NO. 22-276

IN THE SUPREME COURT OF THE
UNITED STATES

DR. APARNA VASHISHT-ROTA,

Petitioner,
v.
HOWELL MANAGEMENT SERVICES,
CHRIS HOWELL,
Respondents.

On Petition for Writ of Certiorari to the United States Supreme Court

DR. APARNA VASHISHT-ROTA CORRECTED PETITION FOR WRIT OF CERTIORARI

Pro Se Petitioner
12396 Dormouse Road,
San Diego, California 92129
(858) 348-7068

QUESTIONS PRESENTED

1. Whether application of the contempt analysis associated with Utah R. Civ. P. 11 sanctions to review a Utah R. Civ. P. 83 Vexatious Litigant order is fundamentally flawed due to lack of the safe harbor which merits the extension of jurisdiction beyond the dismissal of the complaint when appropriately done per Rule 41?
2. Whether the Court of Appeals self-identified lack of jurisdiction makes any determination on the merits problematic especially by a clear and convincing standard?
3. Whether Rule 11 framework is appropriate given the Petitioner never received a letter under Rule 11?
4. Whether the Rule 11 framework as applied to Rule 83 analysis means that all of Rule 11 should be applicable and Petitioner withdrew the alleged Offending Motions allows preclusion of Rule 11 sanction?
5. Whether Petitioner is entitled to a *de novo* assessment claims that matured as 100% of the work was done under the AAA agreement?
6. Can a Utah state Court bar claims pending in federal Court based on AAA?
7. Whether a moot case resuscitates after a voluntary dismissal?

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Aparna Vashisht-Rota respectfully requests the issuance of a writ of certiorari to review the judgment of the Utah Court of Appeals.

DECISION BELOW

The decision of the Court of Appeals of Utah is published at 2021 UT App. 133 and Utah Ct. App. 2021.

JURISDICTION

The Court of Appeals of Utah entered judgment on December 2, 2021. This Court's jurisdiction is invoked under 28 U.S.C. §1257.

STATE RULE INVOLVED

Utah Rule of Civil Procedure 11.

....

(c) **Sanctions.** If, after notice and a reasonable opportunity to respond, the court determines that paragraph (b) has been violated, the court may, subject to the conditions stated below, impose an appropriate sanction upon the attorney, law firms, or parties that have violated paragraph (b) or are

responsible for the violation.

Utah Rules of Civil Procedure 41(a). Voluntary Dismissal; Effect Thereof

....

(a)(1)(A) Subject to Rule 23(e) and any applicable statute, the plaintiff may dismiss an action without a court order by filing:

(a)(1)(A)(i) a notice of dismissal before the opposing party serves an answer or a motion for summary judgment.

Utah Rules of Civil Procedure 83. Vexatious Litigants

....

(a)(1)(C) The court may find a person to be a "vexatious litigant" if a person three or more times does anyone or any combination of the following:

... (i) files unmeritorious pleadings or other papers,

... (ii) files pleadings or other papers that contain redundant, immaterial, impertinent or scandalous matter, or

... (iv) engages in tactics that are frivolous or solely for the purpose of harassment or delay.

(c)(1) Before entering an order ..., the court must find by clear and convincing evidence that:

(c)(1)(A) the party subject to the order is a vexatious litigant, and

(c)(1)(B) there is no reasonable probability that the vexatious litigant will prevail on the claim.

STATEMENT OF THE CASE

On April 17, 2020, Petitioner filed her Complaint with the Utah's district court in case number 20010019[1]. On August 5, 2020, Petitioner

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1. [1]There are 2 cases pending in the First District Court. 170100325 and 200100119. The first case was filed by HMS in Utah in November 2017. The second case is the subject here.
2. There are that three founders joined to acquire universities in a niche market. The parties worked from 2015 to March 2017 covered by AAA contracts.
3. At the breakdown of the relationship, HMS, Hernandez joined forces to cause confusion on the agreements. Both had begun negotiating new contracts late November 2016 when money was due.
4. In March 2017, Petitioner faced solicitation and harassment so she tried to negotiate new agreements but failed reverting to the Second Agreement with AAA.
5. However, when Petitioner sought payment, both HMS and Hernandez refused to pay Petitioner resulting in AAA dispute with Hernandez and HMS cases. Petitioner won in the

Hernandez trial in August 2019 and established her founder role.

6. In parallel, Petitioner filed her wages and harassment complaints in California with counsel that met 12 (B)(6). Petitioner was asked for a stay in 170100325 for her California claims and AAA trial to be complete, but the trial Court denied the stay knowing there was the Hernandez trial around the same time.
7. Filing in California was necessary as Petitioners have strong defenses to formation of the alleged Utah agreements. Furthermore, on July 23, 2019, Petitioner declared under oath there are no Utah agreements and that the parties should revert to the First and Second Agreement.

