22-6566

No. _____

FILED
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SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

ISRAEL ROMERO, Petitioner,

v.

**ALLWELL from Absolute Total Care,
UPSTATE CAROLINA RADIOLOGY,
RECEVABLE MANAGEMENT GROUP, and
THOMAS STEPHENS,
Respondents.**

**On Petition for Writ of Certiorari to the
United States Court of Appeals for the Fourth Circuit
No. 21-2056 (7:20-cv-04344-JMC)**

PETITION FOR WRIT OF CERTIORARI

Israel Romero
Petitioner *Pro Se*
937-B South Liberty Street
Spartanburg, SC 29306
Phone 864-347-9536
israel09r@yahoo.com

QUESTIONS PRESENTED

This is the case the United States Supreme Court has been waiting for years to give light over three crucial issues never decided by any federal court of this country. Following are the three issues that certainly deserve to be heard by this Court. Therefore, certiorari should be granted:

1. Whether a motion for summary judgment supported by 76 pages of documentary evidence, can be properly denied "as premature" when the law states that the motion can be filed even at the commencement of the action?

2. Whether a civil complaint can be dismissed when is well pleaded and supported by 76 pages of documentary evidence –not contested by the four defendants, in application of Rule 28 USC § 1915 only because the action is litigated by plaintiff *pro se in forma pauperis*?

3. Whether the Fourth Circuit Court of Appeals committed reversible error by affirming the District Court's decision on diversity of citizenship when the complaint was filed based upon federal question?

LIST OF PARTIES AND CORPORATE DISCLOSURE STATEMENT

[X] All parties appear in the caption of the case on the cover page.

Petitioner Israel Romero is a natural person, retired.

Respondent ALLWELL from Absolute Total Care is a corporation, represented by legal counsel. It is dubious that ALLWELL is authorized to make business in the State of South Carolina.

Respondent UPSTATE CAROLINA RADIOLOGY, is a corporation with offices in Spartanburg, South Carolina, that did not appear in the case despite being served in every filing and given deadlines to answer by the District Court, and no legal counsel is known.

Respondent RECEIVABLE MANAGEMENT GROUP, is a corporation with offices in Columbus, Georgia, that did not appear in the case despite being served in every filing and given deadlines to answer by the District Court, and no legal counsel is known.

Respondent Thomas Stephens, is a natural person that did not appear in the case despite being served in every filing and given deadlines to answer by the District Court, and no legal counsel is known.

RELATED CASES

- Romero v. ALLWELL, et al, No. 7:20-cv-04344-JMC, U.S. district court for the District of south Carolina, Spartanburg Division. Judgment entered Sept. 17, 2021.
- Romero v. ALLWELL, et al, No. 21-2056, U.S. Court of Appeals for the Fourth Circuit. Judgment entered on Nov. 30, 2021.

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR A WRIT OF CERTIORARI

Petitioner Israel Romero prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fourth Circuit. The three issues presented never have been decided neither by this Court nor by any other federal court of the country.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fourth Circuit appears at Appendix A to the petition and is

UNPUBLISHED PER CURIAM OPINION

The opinion of the United States District Court appears at Appendix B to the petition and is

UNKNOWN TO THE PETITIONER IF IT IS REPORTED OR PUBLISHED

JURISDICTION

The date on which the United States Court of Appeals decided my case was November 30, 2022

[X] No petition for rehearing was timely filed in my case.

The United States Supreme Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Constitution Amendment XIV (1868) Section 1. Due Process of Law, and Equal Protection of the Laws

F.R. Civ. Proc. Rule 56. Summary Judgment – 2009 Amendment
(c)(1) "The new rule allows a party to move for summary judgment at any time, even as early as the commencement of the action." If a motion for summary judgment is filed before a responsive pleading is due from a party affected by the motion, the time for responding to the motion is 21 days after the responsive pleading is due."

F.R. Civ. Proc. Rule 3. Commencing an Action
"A civil action is commenced by filing a complaint with the court."

F.R. Civ. Proc. Rule 12. Defenses and Objections: When and How Presented; Motion for Judgment on the Pleadings; ...; Waiving Defenses.

F.R. Civ. Proc. Rule 9. Pleading Special Matters
(b) "Fraud..."

F.R. Civ. Proc. Rule 10. Form of Pleadings
(c) Adoption by Reference. Exhibits. "A statement in a pleading may be adopted by reference elsewhere in the same pleading or in any other pleading or motion."

