No. 22-7102 ORIGINAL

In the Supreme Court of the United States

TOWAKI KOMATSU,
Petitioner,

v.

NTT DATA, INC., CREDIT SUISSE AG,
AKA CREDIT SUISSE SECURITIES (USA) LLC,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether redetermination is warranted of **a)** my claims in *Komatsu v. NTT Data, Inc.*, No. 15-7007 (LGS)(S.D.N.Y. May 17, 2016) (hereinafter referred to as "K2"), **b)** the refusal by U.S. District Judge Lorna Schofield to recuse herself from K2, **c)** her decisions and orders in K2 since 5/17/16, and **d)** decisions and orders in *Komatsu v. NTT Data, Inc.*, cv-030955-12/NY (Civ. Ct., NY Cty.) (hereinafter referred to as "K1") since 4/11/14 pursuant to findings in *Montana v. United States*, 440 U.S. 147, 99 S. Ct. 970, 59 L. Ed. 2d 210 (1979) that are about an exception to res judicata because reason exists to doubt the fairness, quality, and extensiveness of procedures followed in K2 and K1 by Judge Schofield and others that partly include the U.S. Court of Appeals for the Second Circuit (hereinafter referred to as the "Second Circuit").

2. Whether hindsight about the following material matters sufficiently establish that **a)** both the filing restriction that Judge Schofield imposed against me through her 6/28/22 memo endorsement in K2 and **b)** her refusal to grant me reconsideration about matters in K2 through that order were an abuse of discretion that warrants immediate reversal of that memo endorsement partly pursuant to FRCP Rule 60:

   a. The order that was issued on 12/9/22 in K1 terminated the stay of proceedings in K1 after that was imposed on 4/11/14 in response to the order that was issued then in K1 that also granted a motion to compel arbitration.

   b. The 4/11/14 order in K1 together with the fact that **a)** it was never financially possible for me to arbitrate claims of mine against NTT Data, Inc. (hereinafter referred to as "NTT") and **b)** I was denied a fee waiver from the American Arbitration Association (hereinafter referred to as the "AAA") that could have otherwise possibly enabled me to engage in that arbitration effectively and prejudicially strangled my ability to litigate claims against NTT until a court would possibly make a determination that an arbitration between NTT and I about my claims in K1 had been had by virtue of the fact that it was impossible for me to engage in that arbitration.

   c. The order that was issued on 12/9/22 in K1 that terminated the stay of proceedings in K1 complies with 9 U.S.C. §3 and was issued at my request and in accordance with the fact that *Billie v. Coverall North America*, Civil Case No. 3: 19-cv-00092 (JCH) (D. Conn. Mar. 16, 2022) confirms that when a plaintiff is unable to pay arbitration costs and that circumstance blocks him from being able to engage in arbitration, an arbitration has nonetheless been had between him and a legal adversary.

   d. The fact that NTT and Credit Suisse Securities (USA) LLC (hereinafter referred to as "Credit Suisse") defaulted on engaging in arbitration against me by having never commenced an arbitration proceeding against me that would have been assigned to the AAA entitled me pursuant to 9 U.S.C. §4 to seek redress about that in K2 for an order that would reinstate K2, consolidate K1 with K2 due to the applicability of the exceptions to the Younger Abstention doctrine in K1, and cause K2 to proceed to trial while:

i. Compelling NTT and Credit Suisse to fully comply with the 1/16/13 subpoena that I was granted in K1 and the 4/12/13 discovery order that was issued in K1.

ii. Granting me sanctions against NTT and Credit Suisse about the fact that they chose to defy that subpoena and the 4/12/13 discovery order in K1.

iii. Granting me sanctions about the fact that Francis Convery of NTT committed perjury in his 9/23/15 affidavit that was filed in NTT2.

iv. Granting me sanctions against an attorney for NTT named Lisa Griffith about the fact that she committed fraud on the court and deceit against me by lying as recently as 3/1/22 in *Komatsu v. NTT Data, Inc.*, No. 101264/2021 (Sup. Ct. NY Cty.) (hereinafter referred to as "K5") by fraudulently claiming that NTT had complied with the 4/12/13 discovery order in K1.

v. Granting me immediate partial summary judgment against NTT and Credit Suisse in K2 partly in response to this Court's 2/22/23 landmark decision about overtime pay in *Helix Energy Solutions Group, Inc. v. Hewitt*, No. 21-984 (U.S. Feb. 22, 2023).