8. Petitioner, therefore, took steps to divide the case based on divisible contracts, a part of which is covered by AAA (100% of the work) and then some other by Utah. There is a motion to revert the case to AAA. When she won her AAA trial against Hernandez, as she has money due for any reason, and as per AAA rules, she is entitled to present her AAA claims de novo and she presented the AAA motion in the right forum, California. Therefore, the Utah trial Court is in no position to bar federal complaint based on AAA.
9. On September 2, 2020, Petitioner's 170100325 was dismissed with a default without a ruling on the merits and on the same day, the Court dismissed 20010119 resulting in appeals in both cases.

filed a rule 41(a) dismissal of the case effectively depriving the Court of jurisdiction. The Complaint, however, was still dismissed by the Court with prejudice on September 2, 2020 based on a motion to dismiss from opposition. The Court did not grant a leave to amend at the denial with prejudice. Five months after the case was dismissed, on February 2, 2021, Respondents requested Petitioner to be classified as vexatious litigant under Rule 83 which was granted by the trial court.

The Utah Court of Appeals affirmed the District Court's Ruling classifying Petitioner as vexatious litigant and The Supreme Court of Utah denied Petitioner's writ of certiorari.

I. Application Of Rule 11 Standards To Rule 83 Analysis Is Inappropriate

The Court of Appeals' opinion in the case at bar indicates that "neither the Utah Supreme Court nor this Court has determined the appropriate standard of review for a Vexatious Litigant Order, we conclude that the three-part standard of review for imposition of a sanction under Rule 11 of the Utah Rules of Civil Procedure provides an appropriate and fair framework." *Vashisht-Rota v. Howell Mngt. Serv.*, 2021 UT App 133, 10. This determination is at odds with the requirements of Utah R. Civ. P. 83 when juxtaposed against the requirements of Utah R. Civ. P. 41(a). Rule 83 states in pertinent part: Before entering an order under subparagraph (b), the Court must find by clear and convincing evidence that:

(A) The party subject to the order is a vexatious litigant; and
(B) There is no reasonable probability that the vexatious litigant will prevail on the claim.

The requirements of Rule 83 are problematic when contrasted with the Court of Appeals' analysis of the Rule 11 standard. Per Rule 11, the party wishing to assert sanctions is required to prepare and submit a motion for sanctions to the opposing party. Once received, the opposing party has the "safe harbor" period wherein the offending party may withdraw the pleading without sanction. This safe harbor is akin to the provisions found in Rule 41(a) which allows a plaintiff to unilaterally withdraw the complaint. The distinction requiring this Court's attention is the lack of a safe harbor provision within Rule 83. As such, the sanction element justifying the extension of jurisdiction beyond the withdrawal of the Complaint does not exist.

In each of the cases cited by the Court of Appeals in its Opinion, the parties received a Rule 11 safe harbor letter. Accordingly, and appropriately, the reviewing court determined that the motion for sanctions was based on a contempt event. Such is simply not the case under Rule 83. This Court should view the effect of Rule 41(a) as akin to the safe harbor found in Rule 11. In essence, the withdrawal of the Complaint should be afforded the same protection that the withdrawal of an offending filing is granted under Rule 11. The impact of these rules when read in concert demonstrates a consistent, uniform, and judicially sound conclusion. Rule 41 allows for the unilateral

dismissal of Plaintiff's Complaint. Rule 83 requires a finding that such complaint fail on the merits. Because a court's jurisdiction terminates when a dismissal occurs, any subsequent finding regarding the Complaint's merits is plainly inappropriate.

The rationale that Rule 11 sanctions can survive termination of jurisdiction is based in the theory that Rule 11 deals with a contempt proceeding. Of course, Rule 83 should not be viewed in the same light, because there is no safe harbor giving rise to contemptuous conduct. However, when – as here – a Rule 41 dismissal occurs, such a dismissal should be viewed in the same light as those occurring per Rule 11's safe harbor. If these Rules were to be applied in this fashion, the Rule 41 dismissal exercised by Plaintiff would have entirely prevented any Rule 11 motion from succeeding. Notably, the extension of the position contained herein is particularly consistent if Rule 41(a) is viewed in the same light as the safe harbor provision found in Rule 11, and such a perspective results in a more uniform and predictable application of law.

Stated differently, a Rule 41(a) dismissal *immediately* terminates a court's jurisdiction over the merits of the case. The natural result of the loss of jurisdiction is that a trial court cannot appropriately reach any conclusion regarding the merits of a Plaintiff's complaint *at all*—let alone by a clear and convincing standard. Moreover, it would seem antithetical to allow for an extension of the contempt proceeding justification when there is no safe harbor offered or available.

