22-1144 ORIGINAL

No. _____

In The

Supreme Court of the United States

FARVA JAFRI,

Petitioner,

vs.

SIGNAL FUNDING LLC, 777 PARTNERS LLC,
SIGNAL FINANCIAL HOLDINGS LLC,
JOSHUA CRAIG WANDER as individual,

Respondents.

On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Seventh Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the Honorable Judge Easterbrook and the Honorable Judge Wood of the Seventh Circuit Court of Appeals should have voluntarily recused themselves in accordance with 28 U.S.C. § 455(a) because Jafri had previously been reprimanded by them, they had to vacate their reprimand, and this ordeal received attention from the media.

2. Whether the United States District Court for the Northern District of Illinois Eastern Division erred in dismissing Jafri's Illinois Human Rights Act claims (Counts III and IV) and in granting summary judgment to Defendant in Jafri's Illinois Equal Pay Act claims (Counts I and II), and whether the Seventh Circuit Court of Appeals erred in affirming the District Court as Jafri pleaded sufficient facts to show harassment, and these facts should be considered in the aggregate to support the Equal Pay Act claim.

LIST OF PROCEEDINGS IN STATE AND FEDERAL TRIAL AND APPELLATE COURTS

- *Jafri* v. *Signal Funding LLC*, No. 19 C 645, U.S. District Court for the Northern District of Illinois, Eastern Division. Judgment entered July 7, 2022.
- *Jafri* v. *Signal Funding, LLC*, No. 22-2394, U.S. Court of Appeals for the Seventh Circuit. Judgment entered Dec. 15, 2022.

RELATED CASES

- Oa*sis Legal Fin. Operating Co., LLC* v. *Chodes*, No. 20-2951, U.S. Court of Appeals for the Seventh Circuit. Judgment entered Dec. 6, 2021.

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SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI
OPINIONS BELOW

Petitioner respectfully prays that a writ of certiorari is issued to review the judgment below. The opinion of the United States Court of Appeals appears at Appendix A-1 to the petition and is unpublished at *Jafri* v. *Signal Funding LLC*, 2022 U.S. App. LEXIS 34683. The opinion of the United States District Court appears at Appendix A-10 to the petition and is unpublished at *Jafri* v. *Signal Funding LLC*, 2022 U.S. Dist. LEXIS 119708.

JURISDICTION

Jafri appeals the December 15, 2022, Final Judgement of the United States Court of Appeals for the Seventh Circuit that affirms the District Court's judgment entered July 21, 2022—dismissing two counts of Jafri's claim and granting summary judgment to Defendants on two other counts. A-9. Jafri files this petition for a Writ of Certiorari within 90 days of the Appellate Court's Final Judgment. The jurisdiction of the U.S. Supreme Court is invoked under 28 U.S.C. § 1254(1).

In this matter, there is an important question of recusal that should be settled by this Court. Further, not only was there error in the Seventh Circuit Court of Appeals because the judges should have recused themselves, but there was also error as the Seventh

Circuit Court affirmed the District Court's dismissal and grant of summary judgment to Defendants on Jafri's claims, and the District Court and Seventh Circuit Court of Appeals failed to consider Jafri's allegations in the aggregate.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This matter involves 28 U.S.C. § 455; 29 U.S.C. § 206 *et seq.* (Equal Pay Act); 775 ILCS 5/1-101 *et seq.* (Illinois Human Rights Act); 775 ILCS 5/1-102 (Illinois Human Rights Act); 820 ILCS 112 *et seq.* (Illinois Equal Pay Act); and 2 U.S.C. § 1311 Rights and Protections under Title VII of the Civil Rights Act of 1964.

STATEMENT OF THE CASE AND FACTS

The federal district court had subject matter jurisdiction over this matter pursuant to 28 U.S.C. § 1331 because this case was brought under the Equal Pay Act, 29 U.S.C. § 206(d)(1); supplemental jurisdiction over Jafri's related claims arising under state law pursuant to 28 U.S.C. § 1367(a); and diversity jurisdiction pursuant to 28 U.S.C. § 1332.

Plaintiff, Farva Jafri ("Jafri"), sued her former employers—Signal Funding, Signal Financial Holdings, 777 Partners, and Joshua Craig Wander—under the Illinois Human Rights Act and both the federal and

Illinois versions of the Equal Pay act. A-2. The United States District Court for the District of Illinois Eastern Division dismissed Jafri's Human Rights Act claims for failure to exhaust administrative remedies and subsequently granted summary judgment on the Equal Pay Act claims. A-3. The United States Court of Appeals for the Seventh Circuit affirmed the District Court's dismissal of Jafri's Human Rights Act claims, asserting she did not exhaust administrative remedies and bypassed the "process afforded by the state agency and state courts" by filing a federal suit. A-5-A-6.