3. Whether the 6/9/17 decision by Judge Lisa Sokoloff in K1 confirms that arbitration by me against NTT Data, Inc. had been had as a result of the fact that she acknowledged in it that I **a)** was denied a fee waiver by the AAA to engage in that arbitration and **b)** had presented information in K1 that confirmed that I lacked the financial ability to pay for the costs of engaging in that arbitration.

4. Whether NTT and Credit Suisse waived their right to engage in arbitration against me by having:

a. Never submitted an arbitration demand to the AAA while having the financial ability to do so and after being apprised about my claims against them and otherwise implicating them in K1, K2, and other related litigation.

b. Prejudicially violated my discovery rights in K1 before arbitration was compelled against me in K1 and K2.

c. Waited more than 7 months to try to compel arbitration against me after K1 was commenced as my claims in K1 clearly implicated CS too.

d. Engaged in settlement discussions with me partly on 4/12/13, 4/29/13, and 10/8/14 instead of **a)** submitting an arbitration demand to the AAA to commence arbitration against me and **b)** fully complying with the subpoena that I was granted on 1/16/13 in K1 against Credit Suisse and the 4/12/13 discovery order that was issued in K1.

5. Whether NTT was legally required to provide me discovery material by 5/31/13 that partly consisted of the following in response to the 4/12/13 discovery order in K1 and whether it

was NTT's responsibility instead of mine to inform Lynn Kotler before 5/31/13 and while she was then a New York City Civil Court Judge in the event that Credit Suisse obstructed NTT's ability to fully comply with that 4/12/13 discovery order:

a. All records that were in the possession of NTT, Credit Suisse, and their personnel that:

i. Substantiated a claim that Sharin Newman of NTT made in an e-mail that she sent to me on 4/25/12 at 11:05 am in which she claimed that the compensation that NTT would caused me to receive as a result of the work that I performed for Credit Suisse in 2012 on an outsourcing basis through NTT was governed by a professional day work arrangement in which I would be paid a daily rate for up to 10 hours of work in spite of the fact that no information exists in the contract that NTT issued in January of 2012 that enabled me to work for Credit Suisse in 2012 about a professional day work arrangement.

ii. Substantiated a claim that Ed Epstein of NTT made in an e-mail that he sent to me on 5/18/12 at 8:48 am in which he claimed that the compensation that NTT would caused me to receive as a result of the work that I performed for Credit Suisse in 2012 on an outsourcing basis through NTT wasn't eligible for overtime pay.

iii. All telephone records for telephone calls that personnel of NTT and Credit Suisse had about me in 2012 that were between **a)** NTT personnel, **b)** personnel of NTT and Credit Suisse, and **c)** personnel of Credit Suisse while such records would partly consist of the duration of each of those calls, the phone numbers dialed, and the dates and times of those calls.

iv. A copy of all contracts and other communications between Credit Suisse and NTT that **a)** enabled NTT to be among external recruiting firms that Credit Suisse used in 2012 to recruit people for the job that I held in 2012 while I worked for Credit Suisse then through NTT, **b)** may possibly have informed NTT that the job that I had to work for Credit Suisse in 2012 would be governed by a standard 8-hour workday or some other arrangement, and **c)** may possibly have required NTT to comply with all applicable laws in relation to its status as a recruiter that Credit Suisse used.

v. All e-mail messages and other electronic messages that were sent to and otherwise by me in 2012 while I worked for Credit Suisse by e-mail accounts and other electronic messaging systems that Credit Suisse controlled.

vi. All information about me that was stored in a computer system known as Remedy that Credit Suisse used in 2012.

vii. All training materials that pertained to mandatory training that Credit Suisse arranged for me in 2012.

viii. Telephone log records for all telephone calls that I made and received in 2012 while I worked for Credit Suisse by using a telephone that Credit Suisse assigned to me.

ix. All materials that were in the possession of NTT and Credit Suisse that concerned their procedures for dealing with complaints by whistleblowers.