Recently, the Court of Appeals expressed the following concern regarding the use of Rule 41:

> If a plaintiff could voluntarily dismiss without prejudice to avoid the imposition of future filing restrictions, the procedure in rule 83 would be ineffective in deterring many vexatious litigants who would simply dismiss the pending case once a rule 83 motion is filed and initiate a new action. *Id.* at 9.

Plaintiff posits that this concern has already been resolved by Utah's Rules of Civil Procedure in two ways. First, the obvious solution to such a problem would be for the wise practitioner to submit to the potentially vexatious litigant a Rule 11 motion. This filing would prevent a Plaintiff from simply dismissing to avoid redress by the opposing party. Second, Rule 83, is not rendered impotent because subsection (a) allows for a finding of vexatiousness merely based on the number of filings and successes with those actions. Moreover, such concern is unwarranted because if a party were to make a habit of filing a Complaint and then dismissing that Complaint pursuant to Rule 41(a), such a strategy would backfire as the second such dismissal would result in a determination on the merits. Moreover, Rule 41 itself does not allow for a simple dismissal with impunity.

Rule 41(d)provides:

> If a plaintiff who previously dismissed an action in any court files an action based on or including the same claim against the same defendant, the court may order the plaintiff to pay all or part of the costs of the previous action and may stay the proceedings until the plaintiff complied.

Accordingly, Rule 41 prevents (in large part), or penalizes, the "habit" of refiling (something that the Court of Appeals cites as a primary concern justifying application of the Rule 11 standard to the Rule 83 Vexatious Litigant determination). Petitioner posits that the better approach would be to follow long-established precedent regarding the loss of jurisdiction as to the merits of the action; and allow the process already outlined in the Rules to determine when and how a determination of Vexatious Litigant status should be announced.

Petitioner asserts that this approach would result in a more consistent application of legal theory. Specifically, the seeming incongruency—that the loss of jurisdiction can be followed by a determination that the claim has no chance of success by a clear and convincing standard. The approach and interpretation suggested herein eliminates this incongruent result. The application of this process to the immediate case would generate these helpful, consistent, and predictable results. First, the trial court would not have granted

Defendant's motion to dismiss, because the trial court lacked jurisdiction to review any matter it had already dismissed. Second, the application of this rule would never prevent the assessment of fees against Petitioner because those were awarded for responding to Plaintiff's Rule 11 motion; which was the only basis for fees that the district court offered.

The other language that bears analysis from this Court's Opinion is the notable statement that "[a] court may award attorney fees, contempt sanctions, and Rule 11 sanctions after a Rule 41(a) voluntary dismissal because those issues all involve the determination of a collateral issue: whether the litigant has abused the judicial process, and if so, what sanction would be appropriate.... Thus, "even" when a court lacks jurisdiction to consider the merits of a case, it has jurisdiction to impose filing restrictions on a party for her conduct in that and other cases." *Id.* at 8.

While the Tenth Circuit has seemingly lumped Rule 41(a) and Rule 11 into the same pile of sanctionable behavior, this Court should decline to do so. It is notable that the Tenth Circuit has not offered any analysis regarding the Rule 11 "safe harbor." It is also notable that the Tenth Circuit's own language identifies a lack of jurisdiction. The identified loss of jurisdiction makes any determination on the merits problematic. This problem is increasingly profound given the requirement of a clear and convincing standard.

II. If Rule 11 Is To Be Applied To Rule 83 Analysis, Then Rule 11's Safe Harbor Should Be Applicable And Petitioner Withdrew The Offending Motions.

Petitioner, acting *pro se*, withdrew most of her motions. She even reached out to opposing counsel seeking to limit the filing of additional motions. The fact that Petitioner withdrew those motions would have precluded a Rule 11 sanction. This is relevant because if we are to apply Rule 11 analysis in Rule 83 requests, then all of Rule 11 should be applicable. Accordingly, acts that would afford a safe harbor under Rule 11 should merit such treatment when Rule 83 is at issue. Petitioner withdrew the Complaint even though she never received the Rule 11 (B) letter.

III. Denial of Petitioner's Motion to Amend Constitutes Reversible Error.

The trial court's denial of Petitioner's Motion to amend her Complaint constitutes reversible error. Specifically, Petitioner's Complaint seeks to add Mr. Chris Howell as a necessary and indispensable party to the dispute. Recent rulings in a contemporaneous matter in the District Court of California demonstrate that "Plaintiff's claims are compulsory counterclaims that must be included in the Utah Litigation because the present claims arose out of the same transaction or occurrence and Utah state court has jurisdiction over Chris Howell." For the foregoing reasons, the Court GRANTS Defendants' motion to dismiss and dismisses Plaintiff's Complaint without prejudice, subject to

asserting its claims in Utah State Court." Note that Petitioner dismissed her Complaint as she had already filed the federal complaint filed in February 2020 that has additional defendants. However, had she not withdrawn the Complaint, Petitioner was attempting to add Mr. Howell. Leave to amend complaints are freely granted and even on the last day. In this instant case, Petitioner with an Order from Judge Lorenz tried to add Mr. Howell. The Court further treated Petitioner's Supplement to the Complaint as an amendment but failed to provide a leave to amend to cure the errors noted in the Order as routinely given to litigants. The fact pattern of the case is complex spanning multi jurisdiction requiring *dépeçage* as Respondents know that none of the work done under the First and Second AAA agreements qualifies under the alleged Utah agreements.