F.R. Civ. Proc. Rule 21. Misjoinder or Nonjoinder of Parties.
"Misjoinder [or nonjoinder] of parties is not a ground for dismissing an action."

28 U.S.C. § 1915, known as the *in forma pauperis* statute.

South Carolina Federal Court Rule 5.06 "Substitution, Correction, and Removal of Electronically Filed Documents. "All other requests to redact the content of a previously filed document, or...to remove it from the docket, shall be granted only upon *motion* and order."

STATEMENT OF THE CASE

INTRODUCTION

The Petition properly complies with the Rules of the United States Supreme Court, and the federal questions presented are properly exposed and preserved at every level below.

The Petition is unique because brings to this Court three issues never before argued and resolved by any federal court of the country. A handful of cases have been decided on motions for summary judgment but none contains the denial of a motion for summary judgment as premature. Secondly, many cases have been litigated *pro se* and *in forma pauperis*, but none of those cases has been dismissed pursuant to Rule 28 U.S.C. § 1915, known as the *in forma pauperis* statute, as clearly it was misapplied in this case by the District Court, and affirmed by the Court of Appeals for the Fourth Circuit. Thirdly, the District Court opinion and decision is based upon diversity of citizenship and obviated to acquire jurisdiction based upon federal question, which there were several federal questions brought upon in the case, and the official Docket p. 1 (ECF 35 Appendix F) reflects "JURISDICTION; FEDERAL QUESTION" meaning that the case was decided based upon jurisdiction acquired by the court for federal question. All of the above are errors that warrant reversal, but the Appellate Court failed to act, and just affirmed the errors committed by the lower court. It is an error that warrants reversal.

The District Court, and the Appeals Court misapplied the federal law, and decided the issues the wrong way. Such a failure constitutes plain error that warrants reversal.

This Court must understand that the three issues presented are very important for the

future administration of justice, and once decided by this Court, will bring light to the appellate as well as to the trial courts, especially where there is conflict in the law between the federal circuit courts.

As of today, the conflict between the federal circuit courts is deep, and we find many conflicting decisions. The conflict these three issues are reflecting is clean, because the decision will directly clarify the misapplication of legal rules to a particular set of facts, but also conflict about what is the applicable rule.

The importance of the issues presented connects with the real-world problems that stem from leaving these issues unresolved. In addition, resolving these issues will help to ease amounts of money involved in future heavy litigation.

Please have in consideration that this case is a good vehicle for solving one or more of these open questions. This Court always seeks to decide cases that will have immediate importance far beyond the particular facts and parties involved. Therefore, certiorari should be granted.

SHORT HISTORY OF THE CASE

The complaint was filed on 12/15/2020 and entered by the U.S. District Court of South Carolina (Spartanburg Division) on12/16/2020. The nature of the suit is 370 and other fraud, and the jurisdiction claimed by Plaintiff was based upon Federal Question and Diversity of Citizenship (ECF 35 p.1). The action was filed together with Answers to Interrogatories along with Motion for Leave to Proceed *in forma pauperis* (ECF 4). The Court granted a deadline to respond until 12/29/2020 (ECF 4). No answer was filed by

any of the Defendants. On 1/6/2021, the motion was granted (ECF 8). Entries 5, 6, and 7 are missing from the Official Docket. From those entries, Petitioner only received copy of the answer to the Complaint filed by defendant ALLWELL from Absolute Total Care, which was entered on 01/05/21 as Entry Number 6, before receiving copy of the Complaint and Summons. No doubt that ALLWELL received a tip from a leak at the District Court. Otherwise, defendant ALLWELL must explain how got knowledge of the Complaint. On 01/06/2021 the Magistrate Judge directed "the Clerk to delete defendant's answer (ECF Doc 6) from the record as premature." (ECF 8 and 11 on Entry 35 p.2). On 01/27/2021 the Plaintiff filed a Motion for Summary Judgment with 76 documents offered in evidence to prove the alleged facts (ECF 15). On entry 31 p. 2 the District Court quoted the plaintiff's complaint, "asserting he has "six legitimate causes of action" which he supported with facts. (ECF No. 18 at 17-18; Appendix B)" The court ignored the 76 pieces of documentary evidence in the record to prove the motion and the complaint. The court set deadline for responses to motion due by 2/10/2021 (Appendix F). No defendant answered. On 01/28/2021 the Magistrate Judge "recommended that the MOTION for Summary Judgment filed by [Plaintiff] Israel Romero be denied as premature (see Appendix D) On 2/11/2021 Plaintiff filed "OBJECTION to 16 Report and Recommendation. Reply to Objections due by 2/25/2021 (ECF 18). No defendant filed a reply. On 03/04/2021 by Order and Amendment Notice from the Magistrate Judge (Appendix E), the Petitioner filed an Amended Complaint incorporating by reference all the defendant's allegations and documents in evidence already in the record as per F.R. Civ. Proc. Rule 10 "Adoption by Reference. Exhibits." More documents were added.

