) motion, when combined with the draconian application of Rule 4(a)(4) adopted by the majority, would require the dismissal of [the] appeal."); *Communist Party of Indiana v. Whitcomb*, 414 U.S. 441, 445 (1974), ("the filing of a petition for rehearing or a motion to amend or alter the judgment

"suspend[s] the finality of the [original] judgment," thereby extending the time for filing a notice of appeal "until [the lower court's] denial of the motion . . . restores" that finality.");

This Honorable Court carried its rigid approach to construing Fed.R.App.P. 4(a)(4) even further in *Acosta v. Louisiana Department of Health Human Resources,* 478 U.S. 251, 106 S.Ct. 2876, 92 L.Ed.2d 192 (1986) (per curiam). The appellant in *Acosta* filed his notice of appeal after a post–trial motion had been decided, but before it was entered. This Honorable Court upheld the dismissal of the appeal as premature because the petitioner filed his notice of appeal *before* the order disposing of the motion to reconsider and Rule 4(a)(4) required it to treat the notice as "nullity" and thus deprived the court of jurisdiction over the appeal. *Ibid.*, see also *Allen v. Horinek,* 827 F.2d 672, 673 (10th Cir. 1987) (following *Acosta*).

Therefore, it is settled that "[i]f a timely motion under the Federal Rules of Civil Procedure is filed in the district court by any party . . . to alter or amend the judgment . . . the time for appeal for all parties shall run from the entry of the order . . . granting or denying any . . . such motion. A notice of appeal filed before the disposition of any of the above motions shall have no effect. A new notice of appeal must be filed within the prescribed time measured from the entry of the order disposing of the motion as provided above." *Acosta*, 252–53.

While a *pro se* litigant, Appellant carefully reviewed the relevant treatise and case law to ensure that his right to a Rule 60(b) motion would not require leave from this Honorable Court had he filed his petition for writ of certiorari in parallel. Had he filed prior to the disposition of his Rule 60(b) motion on January 12, 2022 the Clerk of the Court would have been obligated to dismiss the appeal. Therefore, the Clerk of the Court erred when she tolled the statute of limitations from the date of the ORDER dated December 13, 2021 the Rule 60(b) motion sought to vacate. Thus, the correct date in which the statute of limitations for the appeal commences on the date of the disposition of the Rule 60(b) motion— January 12, 2022. And it is established the true "out–of–time" date for the petition for writ of certiorari is on or before April 12, 2022 *not* March 13, 2022.

CONCLUSION

This court should reject the Clerk's letter of March 28, 2022 and direct the Court to review the Appellant's petition for writ of certiorari dated March 21, 2022 (attach.).

RESPECTFULLY SUBMITTED THIS 27TH DAY OF APRIL, 2022

SIGNED: .....

Pro per— Pietro Pasquale Antonio (Peter Anthony) Sgromo
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No. _____

In the Supreme Court of the United States

PIETRO PASQUALE ANTONIO SGROMO
(A/K/A PETER ANTHONY SGROMO) PETITIONER

VS.

TARGET BRANDS INC. RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE FEDERAL CIRCUIT – CASE NO.: 21–1702

DECLARATION OF APPELLANT ISO PETITION TO A JUDGE TO REVIEW CLERK'S ORDER DISMISSING PETITION FOR A WRIT OF CERTIORARI BECAUSE THE "PETITION IS OUT–OF–TIME"

I PIETRO PASQUALE ANTONIO SGROMO (a/k/a PETER ANTHONY SGROMO) **DECLARE AND DO SAY:**

1. On or about January 10, 2022 I filed a combined Petition for Oral Argument in Case No.: 21–1106, *Sgromo v. Scott et al.*— to be heard together with a "Rule 60(b) Petition for Relief from a Final Judgement" in Case No.: 21–1702, *Sgromo v. Target Brands Inc.* before the Federal Circuit Court of Appeals (see Exh. A, attach.). The petition was filed on both Dockets.

2. On or about January 12, 2022 the Clerk of the Fed Cir Court issued a letter on the 21–1702 Docket that it would not entertain the 60(b) petition (see Exh. B, attach.) and on or about January 13, 2022 the Clerk issued an ORDER on the 21–1106 Docket acknowledging that "Peter Sgromo requests oral argument in the above–captioned appeal and requests that argument be heard along with Appeal No. 21–1702" but "[u]pon consideration thereof" denied my Rule 60(b) motion (see Exh. C, attach.).

3. On or about January 26, 2022 I filed an "Emergency Petition Under Rule 20 for Extraordinary Writ Of Mandamus" with a return date requested of February 4, 2022 before this Honorable Court. However, the writ was not considered due to filing deficiencies and became moot because the Federal Circuit Court of Appeal transferred Case No.: 21–1106 to the 9TH Cir Court of Appeal citing the appeal did not *arise under* patent laws.