In affirming the District Court's grant of summary judgment on the Equal Pay Act claims, the Appellate Court states Jafri failed to establish that any of the three coworkers were adequate comparators—ignoring the pleaded facts that Jafri and the named coworkers do did comparable work, and Defendants repeatedly displayed behaviors insinuating disrespect, misogyny, and discrimination toward women. When the Human Rights Act claims were dismissed, the Court's failed to continue to consider Jafri's allegations of harassment in congruence with her Equal Pay Act Discrimination claim, and this petition makes the argument that those pleaded facts should have been considered in the conglomerate, showing a pattern of discrimination such that "factors other than sex" were not the foundation for the unequal pay, and summary judgment was too readily granted.

Jafri originally brought this action for damages and injuries sustained as a result of Defendant's violations of the Equal Pay Act, 29 U.S.C. § 206 *et seq.*, the

Illinois Equal Pay Act of 2003, 820 ILCS 112 *et seq.*, the Illinois Human Rights Act, 775 ILCS 5/1-101 *et seq.*, and common law actions stemming from Jafri's employment. Jafri sought declaratory, injunctive, and equitable relief, as well as monetary damages, to redress Defendants' discriminatory employment practices against Plaintiff.

On or about February 13, 2018, Jafri filed a charge with the United States Equal Employment Opportunity Commission ("EEOC"). Jafri brought the charge against Defendants: Signal Funding LLC—whose parent company is Signal Financial Holdings LLC, which is owned by 777 Partners LLC. Joshua Wander is an owner of each of the three entities. Each of the Defendants had notice of Jafri's claims against Signal Funding LLC. The EEOC issued a Notice of Right to Sue letter on July 2, 2018. On December 13, 2018, the IDHR issued a Notice of Dismissal for Lack of Jurisdiction. Jafri's Complaint was filed within ninety (90) days of receipt of the Notice of Dismissal from the IDHR.

On July 26, 2016, Jafri was hired to work at Signal Highland Park, Illinois, office. Jafri was employed by the Corporate Defendants from July 26, 2016, to September 28, 2017. During this time, Jafri served as Chief Operating Officer of Signal Funding, Chief Operating Officer of Signal Financial, and as an Associate at 777 Partners.

In serving these roles, Jafri was a member of the executive team. Jafri was responsible for many tasks

including technology, finance, accounting, servicing, funding, operations, regulatory issues, compliance, sales, case management, human resources, and administration. Furthermore, Jafri shared responsibilities with the CEO of Signal, Gary Chodes. These responsibilities include, but are not limited to overseeing operations, oversight of finances and capital calls, recruitment, and assembling pitch desks and models for potential investors.

Jafri's base salary was $105,000.00 with a minimum guaranteed bonus of $25,000.00 after one year of employment. Mr. Chodes, however, received a base salary of $325,000.00 and over $175,000.00 in bonuses. The EVP of Operations, Lou Vena—a comparator—was paid $192,500.00 in base salary. Mr. Vena had substantially fewer responsibilities than Jafri yet was paid a significantly higher salary and was given a signing bonus of $30,000.00 and promised a year-end bonus 20% to 40% of the prior year's base salary, a minimum discretionary performance bonus of $45,000.00 and an initial common unit award of 1.25%. Additionally, his final offer letter included a severance upon voluntary termination that alone amounted to $144,375.00.

Another Defendant employee, and one of Jafri's subordinates, Tyson Beauchamp, a VP of Sales with only one role, received $225,000.00 in base compensation, a $150,000 signing bonus, plus $500 per month in a gas stipend, $25,000.00 nuisance fee for litigation, and $75,00.00 as a tax gross-up. Signal paid Mr. Beauchamp more than four (4) times more than Jafri.

Further, the following male comparators were paid higher salaries than Jafri: Trevor Scott, VP of Sales, $140,000.00; Mike Olsen, CMO, $135,000.00; Mike Walker, CTO, $125,000.00; and James Habel, VP of Sales, $115,000.00.

In February of 2017, Jafri emailed then-CEO, Mr. Chodes, asking to discuss her compensation, and he did not respond. Mr. Chodes was terminated on or around March 26, 2017, for unsatisfactory work. Two days later, on March 29, 2017, Defendant Wander instructed Jafri to move to Miami, Florida, to work at the 777 offices and build operations in Florida—the operations she has previously built in Illinois. Jafri continued to serve in her roles with Signal and Signal Financial and moved to Miami in April 2017.

Additionally, on March 29, 2017, Defendants hired David Hough as interim CEO. Hough and Jafri were both responsible for overseeing operations, transition of the operations to Miami, identification of new office space, hiring personnel, and acquisition of new businesses. Mr. Hough was given a base salary of $225,000.00 plus a discretionary target bonus of $175,000.00 or more, depending on how the business did. Jafri's salary did not change.

On or around August 31, 2017, Jafri appealed the pay discrepancy to her direct supervisor, Defendant Wander, via email. The email included a specific comparison regarding her compensation and that given to Mr. Chodes. Jafri asserted she had no opportunity to earn commissions, no profit sharing, referral,

milestone, or retention bonuses. Jafri also set forth other male employees who earned more in base pay and/or were given bonuses that Jafri was not given. Jafri sent a copy of this email to Mr. Hough on September 1, 2017. Neither Mr. Wander nor Mr. Hough responded to Jafri's email expressing her concerns about her pay. Jafri continued to email Mr. Hough regarding the status of her request throughout September and was told a response would be coming, but Jafri never received a response on the issue.