(ECF 23) On 03/25/2021 the Magistrate Judge "recommended that the action be dismissed with prejudice and without leave for further amendment." (see Appendix C) On 04/08/2021 the Petitioner filed an OBJECTION to 27 Report and Recommendation. The District Court set deadline for "Reply to Objections due by 4/22/2021." (ECF 30) No defendant filed a reply. On 09/17/2021 the Court denied the motion for summary judgment as premature, and dismissed the Complaint, the Amended Complaint, and the objections filed by Petitioner. (ECF 31, 32, 33; Appendix B) On 09/24/2021 the Petitioner filed a NOTICE OF APPEAL. (ECF 34) On 09/24/2021 the Clerk provided to Petitioner a copy of the transmittal sheet. Notice that from 35 total entries, eleven entries are missing. (ECF 35; Appendix F) On 10/22/2021 the Applicant filed with the U.S. Court of Appeals Fourth Circuit the Appellant's INFORMAL BRIEF. On 11/04/2021 defendant ALLWELL from Absolute Total Care filed an INFORMAL RESPONSE BRIEF. On 11/12/2021 the Petitioner filed Appellant's INFORMAL REPLY BRIEF. On February 24, 2022 the Fourth Circuit ordered, "For reasons appearing to the Court, this case is placed in abeyance pending a decision by this court [in] Britt v. DeJoy, No. 20-1620, orally argued January 28, 2022, (en banc)." (Appendix A) Petitioner filed in the U.S. Supreme Court a Petition for a Writ of Mandamus that the Court denied. Britt v. DeJoy –not related to Petitioner's case, was decided on 08/17/2022. On 11/30/2022 the U.S. Court of Appeals affirmed the district court's judgment by unpublished per curiam opinion. (Appendix A)

SUMMARY OF THE ARGUMENT

The U.S. Court of Appeals for the Fourth Circuit failed to give a complete account for the reasons of affirming the District Court's judgment. Limits its words to, "We have reviewed the record and find no reversible error." By relying 100% on the appeals court wording, Petitioner believes the Court saw the total 35 entries, including the eleven missing entries. If this is true, the decision constitutes plain error *per se* because Petitioner did not receive copy of ten of those eleven missing entries. Petitioner only received copy of the ANSWER filed by defendant ALLWELL from Absolute Total Care. (Deleted ECF 6. See ECF 11) If the Court of Appeals did not receive and reviewed the eleven missing entries, the decision is wrong containing a misstatement, and constitutes plain error that warrants reversal. The Petitioner pointed out many plain errors committed by both the Magistrate Judge and by the District Judge J. Michelle Childs in the final decision of this case, all of them warranting a decision in favor of Petitioner. Therefore, the Court of Appeals committed plain error that warrants reversal, and this Petition for a Writ of Certiorari should be granted.

The three questions presented carry issues never decided by this Court since its foundation in 1789. This is one of the handful of cases that warrant the U.S. Supreme Court attention. Therefore, the Petition for a Writ of Certiorari should be granted.

REASONS FOR GRANTING THE PETITION. ARGUMENT

1. DENIAL OF MOTION FOR SUMMARY JUDGMENT AS PREMATURE

The U.S. District Court of South Carolina, Spartanburg Division, made a final

decision and denied the motion for summary judgment filed by Petitioner after petitioner was served with a copy of the ANSWER TO THE COMPLAINT (ECF 6). The answer from defendant ALLWELL from Absolute Total Care (ALLWELL) came before being served with a SUMMONS and copy of the COMPLAINT, pushing Petitioner to believe that a leak from the court alerted ALLWELL of the existence of the complaint against ALLWELL and other defendants. A general principle of law is that a defendant has the right to defend his case immediately gets knowledge of a legal action in court, no matter how or for what channel the information came in. The court immediately ordered the ANSWER from defendant ALLWELL to be deleted from the docket (ECF 8, 11). The court violated the South Carolina Federal Court Rules Rule 5.06 Substitution, Correction, and Removal of Electronically Filed Documents. "All other requests to redact the content of a previously filed document, or to remove it from the docket, shall be granted only upon motion and order." The rule means that the Spartanburg Division ordered the deletion of ALLWELL's ANSWER to the COMPLAINT in an arbitrary act or abuse of authority because no motion was filed, in violation of Petitioner's right to Due Process and Equal Protection of the Laws warranted by the U.S. Constitution Amendment XIV Section 1, constituting plain error that warrants reversal.