IV. The Trial Court's Failure to Offer Remedial Sanctions Should Merit Reversal.

The trial court failure to issue any warnings to a *pro se* Petitioner is troubling. While it is plain that a *pro se* litigant proceeds at their own peril, it is also clear that the administration of justice requires some leniency. The trial court's actions did not move to correct or deter Petitioner's conduct.

When significant factual changes occurred on or about August 12, 2019 following Petitioner's victory in her AAA case against Hernandez, the trial court could

easily have suggested that Petitioner be required to hire counsel as a first warning, or that Petitioner must seek to leave to file any subsequent motions prior to filing any additional motions; or any other similar lesser sanctions before imposing the present vexatious litigant title on Petitioner. This is particularly true given that the current restriction seems to impair the proper adjudication of justice given petitioner's success in other judicial venues.

V. The Trial Court Arbitrarily Did not Permit Other Collateral Motions For Sanctions Such as One for Wages Owed under U.R.C.P. §§34-28-1-34-28-19 WAGE PAYMENT: UTAH CODE §§ 34-28-1 TO 34-28-19

Failure to comply with the wage payment laws may result in both

1. Misdemeanor. Penalty of 5% of the unpaid wages owing to the employee. This penalty may be assessed daily for a maximum of 20 days (Utah Code § 34-28-9).

2. Willful failure to pay wages within 24 hours of a written request may result in a penalty of up to 60 days' wages (Utah Code § 34- 28-5(1)).

Calculations based on Petitioner's salary amounts (Appendix One) result in substantial sanctions owed to Petitioner once she was classified as an employee in California and demanded payment on multiple occasions each occasion resulting in penalties for non-payment. Petitioner notes the calculation for one such

demand on February 14, 2020 and then again on January 28, 2021. The sanctions amount from that nonpayment willful, malicious, and a misdemeanor ranges from $507,884 to $1,113,618 for nonpayment for each instance.

	Estimate One	Estimate Two	Estimate Three	Estimate Four	Average
Wages Owed	277,028.00	332,428.00	539,428.00	607,428.00	439,078.00
Utah Penalties	5%	5%	5%	5%	5%
Sanctions as per law	13,851.40	16,621.40	26,971.40	30,371.40	21,953.90
Sanction 5%	23,085.67	27,702.33	44,952.33	50,619.00	36,589.83
20 days daily	461,713.33	554,046.67	899,046.67	1,012,380.00	731,796.67
60 days Penalty	46,171.33	55,404.67	89,904.67	101,238.00	73,179.67
Total	507,884.67	609,451.33	988,951.33	1,113,618.00	804,976.33

(4) For a sales agent employed in whole or in part on a commission basis who has custody of accounts, money, or goods of the sales agent's principal, this section does not apply to the commission-based portion of the sales agent's earnings if the net amount due the agent is
determined only after an audit or verification of sales, accounts, funds, or stocks.

The trial Court cherry picked to steal money and claims to steal money due to an out of state party.

VI. Other Mistakes Warrant the Court's Supervisory Role Attention

A. The trial Court erred on the purpose of the Complaint and the Supplement. The 200100119 was filed based on the Complaint Petitioner filed in California on or around February 2020. The contracts between the parties are divisible and cover different work for different time periods. Believing she had to alert the Utah Court, she erroneously filed on April 17, 2020 to alert the Court in Utah. Petitioner filed the sanction against HMS for Hernandez trial in Utah under Rule 11 (B). The Utah complaint 200100119 was filed PRIOR to the ninth circuit appeal on the wages (19-55748) and harassment claims (20-55302) so that Petitioner could go directly to trial on the claims covered by AAA contract after she won her AAA trial against Hernandez. Thus, the filed claims in 200100119 already had a ruling on the merits and met 12 (B)(6) filed with Attorney Ward Heinrichs and Rainey. As such the claims are estopped for a ruling on the merits so Petitioner dismissed the matter.