It is arguable and important to consider that Jafri's lower compensation compared with her male counterparts is linked with the discriminatory, abusive, and grotesque behaviors of these men. In April of 2017, all six members of the Board of Defendant 777 Partners were white men. There were no other females in management, aside from Jafri. At this time, the only other female employees employed by 777 Partners were part of the support staff.

Jafri regularly heard the men joke that women there were to be "seen, not heard." In Summer 2017, Jafri witnessed Mr. Wander tell Juan Arciniegas something akin to, "we need women; they have a different point of view, but we men will never listen to that point of view." Upon calling attention to herself being a woman and the COO, Mr. Wander told Jafri that she is "different" and "just one of the guys."

Defendants consistently made comments with the effect of belittling women. Around May 2017, Defendant Wander, Mr. Hough, Jafri, and another male

went out to dinner, and during this dinner, Mr. Wander instructed Jafri that she needed to hire more "hot girls" for sales roles at Defendant Signal in order to drive up sales. Additionally, during this dinner, Mr. Wander pointed out the overwhelming presence of men on the 777 Partner's website and its poor image of diversity. Mr. Wander told Jafri, "Farva, you're a girl. We'll just put you on the website because you are a woman."

In July, 2017, in a closed-door conversation in Mr. Wander's office with Jafri and Mr. Hough, these individuals were conducting an interview of Jennifer Barrera for a sales position. Upon Ms. Barrera exiting the room, Mr. Wander objectified and disrespected Ms. Barrera in stating, "The big tits thing in Miami is out of control!" Mr. Hough laughed aloud. Following this ridiculous display, Mr. Wander told Ms. Cortizo in Human Resources to also use whichever recruiter Jafri was using to hire salespeople because all of the candidates Jafri presented to Mr. Wander were "hot."

Not only do Defendants objectify women, but they also inappropriately comment on appearance. In or around summer of 2017, Jafri was in Mr. Wander's office with Mr. Wander and another male—who commented on Jafri's looks and questioned if she was "wearing makeup for once." Jafri was visibly uncomfortable, which Mr. Wander found to be humorous.

Defendants vocalized their sexual thoughts of women repeatedly, further suggesting a lack of respect and regard for women as people and workers. On

August 24, 2017, Jafri attended a board meeting with the executive board and principals—all of whom are men. Mr. Wander began talking about Mali Lipscher—a potential new employee at 777 Partners. Mr. Wander announced, "Do you know Mali is a lesbian? She checks a variety of boxes for us," and all of the men in the room laughed. Later in August or September 2017, while Jafri and a group of male employees were present, Mr. Wander said to another associate, Mr. Lee, "Are you still fucking the HR girl?" Additionally, Mr. Wander explicitly spoke of this sexual relationship between the HR representative and Mr. Lee multiple times in Jafri's presence, including times where she was the only woman present.

Upon information and belief, Jafri was not the only woman in the office who was uncomfortable with Mr. Wander's comments. Diana Gramenos told Jafri that when Gramenos first met with Mr. Wander for a business meeting, he spent the time describing his girlfriend as "young and hot." This was a regular occurrence, as Mr. Wander also consistently told Jafri about his girlfriend's appearance and physical attributes.

Women in this corporation were not treated the same as men, in pay or otherwise. More than once, a male employee of 777 Partners attempted to hold Jafri's hand in his office, and even once commenting words to the effect of "I would do anything for a beautiful woman like you." When Jafri told Arciniegas about Mr. Wander's inappropriate comments, in or around summer 2017, Arciniegas agreed with Jafri's

assessment of Mr. Wander but stated he could not do anything. Jafri also spoke with Edward Gehres about these issues, and Gehres told Jafri he was powerless and to "make no mistake; this is Josh Wander's company." Jafri went to the Director of Human Resources, Gregory Bond, and Mr. Bond told Jafri that he also had no power to address Jafri's concerns.

PROCEDURAL POSTURE

The District Court dismissed Jafri's Counts III and IV—the Illinois Human Rights Act claims—for failure to state a claim, arguing that Jafri was incompliant with the 30-day deadline to submit her EEOC right to sue letter to the Illinois Department of Human Resources. A-25. This was an issue of first impression in the District Court, and the Court did not cite binding precedent. The District Court also held that Jafri's claims against Defendants were based on level of skill, effort and responsibility—any factors other than sex. The District Court disregarded the pleaded facts on the record alleging Jafri did have similar responsibilities to her comparators and ignored all of the allegations of discrimination and harassment. The District Court ruled on summary judgment while disregarding affidavits with information that would've overcome summary judgment and failing to consider the pleaded facts in the conglomerate.