In the final order, the trial court denied the motion for summary judgment as premature because did not order service of the SUMMONS and copy of the COMPLAINT to the defendants. An error because is violation of F.R. Civ. Proc. Rule 21. Misjoinder or Nonjoinder of Parties. "Misjoinder [or Nonjoinder] of parties is not a ground for dismissing an action." The law also states that a motion for summary

judgment can be filed even at the commencement of an action, including before joinder. F.R. Civ. Proc. Rule 56 in 2009 Amendment "new subdivision (c)(1) "The new rule allows a party to move for summary judgment at any time, even as early as the commencement of the action." F.R. Civ. Proc. Rule 3 states, "A civil action is commenced by filing a complaint with the court." The motion for summary judgment was filed on 12/15/2020 and entered 12/16/2020. (ECF 1) The motion for summary judgment was filed on 01/27/2021 (ECF 15) that means 42 days after commencement of the action. The court set deadline to "Response to Motion due by 2/10/2021, and add 3 additional days only if served by mail," in compliance with the only requirement set by Rule 56 (c)(1) "If the motion seems premature both subdivision (c)(1) and Rule 6(b) allow the court to extend the time to respond." Same 2009 Amendment to Rule 56 in last paragraph states that, "If a motion for summary judgment is filed before a responsive pleading is due from a party affected by the motion, the time for responding to the motion is 21 days after the responsive pleading is due." No rule neither mandates nor permits denial of the motion as premature, and the court committed plain error when denied the Petitioner's motion for summary judgment as premature, constituting a plain error that warrants reversal.

The crucial error that the U.S. Supreme Court must take in consideration is found in the final decision where the Judge J. Michelle Childs wrote that the Plaintiff [Petitioner] "asserting he has "six legitimate causes of action" which he supported with facts." (ECF 31 p.2) This is a misstatement because the judge ignored the 76 pieces of documentary evidence in record that support the COMPLAINT, the MOTION FOR SUMMARY

JUDGMENT, and the entire action. It is a plain error that warrants reversal. The overwhelming evidence submitted by Petitioner eliminated any genuine dispute to wit: all elements of the causes of action were proven, and the motion for summary judgment left no doubt that the defendants could not present any objection or any genuine dispute because the 76 pieces of documentary evidence were produced by the defendants and given to Petitioner. The trial court took charge of defending the defendants. The Court of Appeals for the Sixth Circuit has ruled that, "Courts generally lack the ability to raise affirmative defenses sua sponte." Hutchinson v. Lauderdale County, Tenn., 326 F.3d 747, 757 (6th Cir. 2003) The District Court misapplied the ruling of the U.S. Supreme Court established in Kennedy and Celotex. This court wrote that, "We suggest that the trial courts should act other than with caution in granting summary judgment or that the trial court may not deny summary judgment in a case which there is reason to believe that the better course would be to proceed to a full trial." Kennedy v. Silas Mason Co., 334 U.S. 249 (1948)," with Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986) The legislators added that "In our view, the plain language of Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party which fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." In Petitioner's case, the defendants did not answer to the complaint, did not answer to the motion for summary judgment, and did not answer to the objections filed by Petitioner. Petitioner made a prima-facie case with 76 pieces of documents as evidence, deserving a favorable judgment as a matter of law. The official Docket shows that the District Court stopped

the defendants and took the defense of defendants to death. The excuse was that Petitioner did not present the pleas correctly. The trial court ignored the rule set by the Second Circuit Court of Appeals on Hallock that states, "Dismissal of a suit [and denial of motion for summary judgment] only because of good-faith procedural error in plaintiff's [Petitioner] litigation does not advance Congress goal in enacting Rule 12, and unduly penalizes the plaintiff [Petitioner]." Hallock v. Bonner 25, No. 03-6221 (2nd Cir. 2004) The District Court actions constitute plain error that warrants reversal.