4. Because I do not object to the transfer of the 21–1106 to the 9TH Cir and the court disposed of my Rule 60(b) Motion— on or about March 21, 2022, I timely filed a Petition for Writ of Certiorari from the 21–1702 ORDER before this Honorable Court.

5. However, the documents were returned along with a letter from the Clerk of the Court dated March 28, 2022 that "[t]he papers are returned" because "[t]he petition is out–of–time" citing the denial of the petition for rehearing of December 13, 3021 (which the Rule 60(b) motion sought to vacate)— further stating "the petition was due on or before March 13, 2021" citing Rules 13.1, 29.2 and 30.1 (see Exh. D).

6. On or about April 21, 2022 I spoke on the telephone with the Analyst who had for a fourth time returned the documents, *insisting* the petition is out–of–time and that she follows the Rules and not the Case Law. I attempted to explain that that the Rule 13.1 expressly begins with "[u]nless provided by law" as an exception to the 90–day rule. And I also pointed to the Clerk Rule 13.3 which states in relevant part— "[b]ut if a petition for re–hearing is timely fled in the lower court by any party, . . . the time to file the petition for a writ of certiorari for all parties (whether or not they requested rehearing or joined in the petition for rehearing) runs from the date of the *denial of rehearing* or, if rehearing is granted, the subsequent entry of judgment."

7. The Clerk then noted other filing deficiencies (Exh. E). Despite my declaration that submissions form *Pro–se* litigants is to be taken liberally, the Clerk demanded I submit a petition for review in the appropriate format. The Clerk believes the reply letter from the Clerk is invalid although presents no explanation why it is not a relevant "denial of rehearing" as described in Rule 13.3.

I DECLARE UNDER FEDERAL PENALTY OF PERJURY THE ABOVE TO BE TRUE TO THE BEST OF MY KNOWLEDGE

DATED: APRIL 27TH

.....
PIETRO PASQUALE ANTONIO SGROMO
(A/K/A PETER ANTHONY SGROMO)

EXHIBIT A

United States Court of Appeals for the Federal Circuit

2021-1702

PETER SGROMO, aka Pietro Pasquale-Antonio Sgromo

Plaintiff-Appellant,

v.

TARGET BRANDS INC.,

Defendant-Appellee.

On Appeal from the United States District Court for the District of Minnesota in Case No. 0:20-cv-01030-JRT-LIB The Honorable John R. Tunheim, District Court Judge

CASE NO. 21-1106

PIETRO PASQUALE-ANTONIO SGROMO (A/K/A PETER ANTHONY SGROMO) PLAINTIFF-APPELLANT, V. LEONARD GREGORY SCOTT AND EUREKA INVENTIONS, LLC DEFENDANTS-APPELLEES

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, NO. 4:19-cv-08170-HSG THE HONORABLE HAYWOOD S. GILLIAM, JR., UNITED STATES DISTRICT JUDGE, PRESIDING

APPELLANT P.P.A. SGROMO'S OPPOSITION TO SUBMISSION WITHOUT ORAL ARGUMENT— PETITION FOR ORAL HEARING AND RULE 60[B] PETITION FOR RELIEF FROM A FINAL JUDGEMENT VIS-À-VIS ORAL ARGUMENT— TO BE HEARD TOGETHER

INTRODUCTION

There is no case like this. And that is easily proven by this Court's sole reliance on the very decisions the Appeal seeks *de novo* review or *dicta* from cases to which neither individual Appellant— Pietro Pasquale Antonio (Peter Anthony) Sgromo ("Appellant" or "Sgromo") was neither served nor appeared as its authority— whilst ignoring reviewing courts which have overruled every single erroneous decision this Court now uses as its authority. Perhaps the Court believes that because Appellant is self–represented or perhaps because he is a Canadian National he is not entitled to the constitutional right to a hearing. However, "[t]his right to protect persons having a domicil, though not native–born or naturalized citizens, rests on the firm foundation of justice, and the claim to be protected is earned by considerations which the protecting power is not at liberty to disregard. Such domiciled citizen pays the same price for his protection as native-born or naturalized citizens pay for theirs. *Fong Yue Ting v. United States,* 149 U.S. 698, 735 (1893).

Thus, Appellant opposes the Court's "NOTICE OF SUBMISSION WITHOUT ARGUMENT. Panel: 2202C. Case scheduled February 7, 2022." Appellant disagrees that "[a]rgument is not required and this case will be submitted to the panel on the date indicated" and seeks relief from the final judgement in Case

No. 21–1106, *Sgromo v. Target* because the Order has been inadvisedly entered and eschews long–standing precedents without any explanation for such disregard.