Jafri appealed the District Court's decision to the United States Court of Appeals for the Seventh Circuit, and the Seventh Circuit affirmed the District Court's ruling on December 15, 2022. However, two judges sitting on the Seventh Circuit bench should have recused themselves. The Honorable Frank H. Easterbrook and Honorable Diane P. Wood presided over a case where Jafri was acting as attorney for an indigent client—*Oasis Legal Finance Operating Company LLC* v. *Gary Chodes and Oasis Disability LLC.* A-38-A-44. The Seventh Circuit Court of Appeals scheduled a hearing for the *Oasis* matter on October 25, 2021. Jafri did not appear as she held the understanding that the case had been settled the previous Friday when she and opposing counsel—Mr. Barry Irwin—agreed on a settlement and the understanding that Mr. Irwin was to inform the court of the settlement agreement.

On October 26, 2021, the Court issued an order directing Jafri to show cause as to why her failure to appear should not lead to professional discipline under Fed. R. App. P. 46(c). A-42. On December 3, 2021, the United States Court of Appeals for the Seventh Circuit issued a public reprimand on Jafri, "which Jafri must report whenever called on to disclose her disciplinary history." A-41. On December 20, 2021, Jafri filed a petition for reconsideration for rehearing en banc or a panel hearing, or in the alternative, pursuant to Federal Rule of Appellate Procedure 27, requests the Court reconsider, vacate, and strike its public reprimand of Jafri from its December 3, 2021, Order.

On January 14, 2022, the Court vacated its reprimand, stating only, "In light of the information provided in Farva Jafri's request for reconsideration, the reprimand entered on December 3, 2021, is vacated, and the rule to show cause is discharged." A-38.

Importantly, when the reprimand ordeal was ongoing, it garnered significant media attention. In October 2021, LAW360 published an article titled "Lawyer Who Missed Args Says Opposing Atty Misled 7th Circ." LAW360 posted a follow-up article entitled, "NY Atty Who Missed 7th Circ. Hearing Reprimanded" on December 7, 2021. On January 18, 2022, LAW360 published yet another article about the situation, entitled "7th Circ. Tosses Reprimand for Attorney Who Missed Hearing." All of these articles can be found at https://www.law360.com/cases/5f80cb187ec1d7087d3887b3/articles.

Furthermore, the ABA Journal, in December 2021, published an article titled "7th Circuit reprimands lawyer for skipping oral arguments, relying on opposing counsel." https://www.abajournal.com/news/article/7th-circuit-reprimands-lawyer-for-skipping-oral-arguments-relying-on-opposing-counsel. A little over a month later, on January 18, 2022, the ABA Journal published a follow-up article entitled "Lawyer with over $543k in student debt gets reprimand vacated after telling court of financial hardship." https://www.abajournal.com/news/article/lawyer-with-543k-in-student-debt-gets-reprimand-vacated-tells-court-of-financial-hardship. Additionally, the financial hardship discussed in this article is both Jafri's and her client's. *Id.*

Essentially, in Jafri's petition for reconsideration for rehearing en banc, Jafri was forced to disclose her own and her client's personal financial information just to avoid a reprimand, and disclosing this information is embarrassing for most people. According to the website, the ABA Journal is read by half of the nation's one million lawyers every month. https://www.abajournal.com/about. While nonlawyers may not read it often, if laypeople were to read these articles about Jafri's reprimand, her response and the judges' response, there is certainly a basis for a perception of the judges' impropriety towards Jafri following this event—as it is arguable that this ordeal made the judges look bad.

Less than a year after the judges vacated their public reprimand, on August 4, 2022, Jafri appealed the current matter—where she is the Plaintiff litigant—to the Seventh Circuit Court of Appeals. Judge Easterbrook and Judge Wood presided. A-1. The Appellate Court affirmed the District Courts dismissal and summary judgment of Jafri's claims. A-7.

Jafri petitions the Supreme Court for a Writ of Certiorari seeking that the Supreme Court vacate the Appellate Order affirming the District Court as the pleaded facts were improperly assessed in both the District Court and the Appellate Court, and Jafri is also seeking that the Seventh Circuit Court of Appeals' Judge Easterbrook and Judge Wood be disqualified from the bench such that Jafri can get an unbiased,

fair appellate assessment of her Equal Pay Act claim on remand.

ARGUMENT FOR GRANTING THE WRIT

1. Jafri was not given a fair proceeding in the Seventh Circuit Court of Appeals as the Honorable Judge Easterbrook and the Honorable Judge Wood should have voluntarily recused themselves from the action pursuant to 28 U.S.C. § 455(a), and in not voluntarily recusing themselves, Judge Easterbrook and Judge Wood have opened the court up to perceptions of impropriety.

Jafri was not given a fair appeal by the United States Court of Appeals Seventh Circuit because two of the Judges, Judge Easterbrook and Judge Wood, should have recused themselves. Pursuant to 28 U.S.C. § 455(a), "any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned." "Proceeding" is held to include appellate review, as is the issue here. 28 U.S.C. § 455(d)(1). In assessing this, the accepted practice is to consider whether an objective, disinterested observer fully informed of the reasons that recusal was sought would entertain a significant doubt that justice would be done in the case.