Please take notice that the Petitioner did not prevent the four defendants of their right to defend themselves by serving them copy of every filing, except the initial complaint. The District Court is the one that prevented the four defendants from defending their cases by taking the defense of defendants itself instead of giving the four defendants the opportunity for a defense. Petitioner does not know what those other ten missing entries contain. This is a District Court error that warrants reversal, and should not be grounds for punishing the Petitioner, as the District Court did. In addition, federal appeals courts have decided that they "review summary judgment de novo." Jones v. Union Pacific Railroad, 968 F.2d 937 (9th Cir. 1992). In Jones, the appeals court stated that, "Because this appeal is [in part] from a summary judgment, this court will review de novo the decision of the district court." The Court of Appeals for the Fourth Circuit –where this Petition is taken, failed to follow the rules and precedent, and just affirmed the lower court's decision stating that "find no reversible error," which is error *per se*. International Ass'n of Machinists v. Aloha Airlines, Inc. 790 F.2d 727, 730 (9th Circ.) The court stated that, "In considering the summary judgment motion, this court reviews the record in the

light most favorable to Jones [plaintiff-appellant and Petitioner] to determine whether there exists genuine issues of material fact regarding his claims." Los Angeles Airways, Inc. v. Davis, 687 F.2d 321, 324 (9th Cir. 1982). In our instant case, both the District Court and the Court of Appeals failed to apply the applicable rule in Los Angeles Airways and decided against the rule and against the Petitioner. Petitioner's case has proven every corner with 76 pieces of documentary evidence, met his burden of proving his case and established the absence of material issues of fact to go forward making a *prima facie* case, leaving no doubt that Petitioner has the right to a favorable judgment as a matter of law, pursuant to F.R. Civ. Proc. 56(a). Decisions by the two courts below are plain errors that warrants reversal.

Despite the errors pointed by Petitioner above, the Court of Appeals for the Fourth Circuit states that, "We have reviewed the record and find no reversible error. Accordingly, we affirm the District Court's decision," overruling its own decision on Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986), where the Court wrote that, "All that is required...is that "sufficient evidence supporting the claimed factual dispute be shown to require a jury or judge to resolve the parties differing versions of the truth at trial." Petitioner filed 76 pages of uncontested evidence to prove the case. The U.S. Supreme Court wrote that, "The Court of Appeals did not apply the correct standard in reviewing the District Court's [denial] of summary judgment. In essence...whether it is so one-sided that one party must prevail as a matter of law. Anderson 477 U.S. 247-252." The U.S. Supreme Court has a big opportunity to review the entire record, including the eleven entries missing from the official Docket, and rule for the first time after the

foundation of this Honorable Tribunal in 1789, in the issue of denial of a motion for summary judgment *as premature*. Therefore, this Petition for a Writ of Certiorari should be granted.

2. DISMISSAL OF CASE AND DENIAL OF MOTION BECAUSE PLAINTIFF [PETITIONER] ACTED *PRO SE* AND *IN FORMA PAUPERIS*

The District Court was vehement clear that Petitioner's case had defects of construction and finally decided to deny de motion for summary judgment as premature, dismiss the original COMPLAINT after stating that the federal claims [on the complaint] were abandoned in the Amended Complaint (ECF 31 p. 5). If the COMPLAINT did not exist anymore, how can you dismiss it? With the action of dismissing the original complaint, the District Court admits the existence of the original complaint because you do not dismiss what does not exist. The District Court stated that because the case was filed pursuant to 28 U.S.C. § 1915, "the *in forma pauperis* statute" the District Court dismissed the case. (ECF 31 p. 4). The Magistrate Judge recommended the case to be dismissed because plaintiff's case was "under 28 U.S.C. § 1915 (ECF 31 p. 5), an error that warrants reversal.

When Petitioner was at the District Court filing some of the objections to the Report and Recommendation from the Magistrate Judge, an assistant clerk came to take the papers (on those days nobody was allowed to go direct to the Clerk's Office in the second floor), and the person told me: "They told me upstairs that you can give me the filing fee payment and I will bring back the receipt to you." My answer was: "I am not paying the

filing fee because I have no money to pay, and the court granted my application to proceed *in forma pauperis*, which means I am proceeding as a poor person without paying court fees." Minutes later, the same assistant clerk brought back my copy of the filing with the stamp reading: "RECEIVED...USDC CLERK, GREENVILLE, SC...2021 FEB 11...PM 3:06) The document is the Plaintiff's BRIEF IN OPPOSITION TO MAGISTRATE JUDGE REPORT AND RECOMMENDATION TO DENY plaintiff's Motion for Summary Judgment (ECF 18; Appendix D). Petitioner stated that the recommendation to deny the motion is error with the proper argument, preserving the issue for appeal.