LEGAL STANDARDS

If the right to notice and a hearing is to serve its full purpose, then, it is clear that it must be granted at a time when the deprivation can still be prevented. *At a later hearing*, an individual's possessions can be returned to him if they were unfairly or mistakenly taken in the first place. Damages may even be awarded to him for the wrongful deprivation. But no later hearing and no damage award can undo the fact that the arbitrary taking that was subject to the right of procedural due process has already occurred. "Th[e Supreme] Court has not . . . embraced the general proposition that a wrong may be done if it can be undone." (emphasis added) *Stanley v. Illinois,* 405 U.S. 645, 647.

This is no new principle of constitutional law. The right to a prior hearing has long been recognized by the Supreme Court under the Fourteenth and Fifth Amendments. Although the Court has held that due process tolerates variances in the form of a hearing "appropriate to the nature of the case," *Mullane v. Central Hanover Tr. Co.,* 339 U.S. 306, 313, and "depending upon the importance of the interests involved and the nature of the subsequent proceedings" (*Boddie v. Connecticut,* 401 U.S. 371, 378)— the Supreme Court has traditionally insisted that, whatever its form, opportunity for that hearing must be provided before the

deprivation at issue takes effect. See e.g., Bell v. Burson, 402 U.S. 535, 542; *Wisconsin v. Constantineau*, 400 U.S. 433, 437; *Goldberg v. Kelly*, 397 U.S. 254; *Armstrong v. Manzo*, 380 U.S., at 551; *Opp Cotton Mills v. Administrator,* 312 U.S. 126, 152-153; *United States v. Illinois Central R. Co.,* 291 U.S. 457, 463; *Londoner v. City County of Denver,* 210 U.S. 373, 385-386. "That the hearing required by due process is subject to waiver, and is not fixed in form does not affect its root requirement that an individual be given an opportunity for a hearing before he is deprived of any significant property interest, except for extraordinary situations where some valid governmental interest is at stake that justifies postponing the hearing until after the event." *Boddie*, at 378–379.

Rule 60(b) allows a party to seek relief from a final judgment, and request reopening of his case, under a limited set of circumstances including fraud, mistake, and newly discovered evidence. *Santiago v. Warminster Township,* 629 F.3d 121, 134 n.10 (3d Cir. 2010). In addition, the availability of a corrective remedy such as is provided by Federal Rule of Civil Procedure 60(b) — which authorizes the reopening of cases in which final orders have been inadvisedly entered — renders the lack of prior notice of less consequence. *Gonzalez v. Crosby,* 545 U.S. 524, 529 (2005)

ARGUMENT

There is good cause to grant the oral hearing. This Court recently dismissed Appellant's related cases, 21–1702–ZZ, *Sgromo v. Target Brands Inc.* and 21–116, *In re: Pietro Pasquale Antonio Sgromo*[1] without a hearing and it should be noted in none of those underlying actions was Sgromo allowed an opportunity for a hearing. Upon information and belief, while Appellant confirmed UPS had delivered his paper submissions and also confirmed with the Clerk they had arriverd – nowhere on the Docket is there any indication they were ever docketed or even considered. Certainly, this Court's final decision is not "immune" from review, for it is undisputed that Article III courts have the power to revisit their final judgments in appropriate circumstances. See Fed.R.Civ.P. 60 ("[r]elief From a Judgment or Order"). However, routinely subjecting Article III judgments to agency override is a different matter.

In 21–116, this Court relied on *Bestway (USA), Inc. et al. v. Sgromo et al.,* No. 17CV–205, DKT. No:. 148 (N.D. Cal. Apr. 18, 2019) (the "Interpleader Action"). However, this Court's abbreviation is misleading as Bestway field suit against Eureka Inventions LLC ("Eureka"), Sgromo's California Company

[1] On Petition for Writ of Mandamus to the United States District Court for the Northern District of California in Nos. 4:15-cv-00701-JSW, Judge Jeffrey S. White, and 4:17- cv-00205-HSG, Judge Haywood S. Gilliam, Jr.

Wagmore & Barkless ("W&B") and Sgromo individually. Appellant on behalf of his company W&B waived summons of service but had not been served as an individual [DKT No.: 14–5, pp.52–3; see also Interpleader DKT No.: 19] and filed a motion to dismiss the case [Id., DKT No.: 13–16] as the Interpleader Action solely relied on the rescinded Eureka–Bestway License Agreements– to which Appellant was not a Party. However, on May 17, 2017 "the [Interpleader] Court t[oo]k[ ] the pending 14 motion for summary judgment filings under submission. The hearing previously scheduled for May 11, 2017 at 2:00 p.m. [wa]s vacated. The Court w[as to] issue a written order." [Id., DKT No.: 40]— but it did not for more than a year.