But by ruling on the dismissed Complaint as immaterial, the Court is attempting to tell a federal court what to do. Under the Supremacy Clause of the United States Constitution, a state court is legally powerless to restrain federal court proceedings in personam, regardless of whether the federal litigation is pending. See generally *General Atomic Co. v. Felter,* 436 U.S. 493 (1978). "Early in the history of our country a general rule was

established that state and federal courts would not interfere with or try to restrain each other's proceedings ... [and] [t]hat rule has continued substantially unchanged to [date]." *Donovan v. City of Dallas,* 377 U.S. 408,412 (1964). Today, federal courts have been congressionally authorized to restrain state court proceedings under certain circumstances, but "the old and well-established judicially declared rule that state courts are completely without power to restrain federal-court proceedings in in personam actions" remains intact Id. Further, "[j]ust as a court may not decide a merits question that the parties have delegated to an arbitrator, a court may not decide an arbitrability question that the parties have delegated to an arbitrator. " *Henry Schein, Inc. v. Archer & White Sales, Inc.,* 139 S. Ct. 524, 530 (2019). This is from the September 2, 2020 order issued in 20010119 page 5.

1. AAA Rules of Commercial Arbitration; Dépeçage; and Counterclaims

a. Rule R-52. Applications to Court and Exclusion of Liability (a) No judicial proceeding by a party relating to the subject matter of the arbitration shall be deemed a waiver of the party's right to arbitrate. Petitioner has not waived her right to arbitrate and her AAA contract has equitable remedies.

b. Rule 58 (a) The arbitrator may, upon a party's request, order appropriate sanctions where a party fails to comply with its obligations under these rules or with an order of the arbitrator. In the event that the arbitrator enters a sanction that limits any party's participation in the arbitration or results in an adverse determination of an issue or issues, the arbitrator shall explain that order in

writing and shall require the submission of evidence and legal argument prior to making of an award. The arbitrator may not enter a default award as a sanction. (emphasis added) so Petitioner could not be defaulted out of her AAA claims nor could the Utah Court bar those claims as it did in its ruling on April 21, 2021.

c.) **Dépeçage is applicable**. "Dépeçage is the widely approved process whereby the rules of different states are applied on the basis of the precise issue involved." *Johnson Continental Airlines Corp.*, 964 F.2d 1059, 1062 n.4 (10th Cir. 1992). See also *Ruiz v. Blentech Corp.*, 89 F.3d 320, 324 (7th Cir.1996) (defining dépeçage as "the process of cutting up a case into individual issues, each subject to a separate choice-of-law analysis"); *Underground Solutions, Inc. v. Palermo*, 41 F. Supp. 3d 720, 722-23 (N.D. Ill. 2014) ("[Dépeçage] applies when it is appropriate to apply the law of more than one jurisdiction, such as when the issues to which the different laws applied are separable.") (internal quotation marks and citation omitted). This parsing of issues is consistent with the Restatement § 145 approach, which Utah courts have adopted. See *Ruiz,* 89 F.3d at 324 (the Restatement "enumerates specific factors that identify the state with the most significant contacts to an issue, and the relevant factors differ according to the area of substantive law governing the issue and according to the nature of the issue itself." (emphasis added); *Townsend v. Sears, Roebuck & Co.*, 879 N.E.2d 893, 901 (Ill. 2007) ("[S]ection 145 explicitly refers to a selective, issue-oriented approach.

d.) **Judge Fonnesbeck Erroneous on**

Counterclaims: In the September 2, 2020 Order page 6-7, the Court ruled that "Rule 13(a) of the Utah Rules of Civil Procedure requires that"[a] pleading must state as a counterclaim any claim that- at the time of service-the pleader has against an opposing party if the claim (A) arises out of the transaction or occurrence that is the subject-matter of the oppos- ing party's claim; and (b) does not require adding another party over whom the court cannot acquire jurisdiction." Utah R. Civ. P. (13)(a)(l). "The purpose of [R]ule 13(a) is to ensure that all relevant claims arising out of a given transaction are litigated in the same action." *Raile Family Trust v. Promax Dev. Corp.*, 2001 UT 40, 12, 24 P.3d 980. Plaintiff [Petitioner]'s new claims arise out of the same trans- action that is the central subject matter of HMS v. AEG" and April 26, 2021 page 2, "Plaintiff's new claims were compulsory counterclaims. But here, Petitioner won her AAA trial against Hernandez on August 12, 2019 so she has new claims against new Defendants.

1. U.R.C.P. Rule 13 (a)(1)(A): The work under the AAA agreement does not qualify under the alleged Third Agreement. Thus, under U.R.C.P. Rule 13 (a)(1)(A), the work under AAA is under AAA's subject matter jurisdiction. Petitioner has not waived her right to arbitrate her claims pursuant to AAA Rule 52.

2. U.R.C.P. Rule 13 (a)(1)(B). Petitioner has sought sanctions against Hernandez pursuant to AAA Rules of Commercial Arbitration Rule 58 (A) for disobeying a binding Order. Petitioner won her trial against Hernandez on the merits. Hernandez is a Kansas state resident. The trial Court cannot acquire jurisdiction over Hernandez to sanction him for disobeying a binding AAA Order. See III for additional Defendants.