Section 1915 of 28 U.S.C. was enacted to give prisoners the opportunity to claim for redress of damages received while in prison. The application was extended for the benefit of any American citizen that is under the poverty line, and has no money to petition a court of law for redress of injuries –physical and mental as well as economical, caused by other individuals or corporations. The Petitioner is under the poverty line, living in the small retirement benefits from the Social Security Administration: Petitioner monthly benefit for 2022 was $448 per month, and is unable to pay neither filing fees nor lawyer fees. Section 1915 is properly known as the *in forma pauperis* statute for a reason.

The decision by the District Court to dismiss the entire action because was filed *in forma pauperis* is denegation of justice, injustice in violation of the U.S. Constitution XIV Amendment Section 1 rights to Due Process of Law, and Equal Protection of the Laws, and is an error that warrants reversal. When the Court of Appeals for the Fourth Circuit states that, "Israel Romero appeals the district court's order adopting the

magistrate judge's recommendation to deny Romero's summary judgment motion and dismiss his civil complaint against Defendants. We have reviewed the record and find no reversible error. Accordingly, we affirm the district's judgment," constitutes plain error that warrants reversal. Therefore, this Court has the opportunity to decide for the first time the issue of dismissal of a motion for summary judgment as premature, and dismissal of a total case pursuant to U.S.C. 28 Section 1915, the *in forma pauperis* statute. The conflict is deep, is clean and unique, and helps to emphasize the principle at stake, and the likelihood of future litigation that the Court's intervention is required to avoid it. This case is a good vehicle for resolving not one but three of open questions. Therefore, the Petition for a Writ of Certiorari should be granted.

3. COURT REFUSED TO ACQUIRE JURISDICTION FOR DIVERSITY OF CITIZENSHIP WHEN COMPLAINT WAS FILED UNDER FEDERAL QUESTION AND DIVERSITY OF CITIZENSHIP

In the obvious crusade by the District Court to get rid of Petitioner's case, and make the case for the defendants, the final decision shows a complete legal mess. The official Docket (ECF 35 p. 1; Appendix F) shows "Nature of Suit: 370 Other Fraud... Jurisdiction: Federal Question." The Judge J. Michelle Childs, however, made a decision refusing jurisdiction arguing that the case has "no DIVERSITY OF JURISDICTION." (ECF 31 p. 9, 10; Appendix B) The complaint filed on 12/15/2020 entered on 12/16/2020 claims jurisdiction under both FEDERAL QUESTION and DIVERSITY OF

CITIZENSHIP (ECF 1 p.3) listing 17 federal statutes (28 U.S.C. § 1331) for the basis for jurisdiction pursuant to a Federal Question. The Amended Complaint claims jurisdiction under Federal Question. (ECF 23 p. 2) citing same 17 federal statutes as in the original complaint. The District Court judge ignored this fact, committing a plain error that warrants reversal.

The Petitioner claimed the first cause of action for fraud, pleading the nine elements of fraud in the complaint (ECF 1 pp. 4, 5, 6), and in the amended complaint against ALLWELL from Absolute Total Care, Receivable Management Group, Upstate Carolina Radiology, and Thomas Stephens (ECF 23), in the Motion for Summary Judgment (ECF 15), as well as in the Objections to the three Magistrate Judge Reports and Recommendations (ECF 18; ECF 30; Appendixes C, D, E).

The Petitioner claimed as second cause of action: extortion and intentional infliction of emotional distress. (ECF 1 p. 6; ECF 15; ECF 18; ECF 23; ECF 30) Petitioner claimed the third cause of action: Blackmail (ECF 1 p.6; ECF 15; ECF 18; ECF 23; ECF 30) Petitioner claimed the fourth cause of action: misrepresentation and intentional infliction of emotional distress. (ECF 1 p.7; ECF 15; ECF 18; ECF 23; E#CF 30) Petitioner claimed as fifth cause of action: defamation. (ECF 1 p. 7; ECF 15; ECF 18; ECF 23; ECF 30) Petitioner claimed as sixth cause of action: deceptive practices. (ECF 1 p. 8; ECF 15; ECF 18; ECF 23; ECF 30)

The District Court ignored the fact that Petitioner incorporated by reference the six causes of action, the four defendants, and all allegations of fact and the 76 pieces of documentary evidence, pursuant to F.R. Civ. Proc. Rule 10 (c) as amended Apr. 30, 2007,

eff. Dec. 1, 2007.