Furthermore, 28 U.S.C. § 455(b) enumerates circumstances in which a judge shall disqualify himself—

the most relevant being § 455(b)(1): "where he has a personal bias or prejudice concerning a party . . . " The test for this bias as laid out in *Liteky* states, the evidence must reflect a "deep-seated favoritism or antagonism as would make fair judgment impossible." *Liteky* v. *United* States, 510 U.S. 540, 548 (1994). Additionally, the Code of Conduct for United States Judges states a judge must recuse himself in a proceeding in which his "impartiality might reasonably be questioned." Code of Conduct for United States Judges, Canon 3C. Whether the Code of Conduct has been breached may be assessed using an objecting test based upon public perception that seeks to evaluate if a judge's "impartiality might reasonably be questioned." *United States* v. *Sierra Pac. Indus., Inc.*, 862 F.3d 1157, 1174 (9th Cir. 2017).

The plain language of 28 U.S.C. § 455 does not provide a set timeframe regarding when a litigant should make a motion for recusal or when judges should inquire into their own conflicts regarding recusal, but in 2009, the Seventh Circuit held that a motion for recusal of a judge must be made before trial. *In Re U.S.*, 572 F.3d 301, 309 (7th Cir. 2009). However, in 2016, the 7th Circuit stated that § 455 strays from the norm in litigation; with § 455, the language states the judge "shall disqualify himself when" certain circumstances exist or facts are true—placing the initiative of recusal on the judge, not the litigant. *Fowler* v. *Butts*, 829 F.3d 788, 794-95 (7th Cir. 2016). Even when the litigant did not protest in the court where the disqualified judge sat, the Supreme Court has allowed the litigant to

seek disqualification. *Id.* at 794. *See Nguyen* v. *United States*, 539 U.S. 69, 123 S.Ct. 2130, 156 L.Ed.2d 64 (2003). Essentially, *Nguyen* and another recent case—*Williams* v. *Pennsylvania*, 136 S.Ct. 1899, 195 L.Ed.2d 132 (2016)—held that the participation of a disqualified judge should be treated as a structural error to be recognized at any time. *Fowler*, 829 F.3d at 794. In each of the prior mentioned cases, the decisions with participation from disqualified judges were decided unanimously, but the Supreme Court reversed both judgments although it's likely the cases would've been resolved the same way with different judges. *Id.* at 794-95.

Regarding § 455(a), the base rule is that disqualification is mandatory for any conduct that reasonably calls into question a judge's impartiality. *Liteky*, 510 U.S. at 548. A judge's actual bias is not dispositive of the question of his disqualification under § 455(a) and, because the appearance of bias may arise when no bias exists in fact, the reach of §455(a) is much broader than 455(b) which deals with specifically outlined instances of improper conduct. *United States* v. *Herrera-Valdez*, 826 F.3d 912, 917 (7th Cir. 2016). Furthermore,

> "the purpose of the provision is to 'promote the public confidence in the integrity of the judicial process . . . [which] does not depend upon whether or not the judge actually knew of facts creating an appearance of impropriety, so long as the public might reasonably believe that he or she knew.'"

United States v. *Herrera-Valdez*, 826 F.3d 912, 917 (7th Cir. 2016) citing *Durham* v. *Neopolitan*, 875 F.2d 91, 97 (7th Cir. 1989).

Recusal pursuant to § 455(a) is all about the perception of bias from people outside of the legal field. As judicial insiders are "accustomed to the process of dispassionate decision making and keenly aware of their Constitutional and ethical obligations to decide matters solely on the merits, [they] may regard asserted conflicts to be more innocuous than an outsider would." *In Re Kensington*, 368 F.3d 289, 303 (3d Cir. 2004) citing *United States* v. *De Temple*, 162 F.3d 279, 287 (4th Cir. 1998). Even where the record showed no actual bias or partisanship by the judge and the judge displayed "judicial qualities, ethical conduct, and characteristics emblematic of the most experienced, competent, and distinguished Article III jurists," the reviewing court issued a writ of mandamus to disqualify the judge because the judge had a conflict that if revealed to a reasonable person, "would undoubtedly lead to a perception that [the judge's] impartiality might be seriously questioned." *In Re Kensington* at 318.

In a nonbinding opinion, the Third Circuit Court of Appeals stated ordinary judicial decision-making is not grounds for recusal. *In Re Coulter*, 773 Fed. Appx. 110, 110 (3d Cir. 2019). Regardless, the issue here is distinct from "ordinary judicial decision-making." Where the plaintiff filed a motion for recusal, was denied, and sought a writ of mandamus in the 3rd Circuit Court of Appeals, as plaintiff's "complaints were

based on ordinary judicial decision-making," nothing "would lead a reasonable person to question the district judge's impartiality." *Id.* After Plaintiff's second amended complaint, Defendant filed a motion to dismiss. *Id.* at 111. The District Court requested further briefing on one of Plaintiff's claims. *Id.* Plaintiff then filed a motion for recusal and stay of the proceedings. *Id.* The next day, the District Court dismissed Plaintiff's complaint in part. *Id.* Three days later, the District Court denied the motion for recusal. *Id.* As nothing about the Judge's request for briefing nor the timing of the ruling would lead a reasonable person to question impartiality, the 3rd Circuit denied the petition for a writ of mandamus because Plaintiff's allegations did not require disqualification or recusal under 28 U.S.C.S. § 455. *Id.* at 112.