B. Prior Rulings on The Matter:

Judge Lorenz ruled as follows in these cases:

1. On January 28, 2019, Judge Lorenz ruled: "From October 2015 to March 2017, Plaintiff was employed by Defendants Howell Management Services, LLC and Chris Howell ("HMS" or "Defendants"). See ECF No. 1-2. Defendants employed Plaintiff to refer foreign and domestic students to HMS and to have those students enrolled at universities associated with HMS. Plaintiff was not paid for the work she performed for Defendants. Case 3:18-cv-02010-L-AGS Document 21 Filed 01/28/19 PageID.473 Page 1 of 4."
2. On January 28, 2019, Judge Lorenz ruled: "At the crux of the amount in controversy issue is whether attorney's fees can be considered in determining whether the jurisdictional amount is satisfied. Attorney's fees become "part of the matter put in controversy by the complaint, and not mere costs excluded from the reckoning by the jurisdictional and removal statutes." *Missouri State Life Ins. Co. et al. v. Jones*, 290 U.S. 199, 202 (1933) (reasoning that attorneys' fees are not "mere costs excluded from the reckoning" when the attorneys' fees at issue were authorized by

Missouri statute that treated attorneys' fees as costs) (quotation marks omitted). Case 3:18-cv-02010-L-AGS Document 21 Filed 01/28/19 PageID.476 Page 4 of 4.

3. On January 28, 2019, Judge Lorenz ruled: "With that in mind, the Court finds Plaintiff's current assertion that her wage claim is worth between $8,600 and $25,800 to be disingenuous. While her wage claims are likely not worth in excess of $3 million, as indicated in the letter, the Court finds that Plaintiff grossly undervalues wage damages now as her complaint seeks both minimum wages and overtime compensation for work completed over a 17-month span." Case 3:18-cv-02010-L- AGS Document 21 Filed 01/28/19 PageID.475 Page 3 of 4. 4. On May 28, 2019, Judge Lorenz ruled: "Therefore, Plaintiff's claims are compulsory counterclaims that must be included in the Utah Litigation because the present claims arose out of the same transaction or occurrence and Utah state court has jurisdiction over Chris Howell." Case 3:18-cv-02010-L-AGS Document 22 Filed 05/28/19 PageID.481 Page 5 of 5. For the foregoing reasons, the Court GRANTS Defendants' motion to dismiss and dismisses Plaintiff's Complaint *without prejudice*, subject to asserting its claims in Utah state Court." Case 3:18- cv-02010-L- AGS Document 22 Filed 05/28/19 PageID.481 Page 5 of 5.

4. "Moreover, the Court is not persuaded by HMS' contention that the allegations here are at issue in the HMS' interference, defamation, and injurious falsehood claims in Utah. As such, the facts of this case and the Utah litigation are

distinct in that the instant litigation focuses on the Defendants' behavior *during* the contract relationship and the Utah litigation focuses on Plaintiff's behavior *after* the contract relationship ended. Thus, the claims do not arise under the same facts. Therefore, Plaintiff's claims are not compulsory counterclaims that must be included in the Utah Litigation." (Case 3:19-cv-00512-L- AGS Document 18 Filed 03/02/20 PageID.420 Page 6 of 10).

C. Lack of Fair Trial Noted: Plaintiff has raised the issue of fair trial timely in all her California briefs waiting for rulings from a state court in Utah.

1. FAIR TRIAL: Case 3:19-cv-00512-L-AGS Document 11 Filed 06/14/19 PageID.236 Page 13 of 23. "II. PLAINTIFF CANNOT HAVE A FAIR TRIAL IN CACHE COUNTY, UTAH. Her inability to actually litigate claims fairly is an exceptional circumstance that should carry great weight in exercise of the Court's discretion here. In the Utah Litigation, according to the order drafted and filed by HMS' attorney, HMS and Supervisor Howell, state they are "lifelong citizens of Cache County and well known by members of the local community." [ECF No. 9 P.3 ¶ 3]. Plaintiff is neither a lifelong citizen of Cache County, Utah nor well known by members of the local community. In fact, Plaintiff has never been to Cache County, Utah. (Rota Decl. ¶ 2). Moreover, Cache County is a small town with a 93.1% Caucasian population. This is an overwhelming majority. Plaintiff is of Indian descent and a California resident. Id."

2. FAIR TRIAL: Case 3:19-cv-00512-L-AGS

Document 11 Filed 06/14/19 PageID.238 Page 15-16 of 23, "TRIAL IN THE SELECTED FORUM WOULD BE SO GRAVELY DIFFICULT AND INCONVENIENT THAT IT WOULD EFFECTIVELY DEPRIVE THE PLAINTIFF OF HER DAY IN COURT. Litigating this case in Utah would deprive the Plaintiff of a fair trial. The composition of the population in Cache County make it difficult for Plaintiff to have a fair trial in the small town. With the demographics in Cache County, it is highly unlikely the jury pool will be diverse. In fact, the jury pool will likely be individuals who are lifelong members of this small community or at least lived there the majority of their lives, with the majority being Caucasian. In the Utah Litigation, HMS and Supervisor Howell state they are "lifelong citizens of Cache County and well known by members of the local community." [ECF No. 9 P.3 ¶ 3]. Plaintiff has no connections nor ever been to Cache County. (Rota Decl. ¶2). Plaintiff is domiciled in California. Id. at ¶3. Plaintiff is a female of Indian origin. Id.