Please take notice that the decision by Judge J. Michelle Childs is not only wrong but also deceiving. On ECF 31 p. 8, Appendix B makes an astonishing error: cites "(ECF 30 at 10 (citing 6 Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 1476 (3d.ed. 2017)" where in no way such citation exists at page 10. It is obvious that the District Court only was messing it up with Petitioner's case with the belief that nobody will care for this case. That kind of mishap in a final decision by a District Court must not go unchecked by the U.S. Supreme Court because it is an error *per se* that warrants reversal. This is a point that should be taken in consideration when reviewing the Court of Appeals for the Fourth Circuit decision that writes, "We have reviewed the record and find no reversible error." (Appendix A) This is a plain error that warrants reversal.

The District Court used the lack of subject matter jurisdiction excuse to cover up the court mishaps. Take notice that the denial of the motion for summary judgment as premature, and dismissal of the complaint is based on "the Magistrate Judge's Report and Recommendation ("Report I") filed on January 18, 2021." (ECF 35 p. 1, Appendix F) Also take notice that there is no entry filed on January 18, 2021. Take additional notice that the Petitioner's motion for summary judgment was filed on January 27, 2021 (ECF 15). Hence, it is impossible that a recommendation to dismiss a motion that still was not filed be recommended for denial as premature. This fact renders the final decision of 09/17/2021 (ECF 31, 32, Appendix B) null and void and constitutes plain error that warrants reversal. Therefore, this petition for a writ of certiorari should be granted.

If anything, there is no law of this country that gives a court of law authority to go

around running investigations or research in behalf of a party –unless the judge has personal financial interest in the case at hands. Remember that federal judges in South Carolina are famous for judging in cases involving private corporations where they are partners/investors/directors. A bunch of them have been sanctioned or reprimanded. (See FRAUD STOPPERS fraudstoppers.org/131-federal-judges-broke-the-law-by-hearing-cases-where-they-had-financial-interest [retrieved 12/27/2022 at 10:17 PM]; Two federal judges in South Carolina broke the law when they oversaw court cases in which they had a financial interest, an investigation by the Wall Street Journal has found [FRAUD STOPPERS, retrieved 12/27/2022 at 10:30 PM]; see Appendix G) Judge J. Michelle Childs wrote in her decision of 09/27/2021 (ECF 31 p. 3; Appendix B), "Upon review, the court takes judicial notice that Allwell's parent, Absolute Total Care, Inc. is incorporated in, and therefore a citizen of, South Carolina.[3]" Marginal note 3 states: "The South Carolina Secretary of State lists Absolute Total Care, Inc. [not ALLWELL] as a South Carolina corporation in good standing." Take notice that the report cited by Judge Childs does not mention defendant ALLWELL at all. However, the Judge Childs keeps writing that, "Allwell from Absolute Total Care appears to be part of Absolute Total Care, Inc., which is wholly owned subsidiary of Centene Corporation." Judge Childs was given answer to Petitioner claim that, "ALLWELL IS A HOAX." (ECF 1 p. 8 f. 5) "Please take notice that ALLWELL only operates in 16 states including South Carolina [where operates without license]. Why ALLWELL does not exist in 34 states? After researching in the insurance health community, the Petitioner found that ALLWELL is a hoax, and that should be stopped by the proper authorities." The question is: From where,

how and why the District Court received the information cited by Judge J. Michelle Childs? The final decision (ECF 31, 32 p. 3; Appendix B) confirms that ALLWELL is not authorized to make business in South Carolina because a license to sell insurance as ALLWELL does it representing to clients that is an independent insurance company –not Absolute Total Care, there must be a clear and convincing evidence of a LICENSE, not like the District Court states that it "appears" to have authorization to operate in South Carolina. The Judge's behavior confirms Petitioner theory that in the District Court there is a leak working with outside dark forces. This is the reason why Petitioner included the documents filed as evidence in the middle of the AMENDED COMPLAINT. (ECF 23 pp.8-25), not usual but Petitioner considered to be necessary. Otherwise, Petitioner fear was that the evidence might vanish from the record. Petitioner made research with the South Carolina Secretary of State's Office, Business name Search, and found that ALLWELL from Absolute Total Care does not exist. The record shows "THIS NAME IS AVAILABLE" highlighted in green, and then shows "NO RESULTS" for the name of ALLWELL from Absolute Total Care, meaning that does not exist. (See Appendix G)