Although the 3rd Circuit has "repeatedly stated that a party's displeasure with legal rulings does not form an adequate basis for recusal," that is not the circumstance of Jafri's case either. *In Re Whitchurch*, 639 Fed. Appx. 772 (3d Cir. 2016) citing *SecuraComm Consulting, Inc.* v. *Securacom Inc.*, 224 F.3d 273, 278 (3d Cir. 2000). However, importantly, the timeline of actions before a judge may be pertinent in a reasonable person's perception of bias. *In Re Taylor*, 417 F.3d 649, 649 (7th Cir. 2005). In a Seventh Circuit Court of Appeals case where Petitioner sought a writ of mandamus seeking disqualification of a judge in a criminal case where the Petitioner/Defendant had previously sued the judge twice in civil actions, recusal was not required as the civil claims had been frivolous cases.

Id. The Court stated, "the only factual allegation that petitioner attributed to the judge was the judge's dismissal of his earlier cases." *Id.* However, the court noted that it had been eight years since Petitioner's cases against the judge concluded and stated, "even if the judge was personally biased against petitioner when the civil cases were filed, it was unlikely that a reasonable observer would believe that his judgment was still clouded." *Id.*

Here, the Appellate Judges of contention issued Jafri a public reprimand, and their orders suggested they were extremely displeased with Jafri at the time. A-39-A-41. Shortly thereafter, following Jafri's Petition for Rehearing En Banc and Petition for Panel Rehearing or in the alternative Motion for Reconsideration, the Seventh Circuit Court of Appeals issued an Order vacating their reprimand and discharging the rule to show cause. A-38. This Order was merely a sentence. *Id.* Because Judge Easterbrook and Judge Wood publicly reprimanded Jafri, Jafri persuaded them that their reprimand was wrongful, the Judges subsequently vacated their reprimand, this reprimand and vacation received attention from the media, and less than a year later Jafri was back in their Court as Plaintiff in this matter, the Judges' impartiality toward Jafri is reasonably called into question.

Most importantly, when Jafri was publicly reprimanded by the Seventh Circuit, there were media articles written about it—calling attention to the reprimand and the arguments Jafri made to successfully contest the reprimand, and these arguments can be

read to lambast the judges for their consideration for people with financial hardships. The judges do not want to be viewed as people who have a disregard for class struggles, but the articles infer that in making her arguments, Jafri lambasted the judges for issuing the reprimand in the first place. When the reprimand was vacated, the ABA published an article—https://www.abajournal.com/news/article/lawyer-with-543k-in-student-debt-gets-reprimand-vacated-tells-court-of-financial-hardship—detailing the types or arguments Jafri made in her petition for reconsideration and rehearing en banc. Of the arguments Jafri made in her motion, the article notes Jafri's and her client's severe financial hardship—the client had no assets and relied on family members for financial assistance, how Jafri's law practice primarily serves the poor, and how she does not have clients who pay high hourly fees. *Id.* Furthermore, in quoting Jafri, the article provides "the court, by reprimanding Jafri, penalizes those with less financial resources." *Id.* Not only could a layperson see this as Jafri criticizing the court for their decision to reprimand, but it is possible that the other judges sitting on the Seventh Circuit Court of Appeals also realized this criticism toward their fellow judges and agreed that the reprimand should not have been issued—casting greater implications in the Court and Judge Easterbrook's and Judge Wood's opinion of Jafri.

Since Jafri filed a petition for reconsideration for rehearing en banc or a panel hearing, all of the appellate judges sitting in the Seventh Circuit Court of Appeals read her motion for reconsideration, detailing the

arguments discussed previously. Because of this, Judge Easterbrook and Judge Wood were vulnerable to scrutiny by their fellow Seventh Circuit judges in their decision to publicly reprimand Jafri. It is possible—perhaps even probable—that the judges of the Seventh Circuit did not agree that Jafri should have been publicly reprimanded and subsequently questioned their colleagues' choice to reprimand Jafri.

This reprimand received media attention, and many people reached out to Jafri to voice their support for her and disapproval of the reprimand. When the reprimand was reversed, the judges wrote a one-line order. Considering the class-based arguments, details and personal information Jafri exposed in her petition for reconsideration, the one-line order vacating the recusal is jarring. Arguably, the judges may have felt embarrassed by Jafri—both publicly and in front of their colleagues. No one wants to be wrong.