The Interpleader Action was only filed in retaliation after Scott failed throughout an eighteen–month malicious prosecution to convict Sgromo of domestic violence to steal Sgromo's royalties under the guise of the business judgement rule. Additionally, Eureka defaulted on an action in the Northern District of California– Oakland— Case 4:15–cv–00701–JSW, *Eureka Inventions LLC v. Bestway (USA), Inc., Bestway (Hong Kong) International Ltd.* (the "Eureka Action" or "Eureka Court") which Eureka sought relief for unpaid royalties under two non–exclusive licenses for the '298 and '440 Patents. [SuppAppx591–617; see also Eureka Action, DKT No.: 1–1, 1–2]. Scott and Bestway conspired to place all royalties in an escrow account— *misrepresenting* on at least two occasions that the

court had made such an ORDER. [DKT No.: 14–5, pp.1–2]. It is unclear which amounts were paid directly to Scott or put in escrow [Id., pp.14–49]— but there is no such ORDER from the Eureka Court whatsoever. And when Scott was unable to get his charges to stick [DKT No.: 14–7, pp.74,116–20]. Sgromo demanded to intervene in the Eureka Action [Id., pp.25–7]. In an attempt to escape default Scott admitted that "Mr. Sgromo has asserted that he is the owner of the intellectual property rights underlying the licenses in th[e] case" [Id., p.29,¶3]. Rather than file a counter–claim against Appellant who was willing to intervene— Eureka and Bestway dismissed their claims against each other "with prejudice" [Id., pp.32–4].

Notwithstanding the Interpleader Court granted Eureka's sole managing member — Leonard Gregory Scott as an individual – a non–party to the Interpleader Action his cross–motion for summary judgement against Sgromo as an individual and non–party to the action [DKT No.: 14–5, pp.54–63] — not only the royalties in escrow but his intellectual property including that of his co–inventor of the '298 Patent Bob Ranftl [DKT No.: 14–3, pp.18–22] or '440 Patentee WEM [Id., p.14]. Appellant on behalf of W&B appealed the decision to the 9th Circ. and had this Court conducted a proper *de novo* review it would have found the 9th Cir ruled the decision non–final as it failed to meet the requirements under Fed Civ Rule 54[b]. [Id., pp.50–1] ("order is not appealable unless it disposes of all claims as to all parties or judgment is entered in compliance with rule"); citing *Frank Briscoe Co., Inc. v.*

Morrison-Knudsen Co., Inc., 776 F.2d 1414, 1416 (9th Cir. 1985) ("order disposing of fewer than all claims or parties is not appealable absent express determination from district court that there is no just reason for delay under Rule 54(b)" concluding ["therefore, the scope of th[e] appeal is limited to a review of that portion of the district court's July 2, 2018 order denying appellant's motion to compel arbitration.").

Additionally, had a complete *de novo* review had been conducted this Court would have found that on or about October 2, 2019 the 9th Circ. ordered Eureka unseal certain documents revealing that Eureka had indeed rescinded the Eureka–Bestway License Agreements [SuppAppx646–63]. Therefore the Interpleader and Texas Actions became moot as did the *writ of mandamus* filed with this Court by the Appellant because "[w]hen a contract is rescinded, it ceases to exist . . . if the facts exist which justify a rescission by one party, and he exercises his right and declares a rescission in some effectual manner, he terminates the contract, and it cannot thereafter be made the basis of an action for damages caused by a breach of its covenants." *Lemle v. Barry,* 181 Cal. 1, 5 (Cal. 1919). Most importantly—"[r]escission extinguishes a contract (Civ. Code, § 1688) and requires each party to return whatever he has received as consideration thereunder (Civ. Code, § 1691). *Rodriguez v. Barnett,* 52 Cal.2d 154, 161 (Cal. 1959). As a matter of law the

defendant would therefore be required to return royalties and intellectual property to the Appellant upon rescission." *Ibid.* The settlement agreement between Appellee's and Bestway expressly states:

> "(a) With the exception of any claim relating to any term and/or the performance of this Agreement, Eureka, — Peter Sgromo, W&B — and Bestway hereby release each other from all actions, causes of action, suits, rights, debts, sums of money, accounts, accountings, covenants, contracts, controversies, agreements, promises, indemnities, liabilities, damages, judgments, executions, claims, or demands of every nature whatsoever, in law or equity or arbitration, whether based on contract, tort, statutory or other legal or equitable theory of recovery, whether known or unknown, asserted or unasserted, which one may have against the other arising at any time prior to the Effective Date, including all claims that in any way relate to, arise from, or are in any manner connected to the Disputed Licenses.
>
> (b) The Parties hereto expressly acknowledge and agree that this Agreement fully and finally releases and forever resolves all claims referenced in subparagraph (a) above, including those that are unknown, unanticipated or unsuspected or that may hereafter arise as a result of the discovery of new and/or additional facts, and the parties expressly waive all rights under § 1542 of the Civil Code of California, which the parties acknowledge they have read and understood and which provides as follows:
>
> A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR." (emphasis added) [DKT No.: 14–4, pp.41–2, §§11(a)(b); Id., p.53, §§8(a)(b)].