Plaintiff will not receive a fair trial if she is forced to litigate her case in the small town of Cache County. Accordingly, Plaintiff should not have to endure litigating her claims to a jury who will likely be biased against her automatically. 5. Case 3:19-cv-00512-L-AGS Document 11 Filed 06/14/19 PageID.240 Page 17 of 23 "As previously stated, it is highly unlikely Plaintiff will have a fair trial in the small town of Cache County, as she will be a complete outsider and not a well-known by members of the community like HMS and Supervisor Howell."

3. **RESCISSION NOT NEW:** Plaintiff has filed a previous complaint with causes of action related to unpaid wages (See Case 3:19-cv-00512-L-AGS Document 18 Filed 03/02/20 PageID.417 Page 3 of 10). Plaintiff states under oath that only the first two of the alleged four agreements are binding. (See Case 3:18-cv-02010-L-AGS Document 7-3 Filed 09/14/18 PageID.226 Page 2 of 3, paragraph 6, line 19-20.) Plaintiff notes that she 'rescinded' from the alleged Utah agreements Case 3:18-cv- 02010-L-AGS Document 7-2 Filed 09/14/18 PageID.222 Page 2 of 4). On that page, "Even if a court were to find that the Utah jurisdiction cause survives, ...have 'at will' language in them in Paragraph 1.5 "HMS reserves the right to terminate this agreement at any time for any reason or no reason .. " In California, that language alone is enough to make Ms. Vashisht- Rota an employee." Petitioner has also declared under oath in 170100325 that the case should be divided by the contracts.

D. *Shree Ganesh* Warrants Contract Formation Review: *Shree Ganesh, LLC v. Weston Logan, Inc.*, 2021 UT 21, 2021 Utah LEXIS 65, 2021 WL 2460658 is relevant for two reasons.

One the trial Court mentions baseless conspiracy theories in the opinion. This is categorically false. Hernandez in his deposition under oath mentioned that HMS and Hernandez discussed 'blocking' Petitioner. When she won the AAA trial, new claims against Defendants matured (Trocki, Hernandez, Howell, BlueChip, and Spencer) entitling her to equitable remedies complaint filed in federal court. Notably, in 200100119, Petitioner attempted to add Mr. Chris Howell as a party who is indispensable to the dispute at hand. "[29] Shree Ganesh also argues that

we should reverse the district court's denial of Shree Ganesh's motion to amend its complaint to (Continued) add conspiracy claims against several new defendants. Because the district court may want to revisit this decision on remand in connection with its determinations as to Shree Ganesh's other claims, we also remand for a reconsideration of the denial of the motion to amend. But in so doing, we make no decision regarding the merits of the district court's decision on this issue. Rather our decision is motivated only by the fact that—in light of our other determinations—a decision on the issue at this time would be premature. "

Two because Judge Allen failed to note a 'legal duty' in *Shree Ganesh* and he made the same mistake in 170100325. HMS also failed its legal duty. On page 1 of the filed Complaint, in 20010119 Petitioner notes the need to reanalyze Hon. Judge Allen's 2018 ruling as the Utah agreements are unenforceable. Hon. Judge Allen should have used *Cea v. Hoffman*, 272 P.3d 1178 as there is no meeting of the minds, signatures are required, two counteroffers and fraud making *Cea v. Hoffman,* 272 P.3d 1178 more applicable rather than *Commercial Union Associates v. Clayton*, 863 P.2d 29. In this instance, offer and acceptance were less probable than not due to solicitation of sexual favors preceding the agreement negotiations. On March 31, 2017 Appellant terminated the Second Agreement due horrible work conditions and nebulous compensation terms rendering the work untraceable. It is unlikely that Appellant will ever work with HMS or Utah again. In his 2018 Order in 170100325, although he ruled that HMS failed to timely provide

countersigned copies, he did not fully analyze the impact of that failure. HMS failed its legal duty to accept counteroffers in a clear and an unambiguous manner prior to the counteroffers' express revocation. There are no Utah agreements. Appendix One is the Rule 2 legal analysis motion Petitioner filed in 20210395-CA to timely raise the issue but the appellate ignored it. The Court has wide discretion to suspend rules especially as the agreements are clearly not formed and the matter should revert to arbitration. Rule 12 (h) of the U.R.C.P. further allow any party to raise the issue of jurisdiction at any time and failure to add indispensable parties as a valid defense.