After being called out for being wrong and subsequently having to reverse themselves, it is certainly arguable that the judges felt a personal disdain toward and bias against Jafri. It is ridiculously easy to fathom how a layperson may learn all of this information and immediately assume or infer that the judges were upset with / bothered by / embarrassed by / etc. Jafri, and this tension between Jafri and Judge Easterbrook and Judge Wood results in an appearance of personal bias and impropriety that would garner recusal necessary for Jafri to have fair proceedings in the Seventh Circuit Court of Appeals.

Although there is no evidence of bias, ill-will, or unethical conduct on behalf of the Honorable Judge Easterbrook or the Honorable Judge Wood, a reasonable person may nonetheless have a perception that impartiality may be questioned if the person knew that Jafri had previously been publicly reprimanded by these judges, and these judges had to vacate this public reprimand. Jafri essentially had to tell these Judges that their reprimand was wrong; she had to contest them and their order. A reasonable person may think the judges hold hostility. Especially considering the publicity of this reprimand and subsequent vacation, a layperson could and would easily assume that the judges were displeased by Jafri, annoyed/aggravated that they were easily proven wrong, embarrassed that they publicly reprimanded an attorney who was helping an indigent client and in doing so were supporting horrible public policy, etc. There are a multitude of possible negative perceptions that a layperson would hold against the judges if they knew the circumstances of Jafri's relationship with these particular judges. Any and all of these possible perceptions strongly support an appearance of bias or impropriety that would lend towards recusal pursuant to 28 U.S.C. § 455.

Furthermore, Jafri's impartiality issue with Judge Easterbrook and Judge Wood is not based on "ordinary judicial decision-making" as in *In Re Coulter*. Jafri does not have a problem with the judicial process as laid out in *In Re Coulter*. The decision of the judges—to vacate the order—helped Jafri and was beneficial to Jafri. However, no judge wants to vacate their own

order, and Jafri's brief as to why they should vacate their order caused them to make that decision. A reasonable person may perceive this as a situation where there is residual prejudice or disdain toward Jafri because of what happened with her in the Seventh Circuit prior to this current action.

Lastly and importantly, it had been less than one year between the time Jafri was publicly reprimanded and the Judges vacated the public reprimand when Jafri was back in their Court as a pro se Plaintiff in *Jafri* v. *Signal Funding*. This is an extremely short amount of time. *Jafri* v. *Signal Funding* was Jafri's first time back in the Seventh Circuit Court of Appeals since the reprimand and subsequent vacation of the reprimand.

With no disrespect to any judges, it is widely perceived that judges are extremely prideful people. Judges do not want to vacate their own orders because it is embarrassing; it is essentially an announcement saying, "we were wrong." Jafri caused these judges to reverse themselves, and there is a serious concern that in doing so, Jafri embarrassed these judges and hurt their egos. Furthermore, this situation was public; people were watching the Seventh Circuit to see what would happen to Jafri. Such little time passed between the issuance of the reprimand and vacation and Jafri's reappearance in the Court in a new case as a pro se Plaintiff that it is entirely plausible and reasonable to believe that the Judges hold animosity toward Jafri causing the Judges impartiality to be reasonably questioned by an ordinary, reasonable person. Judge

Easterbrook and Judge Wood must be disqualified from this action in order to protect the sanctity of the judicial system as perceived by regular citizens, in congruence with 28 U.S.C. § 455(a).

2. The District Court and Seventh Circuit Court of Appeals erred in dismissing Jafri's claims and granting summary judgment to Defendants regarding Jafri's Equal Pay Act, 29 U.S.C. § 206(d)(1) allegation.

The Illinois Human Rights Act provides that all individuals within Illinois shall have "freedom from discrimination against any individual because of his or her race, color, religion, sex . . . " 775 ILCS 5/1-102(a). Furthermore, individuals have freedom from sexual harassment in employment. 775 ILCS 5/1-102(b). Even if the harassment claims are dismissed pursuant to a failure to exhaust administrative remedies, the pleaded facts are still relevant and supportive of Jafri's Equal Pay Act claim, and the facts should not be ignored. The words and behaviors of Defendants in harassing Jafri—a woman—should be cumulatively considered in assessing the Equal Pay Act claim as the misogynistic comments and conversations Jafri endured and the lower pay she received—compared to her coworkers who did similar work—are rooted in the same basis that women are inferior to men, whether or not Defendants consciously believe this notion.

The District Court decided that Jafri did not establish an irrebuttable prima facie case of wage

discrimination, requiring a showing by preponderance of the evidence, that: 1) higher wages were paid to a male employee, 2) for equal work requiring substantially similar skill, effort and responsibilities, and 3) the work was performed under similar working conditions. *Stopka* v. *Alliance of Am. Insurers*, 141 F.3d 681, 685 (7th Cir. 1998). If the plaintiff is able to establish a prima facie case, the defendant is burdened with establishing one of the four statutory defenses to rebut the case. *Merillat* v. *Metal Spinners, Inc.*, 470 F.3d 685, 697 (7th Cir. 2006). The "statutory defenses kick in if the difference in pay is attributed to "(i) a seniority system; (ii) a merit system; (iii) a system which measures earnings by quantity or quality of production; or (iv) a differential based on any other factor other than sex." *Warren* v. *Solo Cup Co.*, 516 F.3d 627, 629-30 (7th Cir. 2008). The District Court found that Jafri's claim failed as the difference in pay was based on factors other than sex; however, as the harassment counts were previously dismissed and given little regard, it is arguable that the harassment and pay discrimination counts should have been further considered within the scheme of the employment—showing a pattern of harassing/weird/inappropriate conduct toward Jafri as a woman that should be considered along with the Equal Pay Act claim such that there is more than a scintilla of evidence of harassment/discrimination, and summary judgment should not have been granted to Defendants.