In addition to rescinding the Eureka–Bestway License Agreements, Sgromo and Bestway entered into an agreement with Sgromo for the '440 Patent [Id., p.59, §1.01— "DEFINITIONS— 3D Hopscotch product with ChromaDepth 3D googles" several other of Sgromo's inventions [Id., pp.58–125; see also Id., p.47, 2nd recit. ("Mr. Sgromo was responsible for creating and developing most, if not all of the toy products developed, sold and/or licensed by Eureka); see also Id., p.48, 1st recit. ("Mr. Sgromo and Bestway both believe that Mr. Sgromo has superior claims to the Option Products."); Ibid., 2nd recit. ("*Mr. Sgromo*, through his company W&B, has agreed to license to Bestway the exclusive rights to exploit the Option Products"). Under the settlement agreement which incorporated by reference [Id., p.48, 3rd & 4th recit.s] to the license agreements (the "Option Agreements") the parties essentially agreed to forego all past consulting *quantum meruit* for a simple solution— a royalty of five–percent (5%) of net sales [see for e.g., Id., p.61, §5] *if and only if* Bestway decided to launch any of the inventions Appellant had presented over the past 2 years:

> "LICENSE GRANT– Subject to the terms and conditions set forth herein, B&W grants to Bestway the sole and exclusive worldwide rights (including, without limitation, all patent, trade secret, copyright, trademark, know-how, and other proprietary and intellectual property rights) to manufacture, have manufactured, market, promote, advertise, use, offer-to-sell, sell, distribute, and import the Licensed Product and any extensions, modifications or improvements thereto. B&W further grants to Bestway the sole and exclusive worldwide rights to manufacture, have

> manufactured, market, promote, advertise, use, offer-to-sell, sell, distribute, and import any invention which is embodied in the Licensed Product or which is the subject of any patents to issue from any patent applications which have been or may be filed covering all or any portion of the Licensed Product (the "License").
>
> B&W also grants to Bestway all merchandising rights in the Licensed Product, including but not limited to the packaging, commercials, displays, trademarks and copyrights (the "Merchandising Rights")." [See for e.g.– Id., p.60, §§2.01–.02].
>
> The Agreement was the final expression of the parties intentions: "This Agreement, including all attached Appendices which are incorporated herein by reference as though fully set forth herein, embodies the complete and final agreement between the Parties, and supersedes all prior negotiations and agreements between the Parties, either oral or verbal, concerning its subject matter" [see for e.g., Id., p.67, §18.04].

On or about March 28, 2017, Bestway on its own free will terminated the Option Agreements whilst acknowledging §3.04(a) of the Option Agreements [see Interpleader Action– DKT No.: 46–11, pp.2–3; see also SuppAppx589–90] which expressly defines Bestway's rights upon termination:

> "Bestway's Rights Upon Termination. Upon termination of this Agreement, the License and all other rights granted to Bestway under this Agreement shall immediately terminate; provided, however, that there shall be no restriction on the right of Bestway's customers to continue to use a Licensed Product purchased prior to the date of termination. Notwithstanding the foregoing, Bestway shall have the right (but not the obligation) for a period of One Hundred and Eighty (180) days after such termination, to sell off its existing inventory of Licensed

> Products and complete the sale of any Licensed Product in process; provided that the royalty provisions of § 5 apply to such sales." (emphasis provided) [See for e.g., DKT No.: 14–7, p.60, §3.04(a)].

The Option Agreements clearly have a reversionary rights clause because ærights granted to Bestway under this Agreement shall immediately terminate" [Ibid.] and those rights granted are clearly defined as to ownership:

> "W&B will hold all patent rights to the initial concepts or designs of the License Product provided by W&B to Bestway hereunder . . . Bestway will have first refusal rights to purchase any patents or patent rights from B&W . . . The ownership rights in all trademarks and copyrights related to the Licensed Product that are developed, created, or originated by B&W shall remain the property of B&W but are licensed [ ] to Bestway . . ." [Id., pp.64–5, §§9.01–.04]; and

> "[t]h[e] Agreement, including all attached Appendices which are incorporated herein by reference as though fully set forth herein, embodies the complete and final agreement between the Parties, and supersedes all prior negotiations and agreements between the Parties, either oral or verbal, concerning its subject matter." [Id., p.67, §18.04].