(h) Waiver of defenses. A party waives all defenses and objections not presented either by motion or by answer or reply, except (1) that the defense of failure to state a claim upon which relief can be granted, the defense of failure to join an indispensable party, and the objection of failure to state a legal defense to a claim may also be made by a later pleading, if one is permitted, or by motion for judgment on the pleadings or at the trial on the merits, and except (2) that, whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court must dismiss the action. The objection or defense, if made at the trial, must be disposed of as provided in Rule in the light of any evidence that may have been received".

E. Mootness: The Trial Court left opposition two notes indicating that its motions were 'moot' on September 4, 2020 "Motion for Sanctions and Attorney Fees" and then again on October 16, 2020 for opposing counsel's motion "Note: This Matter was dismissed in September 2020 by the

Court's Memorandum Decision. Thus, a case management conference is moot. No further action needs to be taken on this case". There were never any notations left for Petitioner. Despite the notes from the Court, opposing counsel kept with his poor gamesmanship to catch Petitioner off-guard without counsel. Opposing counsel knew her counsel was busy with the other case's appeal.

However, continued filing from counsel does not revive the dead complaint. Appellant filed a voluntary dismissal Pursuant to Rule 41 of the Utah Civil Procedure; "Plaintiff exercises Rule 41 (a)(1)(A)(i) with this filed notice of dismissal. Pursuant to Rule 41 (a)(1)(B) the dismissal is without prejudice." The parties' willingness to continue the dispute does not resuscitate a moot matter.
"Generally, we will not decide a case that is moot. *Guardian ad Litem v. State* (State ex rel. C.D.), 2010 UT 66, ¶ 11, 245 P.3d 724." "Where the issues that were before the trial court no longer exist, the appellate court will not review the case. An appeal is moot if during the pendency of the appeal circumstances change so that the controversy is eliminated, thereby rendering the relief requested impossible or of no legal effect." *Guardian ad Litem v. State* (State ex rel. C.D.), 2010 UT 66, ¶ 11, 245 P.3d 724; 2012 UT 23. Although "[i]t is the duty of each party . . . to inform the court of any circumstances which . .. render moot one or more of the issues raised UTAH R. APP. P. 37(a)," the court may also raise the issue of mootness sua sponte to further "a core judicial policy" of limiting "the scope of its power to issues in controversy." Therefore, an agreement among parties to continue

litigation does not resuscitate a moot case. *Shipman v. Evans*, 2004 UT 44, ¶ 36, 100 P.3d 1151, abrogated on other grounds by *Utahns for Better Dental Health–Davis, Inc. v. Davis Cnty. Clerk*, 2007 UT 97, 175 P.3d 1036; *Richards v. Baum*,914 P.2d 719, 720 (Utah 1996) ("The strong judicial policy against giving advisory opinions dictates that courts refrain from adjudicating moot questions."); see also, e.g., *McBride v. Utah State Bar*, 2010 UT 60, ¶ 13 & n.1, 242 P.3d 769 (raising mootness sua sponte); *Soc'y of Prof'l Journalists v. Bullock*, 743 P.2d 1166, 1169 (Utah 1987) (same).

REASONS FOR GRANTING THE WRIT

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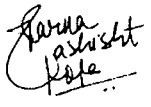
The Court Should Grant Certiorari to Clarify that the Rule 11 analysis is inapplicable and incongruent with the requirements of Rule 83 when a Rule 41(a) dismissal has been initiated.

This Court should grant review in this case to provide guidance on what standard for review of such determination should be utilized. Lack of the standard for review of such determination is the issue that has confounded, and will continue to confound, the Utah courts. Properly understood, the current Rules of Civil Procedure provide all of the remedies required in the event of a Rule 41(a) dismissal. Which remedies will preclude any use of this rule in an abusive fashion – as outlined in Rule 41(d) and Rule 83(1)(A). The Utah Court of Appeal's first mistake was failing to discern that the Rule 11 analysis is incongruent with the requirements of Rule 83 when a Rule 41(a) dismissal has been initiated by the Plaintiff because the dismissal entirely terminates a court's subject matter jurisdiction over the claims and in this case, no Rule 11 safe harbor had been provided to the *pro se* litigant. Because the Utah courts are not properly applying the Utah Rules of Civil Procedure, this Court's review is warranted. In the alternative, gross errors of law such as prior rulings, AAA agreements, the Utah Court 'barring' a federal complaint warrants a review not to mention a litigant seeking to add indispensable parties.

CONCLUSION

Ms. Rota respectfully requests that this Court issue a writ of certiorari.

Respectfully submitted,



/s/ Aparna Vashisht-Rota Pro

Pro Se Petitioner
12396 Dormouse Road,
San Diego, California 92129
(858) 348-7068

September 12, 2022

(Correction of the July 20, 2022 file)