The District Court in the final decision wrote, "The court...DENIES Plaintiff's motion for Summary Judgment (ECF No. 15) as premature. Moreover...DISMISSES the federal law claims under the FDCPA and FCRA..." (ECF 31 p. 11; Appendix B) You cannot dismiss what does not exist. With this decision, the District Court recognizes that there were federal questions to decide in the case. Otherwise, there was no need to dismiss the "federal law claims under the FDCPA and FCRA" both federal laws.

The above accounts and facts prove that the District Court is wrong and that

committed plain error that warrants reversal, and when the Court of Appeals for the Fourth Circuit states that, "We have reviewed the record and find no reversible error. Accordingly, we affirm the district court's decision," overruling the decision on Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986), where the Court wrote that, "All that is required...is that "sufficient evidence supporting the claimed factual dispute be shown to require a jury or judge to resolve the parties differing versions of the truth at trial." Petitioner filed 76 pages of uncontested evidence making a *prima facie* case that deserves a favorable decision as a matter of law. The U.S. Supreme Court wrote that, "The Court of Appeals did not apply the correct standard in reviewing the District Court's [denial] of summary judgment. In essence...whether it is so one-sided that one party must prevail as a matter of law. Anderson, 477 U.S. 247-252." Once again, the Appeals Court did not apply the correct standard in Petitioner's case committing a plain error that warrants reversal, and the Petition for a Writ of Certiorari should be granted.

CONCLUSION

FIRST. The District Court decision is plain error because misapplied and misinterpreted the law: Rule 56 mandates to give more time to defendants to answer a motion for summary judgment when the court believes that the motion is premature. The statute does not call for denial of the motion. The Petitioner made a *prima facie* case and is entitled to summary judgment as a matter of law. The District Court denied the motion committing plain error that warrants reversal.

SECOND. The District Court decision is plain error because courts must rule

according to the allegations, facts and evidence. The Petitioner filed with the court 76 pages of documentary evidence to support the allegations, and the facts. Petitioner made a *prima facie* case and is entitled to summary judgment as a matter of law. The District Court dismissed the complaint instead pursuant to Rule 28 U.S.C. § 1915, the *in forma pauperis* statute, committing plain error that warrants reversal.

THIRD. The District Court dismissed the complaint and all the objections filed by the Petitioner for lack of diversity of citizenship jurisdiction where the Complaint was filed upon both federal question and diversity of citizenship, the Amended Complaint was filed based upon federal question jurisdiction. The District Court decision is a plain error that warrants reversal.

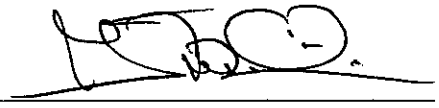
FOURTH. The Court of Appeals for the Fourth Circuit's decision states that, "We have reviewed the record and find no reversible error. Accordingly, we affirm the district court's judgment" is plain error that warrants reversal.

FIFTH. This is the first time that the U.S. Supreme Court has the opportunity to decide –in one case or separated, the three issues presented to this Court, to wit: denial of motion for summary judgment as premature; dismissal of a case pursuant to Rule 28 U.S.C. § 1915, the *in forma pauperis* statute; and, dismissal of a case for lack of diversity of citizenship jurisdiction when the action was decided "Jurisdiction: Federal Question," and 17 federal statutes were cited by Petitioner. It is strongly suggested that this Honorable Tribunal request the Court of Appeals and the District Court of South Carolina, Spartanburg Division, the production of the 35 entries, including the eleven missing entries, with credible and correct explanation that can be

proven why those eleven (11) entries are missing from the record. Just the missing eleven entries added to the three questions presented, are enough reason for this Court to review this case, and to reverse the two lower courts decisions.

THEREFORE, the Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

Dated: Jan. 9th 2023 (s) 

Israel Romero, Petitioner Pro Se
937-B South Liberty Street
Spartanburg, South Carolina 29306
Phone (864) 347-9536
israel09r@yahoo.com