Appellant sought to enforce the terms of settlement under Cal Civ Code §664.6 which allows the Eureka Court where settlement was reached to enforce the terms of settlement *without a new trial.* Id. However, the Eureka Court ruled that "Mr. Sgromo is arguing the Bestway Defendants breached a separate settlement agreement that he reached with them, that agreement is not part of this case and will

not be enforced by this Court" [DKT No.: 14–5, p.8, fn.4]. Nothing in the ORDER states the accompanying Option License Agreements were not enforceable.

Appellant filed a writ of mandamus — albeit late – but showed cause citing *Pyles v. Merit Systems Protection Board*– ". . . where a petitioner is diagnosed with a condition that by its nature is permanent in severity, and absent related evidence to the contrary, . . . cannot require additional medical evidence to cover gaps of medical evidence after diagnosis." 45 F.3d 411, 416 (Fed. Cir. 1995). The Clerk's finding that Sgromo failed to establish good cause, or was even denied an opportunity to present cause, contravenes this court's ruling in *Pyles* and is therefore contrary to law." Ibid.; see also, *Frank v. Office of Personnel Management,* 111 M.S.P.R. 206 (2009)— applying *French v. Office of Pers. Mgmt,* 810 F.2d 1118, 1120 (Fed. Cir.1987)— to a *pro se* appellant with mental impairment seeking entitlement to survivor annuities under 5 U.S.C. § 8341. *Id.* at 210 (the court "discern[ed] no reason why the French procedures should not [ ] appl[y]). In Frank, petitioner had failed to produce medical documentation covering the most recent nine years of his illness, so his claim was denied. Id. ("Mr. Frank subsequently filed a petition for review, but did so late." Id. at 208 n. 2.).

Most importantly though, the Option Agreements are dispositive here and also in related case 21–1702, *Sgromo v. Target et al.,* (the "Target Case") which this court also dismissed without a proper hearing following the District Court denying

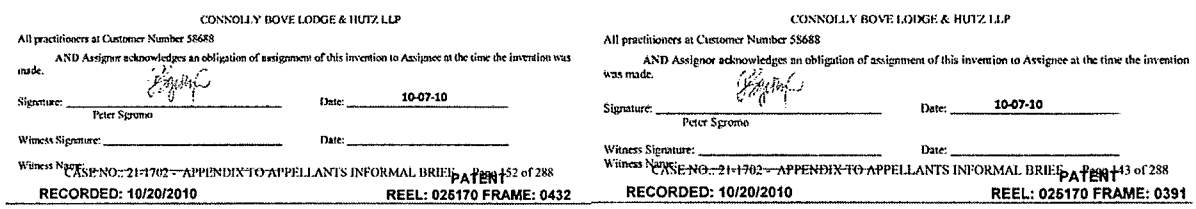
Appellant's request for a hearing. While often misapplied and confused it is settled that a licensor can choose to sue for breach of the license agreement or where as here, enforce the termination clause and sue for an injunction against infringement and for profits for damages and profits. *Luckett v. Delpark, Inc.,* 270 U.S. 496, 46 S.Ct. 397, 70 L.Ed. 703 (1926), (which extensively analyzed and harmonized the case law which had dealt with the question as to whether a case arises under the patent laws, thus conferring federal subject matter jurisdiction, or whether the case is a matter of contract or license construction or interpretation, thus conferring state subject matter jurisdiction. The Court found that the result of these cases was that a federal district court has jurisdiction of a suit by a patentee for an injunction against infringement and for profits and damages, even though, in anticipation of a defense of license or authority to use the patent, the complaint includes in his bill averments intended to defeat such a defense.) *Id.*, at 510, 46 S.Ct. at 401.

When the Eureka Court denied the §664.6 Motion Appellant sought to a joinder petition to the Target Case. The action was dismissed based on the same erroneous conclusions of law cited above. Appellant demanded a hearing with the District Judge and was denied. The Option Agreements are dispositive on the intellectual property rights in these cases.