Where the United States District Court for the Central District of California granted summary

judgment to the employer regarding the black employee's claim that the employer violated Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.*, the 9th Circuit Court of Appeals reversed the District Court's dismissal, finding the District Court "resolved numerous factual questions in favor of [Employer], failed to distinguish between supervisors and coworkers in evaluating [Employer's] liability, and did not consider fully the cumulative impact of the events that occurred over the fifteen year period that employee was working for employer." *McGinest* v. *GTE Serv. Corp.*, 360 F.3d 1103, 1108. In assessing the employee's claims, the Appellate Court looked at: how the employee was forced to work under dangerous conditions without adequate equipment; how the employee was subjected to obscene language; how on one occasion, employee's supervisor saw employee wearing a gold chain and commented, "only drug dealers can afford nice gold chains;" how a white employee was also subjected to the supervisor's abuse; how employee filed an internal discrimination complaint noting twelve incidents where the supervisor was discriminatory toward the employee; how there were incidents where other employees refused to work under Plaintiff employee; etc. *Id.* at 1103-1115. Overall, the Appellate Court took aggregate consideration of the discriminatory conduct, racial slurs, and derogatory comments and reversed the District Court's dismissal of two of the employee's claims. *Id.*

Although the discrimination against Jafri is less obvious than that depicted in *McGinest*, Jafri pleaded

facts of harassment and discrimination that should have been considered in the aggregate with the Equal Pay Act claim, rather than ignored because the lower courts found Jafri did not exhaust administrative remedies in regard to the Illinois Human Rights Act claim. Like *McGinest* (whose allegations were based on race), Jafri alleged multiple instances of improper conduct based on sex that occurred during the year that Jafri worked with Defendants.

The Ninth Circuit Court of Appeals has found that "when a court too readily grants summary judgment, it runs the risk of providing a protective shield for discriminatory behavior that our society has determined must be extirpated." *McGinest* v. *GTE Serv. Corp.*, 360 F.3d 1103, 1112. Jafri's allegations, as pleaded in the complaint, include a multitude of circumstances where Defendants called attention to sex, made misogynistic comments, or otherwise inappropriately and unprofessionally communicated with Jafri. Defendant(s) commented that Jafri needs to hire more "hot girls" to work in sales and drive-up sales. This is clear objectification of women; it essentially means "men love to ogle at women, so we need them to be here so the men can ogle at them, and we can make more money off of men making our saleswomen uncomfortable." Defendant(s) pointed out that there is an overwhelming presence of men on the company's website, and Jafri should be put on the website to be the token woman. In saying this, Mr. Wander called attention to Jafri's sex and essentially joked about using it to tokenize her and make the company look better. Another time, when Jafri was in

Mr. Wander's office with him and another man and the other man questioned whether Jafri was wearing makeup for once—clearly making Jafri uncomfortable, Mr. Wander laughed at the situation. Apparently, making women uncomfortable at work is funny.

Mr. Wander talked about another man, Mr. Lee, "fucking the HR girl" in front of Jafri which is not only disgusting behavior toward Jafri but also evidence of disrespect toward the woman who works in HR. On another occasion, Mr. Wander commented on the "big tits" of a woman who was interviewing for a sales position. In what world is this appropriate? Mr. Wander genuinely objectified and sexualized a potential employee in front of Jafri, yet the District Court and Seventh Circuit Court of Appeals ignore this and the rest of the pleaded facts and pretend there was no evidence of discrimination that would further support a finding of a violation of the Equal Pay Act on account of sex.

In cases involving harassment, discrimination, and unequal pay, the pleaded facts deserve immense attention as the bases of harassment and unequal pay are of the same foundation. After dismissing Jafri's harassment claims for failure to exhaust administrative remedies, the District Court granted summary judgement to Defendants for showing "factors other than sex" influenced Jafri's pay, but in doing so, the District Court completely disregarded the alleged facts of harassment that underpin the discrimination and

undermine Defendant's defense to the prima facie showing of gender based unequal pay.

CONCLUSION

Jafri was not given a fair judicial proceeding in the lower courts as her allegations were not properly considered in the District Court, and two of the judges should have recused themselves in the Seventh Circuit Court of Appeals. In failing to recuse themselves, the judges of the Seventh Circuit Court of Appeals have allowed for doubt to be cast on the judicial process with the perception of biased judges partaking in biased decision-making. These issues may be remedied and rectified by a grant of writ of certiorari, and as such, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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