This also includes the Imperial License Agreements which this Court upholds conflicting decisions between the Texas and Bankruptcy Court and the Target Court whilst ignoring the Reviewing Bankruptcy Court's ORDER. The fact the arbitrator and the Interpleader Court (which *sua sponte* moved to relate the arbitration review to the Interpleader Action) awarded Scott royalties from the Imperial Patent License Agreements [DKT No.: 14–5, pp.–7] in itself contradicts that Imperial is the owner of the patents. The Bankruptcy Court took judicial notice of the Texas Court's R&R and "note[d] . . . there being valid licenses between Wide Eyes Marketing . . . the corrected supplement [ ] just says "licensor", so [the court] didn't actually know what's seeking to be assumed and assigned" and without a proper hearing ORDERED "the debtor has an ownership interest, as found by the Texas District Court it is the owner of the patents . . . because they received a worldwide exclusive license to the patents in those license agreements. Mr. Sgromo is a signatory to those license agreements that are attached to his filing, personally, on his own behalf, as an inventor." [See Case No.: 21–1702, *Sgromo v. Target,* DKT No.: 5–2, pp.166–67]. But the Reviewing Bankruptcy Court flatly rejected this one–sided *alter ego* argument and ORDERED "Mr. Sgromo is not a party to the Wide Eyes Licensing Agreements; Wide Eyes, a separate corporate entity, is the Debtor's counterparty" and "Sgromo has said nothing to contest or otherwise cast doubt upon this fact" [Id., p.176, see also Case No.: 19–cv–08431–EJD, *In re: Imperial,* DKT

No.8) and Debtor "raises several arguments in opposition to Mr. Sgromo's appeal, including that Mr. Sgromo lacks standing to bring this appeal [citation] . . . th[e] Court agrees that Mr. Sgromo lacks standing . . . in connection with the Wide Eyes Licenses, the Court's analysis begins and ends there" [Id., p.173; *In re Imperial,* DKT No.:8].

Had this Court conducted a proper *de novo* review of the record it would have found the Target Court's finding that Sgromo had assigned the '243 & '422 Patents to Imperial are not only conflicting— but based on the erroneous conclusion of law that the WEM Agreements [Id., pp.103–14,127–39] and "the nondisclosure [Id., p.98] and consulting agreements [Id., 140–1; see also DKT No.: 14–2, pp.60–2] are irrelevant to ownership from Sgromo to Imperial" Because they "are superseded by the later, signed, assignment [21–1702, DKT No.: 5–2, pp.142–54] of the '422 [& '243] Patent[s]. [See TargetR&ROrder, p.11]:



CONNOLLY BOVE LODGE & HUTZ LLP
All practitioners at Customer Number 58688
AND Assignor acknowledges an obligation of assignment of this invention to Assignee at the time the invention was made.
Signature: _____ Date: 10-07-10
Peter Sgromo
Witness Signature: _____ Date: _____
Witness Name: _____
CASE NO.: 21-1702 – APPENDIX TO APPELLANTS INFORMAL BRIEF Page 142 of 288
RECORDED: 10/20/2010 PATENT REEL: 025170 FRAME: 0432

CONNOLLY BOVE LODGE & HUTZ LLP
All practitioners at Customer Number 58688
AND Assignor acknowledges an obligation of assignment of this invention to Assignee at the time the invention was made.
Signature: _____ Date: 10-07-10
Peter Sgromo
Witness Signature: _____ Date: _____
Witness Name: _____
CASE NO.: 21-1702 – APPENDIX TO APPELLANTS INFORMAL BRIEF Page 143 of 288
RECORDED: 10/20/2010 PATENT REEL: 025170 FRAME: 0391

The *purported* assignments state that "Assignor acknowledges an obligation of assignment of this invention to Assignee at the time the invention was made" But the Target Court ruled "the nondisclosure [Id., p.98] and consulting agreements [Id., 140–1; see also DKT No.: 14–2, pp.60–2] are irrelevant to ownership from Sgromo to Imperial" and there is no other agreement at the time the inventions were "made"– thus, Respondents rely on an oral agreement. The 9th Circ has aptly stated that "[i]n the context of an assignment of a patent, [the parties] can agree verbally until the cows come home, and that patent isn't assigned until there's a writing" (*U.S. v. Solomon,* 825 F.2d 1292, 1296 (9th Cir. 1987) and "as has been aptly stated" in *Enzo APA & Son, Inc. v. Geapag A.G.,* "*nunc pro tunc* assignments are not sufficient to confer retroactive standing." 134 F.3d 1090, 1093 (Fed. Cir. 1998).

CONCLUSION

Given the conflicting decisions and respectfully this Court's finding that "[t]he present action is not Sgromo's first attempt at asserting infringement of these patents and trademarks, and other courts have found that Sgromo does not own any of these patents or trademarks" is deeply concerning because "validity is an issue of law because patent rights are public rights, not private rights" *St. Louis v. Praprotnik,* 485 U.S. 112, 124-126, 108 S.Ct. 915, 925-26, 99 L.Ed.2d 107 (1988); see also *Hilton Davis Chemical v. Warner-Jenkinson*, 62 F.3d 1512, 1555 (Fed. Cir. 1995).

This is a matter of public policy and the royalties that have been converted by Scott or unpaid by Bestway and Imperial are an issue of public policy.

The Appellant respectfully DEMANDS an oral hearing be granted for 21–1106 and re–open Case No.: 21–1702, *Sgromo v. Target et al.,* and these cases be heard together on February 7, 2022 or in the alternative, at a later date acceptable to the Respondents (who on December 27, 2021 advised they will oppose this motion).

Submitted that 10TH Day of January, 2022

Pro–per Appellant–Movant— P.P.A.Sgromo

EXHIBIT B

UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

717 MADISON PLACE, N.W.
WASHINGTON, D.C. 20439

PETER R. MARKSTEINER
CLERK OF COURT

CLERK'S OFFICE
202-275-8000

January 12, 2022

Peter Sgromo
3-113 Marks Street S
Thunder Bay, Ontario, P7E 1L8
Canada

Re: Sgromo v. Target Brands Inc., Appeal No. 2021-1702

Dear Mr. Sgromo,

This letter responds to your submission received by the Clerk's Office on January 10, 2022. Final judgment has been entered in this case and it is now closed in this court.

The above appeal was decided on October 6, 2021, the petition for rehearing was denied on December 13, 2021, and the mandate issued on December 20, 2021. Thus, no action will be taken on the submitted document. Further related filings in this closed case will receive no response.

Very truly yours,

/s/ Peter R. Marksteiner
Peter R. Marksteiner
Clerk of Court
By: M. Hull, Deputy Clerk

EXHIBIT C

NOTE: This order is nonprecedential.

United States Court of Appeals for the Federal Circuit

PIETRO PASQUALE-ANTONI SGROMO, AKA PETER ANTHONY SGROMO,
Plaintiff-Appellant

v.

LEONARD GREGORY SCOTT, EUREKA INVENTIONS LLC,
Defendants-Appellees

2021-1106

Appeal from the United States District Court for the Northern District of California in No. 4:19-cv-08170-HSG, Judge Haywood S. Gilliam Jr.

ON MOTION

PER CURIAM.

O R D E R

Peter Sgromo requests oral argument in the above-captioned appeal and requests that argument be heard along with Appeal No. 21-1702.

Upon consideration thereof,

IT IS ORDERED THAT:

The motion is denied.

FOR THE COURT

January 13, 2022
Date

/s/ Peter R. Marksteiner
Peter R. Marksteiner
Clerk of Court

EXHIBIT D

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001

March 28, 2022

Pietro Sgromo
3-113 Marks St. S
Thunderbay, Ontario
Canada P7E 118,

RE: Sgromo v. Target Brands Inc.
USFC No. 21-1702

Dear Mr. Sgromo:

The above-entitled petition for a writ of certiorari was postmarked March 21, 2022 and received March 25, 2022. The papers are returned for the following reason(s):

The petition is out-of-time. The date of the lower court judgment or order denying a timely petition for rehearing was December 13, 2021. Therefore, the petition was due on or before March 13, 2021. Rules 13.1, 29.2 and 30.1. When the time to file a petition for a writ of certiorari in a civil case (habeas action included) has expired, the Court no longer has the power to review the petition.

The time for filing a petition for a writ of certiorari is not controlled by the date of the issuance of the mandate. Rule 13.3.

Sincerely,
Scott S. Harris, Clerk
By:

Emily Walker
(202) 479-5955

EXHIBIT E

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001

April 18, 2022

Pietro Sgromo
3-113 Marks St. S
Thunderbay, Ontario
Canada P7E 1I8,

RE: Sgromo v. Target Brands Inc., "Informal Petition to a Judge to Review Clerk's Order..."
USFC No. 21-1702

Dear Mr. Sgromo:

Your submission postmarked on April 4, 2022 was received by this Office on April 14, 2022 and is returned here within.

Please be advised that the Rules of the Court make no provisions for the filing of a "informal petition to a judge to review the clerk's order dismissing petition for a writ of certiorari because the "petition is out of time" by pro se appellant". To the extent that you are attempting to file a motion to direct the Clerk to file the petition out-of-time, please promptly submit an appropriately titled motion together with a copy of the petition and required accompanying documents.

Please also be advised that a motion to direct the Clerk to file the petition out-of-time may only be filed when accompanied by an otherwise compliant petition.

If you choose to resubmit your petition with a motion to direct the Clerk to file the petition out-of-time, the following corrections must be made:

Each section within the affidavit in support of motion for leave to proceed in forma pauperis must be acknowledged. For sections that do not apply, write "n/a".

The statement of jurisdiction must contain accurate information. Rule 14.1(e).

The petition must be accompanied by an appendix, in the order prescribed by Rule 14.1(i).

Sincerely,
Scott S. Harris, Clerk
By:

Emily Walker
(202) 479-5955