6. Whether the following establishes that reassignment of **a)** K2 upon remand and **b)** all other federal court litigation of mine is warranted to judges who are part of a different judicial circuit to allow for the appearance of justice to exist in litigation of mine:

a. Hindsight about how K1 and K2 were dealt with by Judge Schofield and the Second Circuit in violation of my constitutional rights and other prevailing legal standards that warrants sanctions against them pursuant to 28 U.S.C. §351 and 18 U.S.C. §401.

b. The propensity and proclivity by Judge Schofield and the Second Circuit to pretextually, prematurely, and prejudicially violate my 1st and 14th Amendment rights to effectively and timely petition for redress about meritorious matters while scapegoating me instead.

c. Information about other federal court litigation that I commenced in New York City since 2018 that I will summarize below and provide further information about, if necessary, in a later supplemental brief such as a brief on the merits.

d. The following relevant facts about findings in pertinent court decisions:

i. Judge Schofield's decision in *360 Mortgage Group, LLC v. Fortress Investment Group LLC*, No. 19-cv- 8760 (LGS) (S.D.N.Y. Mar. 30, 2022) points out that attempts to influence governmental action through misrepresentation (in the adjudicatory process) and overtly corrupt conduct are not normal.

ii. *Kennedy v. Bremerton School Dist.*, 142 S. Ct. 2407, 597 U.S., 213 L. Ed. 2d 755 (2022) points out that government justifications for interfering with First Amendment rights **a)** mustn't be invented or hypothesized post hoc in response to litigation and **b)** must be genuine instead.

iii. *United States v. Robin*, 553 F.2d 8 (2d Cir. 1977) points out that in instances in which a judge "has repeatedly adhered to an erroneous view after the error is called to his attention", reassignment to another judge may be advisable in order to avoid an exercise in futility in which the Court is merely marching up the hill only to march right down again.

iv. *Securities & Exch. Com'n v. Management Dyn., Inc.*, 515 F.2d 801 (2d Cir. 1975) points out that **a)** the commission of past illegal conduct is highly suggestive of the likelihood of future violations, **b)** factors suggesting that the infraction might not have been an isolated occurrence are always relevant, and **c)** the critical question in issuing an injunction is whether there is a reasonable likelihood that the wrong will be repeated.

v. *Whitney v. California*, 274 U.S. 357, 47 S. Ct. 641, 71 L. Ed. 1095 (1927) points out the following:

1) Every denunciation of existing law tends in some measure to increase the probability that there will be violation of it. Condonation of a breach enhances the probability. Expressions of

approval add to the probability. Advocacy of law-breaking heightens it still further.

2) To justify suppression of free speech there must be reasonable ground to fear that serious evil will result if free speech is practiced. There must be reasonable ground to believe that the danger apprehended is imminent. There must be reasonable ground to believe that the evil to be prevented is a serious one.

vi. *People v. Beshiri*, No. 2019BX019319 (Bronx Crim. Ct., May. 16, 2022) similarly points out that "deviancy can be defined downward only so far before there are consequences" and was based upon remarks by former U.S. Senator Daniel Patrick Moynihan.

7. Whether hindsight as borne out partly by the following facts sufficiently confirms that it would have been futile for me to submit a valid complaint to the Second Circuit against Judge Schofield in K2 and *Komatsu v. City of New York*, No. 18-cv-3698 (LGS)(GWG)(S.D.N.Y. Sep. 27, 2021) (hereinafter referred to as "K10") pursuant to 28 U.S.C. §351 in response to conduct partly in K2 that she engaged in that was prejudicial to the effective and expeditious administration of the business of the courts because the Second Circuit has consistently demonstrated prohibited and pretextual bias against me partly by making it sufficiently clear that it will not grant me any relief against any federal judge when such relief is clearly warranted:

a. My pending petition for a writ of certiorari to this Court for *Komatsu v. Ramos*, No. 22A602 (U.S.) is about 4 appeals that are partly about the fact that the Second Circuit has perpetrated fraud on the court and obstruction of justice against me by unlawfully:

i. Condoning the fact that U.S. District Judge Edgardo Ramos has illegally and pretextually blocked me for roughly 2.25 years since 12/15/20 through the order he then issued in the consolidated case of *Komatsu v. City of New York*, No. 20-cv-7046 (ER)(GWG) (S.D.N.Y.) from commencing further meritorious federal court litigation that would be about illegal acts and omissions that were committed against me that caused me to be barred from exercising my 1st and 14th Amendment rights to lawfully attend public meetings that were public forums that members of the public conducted with government personnel.

ii. Condoning the fact that Judge Ramos illegally and pretextually caused my complaint in *Komatsu v. City of New York*, No. 20-cv-10942 (VEC)(RWL) (S.D.N.Y. Jun. 17, 2022) to be struck without immunity through his 1/5/21 order in *Komatsu v. City of New York*, No. 20-cv-7046 in spite of the fact that he was never assigned to that case before his strike order was later vacated.

b. The Second Circuit issued a mandate on 3/14/23 about its dismissal of my appeal in *Komatsu v. City of New York*, No. 23-22 (2d Cir. Mar. 14, 2023) that was about *Komatsu v. City of New York*, No. 22-cv-424 (LTS) (S.D.N.Y. Jan. 3, 2023). The Second Circuit did so in violation of FRAP Rule 4(B)(i) that prohibited it from doing so because I filed a motion for reconsideration about the 1/3/23 dismissal order in *Komatsu v. City of New York*, No. 22-cv-424

on 1/20/23 and that required a stay of my appeal about that dismissal until after that motion for reconsideration was resolved.

c. The Second Circuit violated my 1st Amendment right to file an appellant's brief in *Komatsu v. City of New York*, No. 21-cv-2470 (2d Cir. Mar. 30, 2022) about K10's dismissal that would have otherwise let me apprise it of the following material facts that warranted reversal of K10's dismissal before the fraudulent dismissal of *Komatsu v. USA*, No. 21-cv-1838 (RJD)(RLM)(S.D.N.Y. Jan. 19, 2023) decidedly reinforced this point:

i. U.S. District Judge Valerie Caproni's 6/17/22 order in *Komatsu v. City of New York*, No. 20-cv-10942 confirmed that Judge Schofield prejudicially discriminated against me in K10 by sanctioning me for provoked offensive remarks that I made in K10 that Judge Caproni didn't sanction me about in the other case.

ii. The written transcript that was prepared from the 10/31/19 conference in K10 between U.S. Magistrate Judge Gabriel Gorenstein and I confirm that he and Judge Schofield were required to recuse themselves from K10 prior to that date partly because both of them illegally enabled me to continue to be illegally and pretextually persecuted and assaulted inside of federal courthouses in New York City by federal court security officers while that was illegally condoned and covered-up by personnel of the U.S. Marshals Service. Remarks that he made to me on 10/31/19 confirm this by confirming that he and Judge Schofield subjected me to criminal negligence about that matter following my 7/20/18 filing in K10.

iii. Judge Schofield shirked her duty to act in accordance with findings in *Southern New England Telephone Co. v. Global NAPs Inc.*, 624 F.3d 123 (2d Cir. 2010) by not considering whether I had valid reasons to disregard unlawful, discriminatory, and unduly prejudicial orders that were issued in K10 that I opted to disregard before hindsight confirms that she retaliated against me for not complying with such unlawful orders by pretextually and biasedly dismissing K10.

8. Whether the totality of the facts and circumstances about K1 that I discuss in this petition sufficiently establish that federal court intervention in K1 and its consolidation with K2 is warranted pursuant to the exceptions to the Younger Abstention doctrine with respect to K1.

9. Whether Judge Schofield violated 18 U.S.C. §401, 18 U.S.C. §1509, 18 U.S.C. §1512, and my 1st and 14th Amendment rights in the course of committing fraud on the court and obstruction of justice against me through her 6/28/22 memo endorsement in K2 partly by:

a. Inventing a pretextual and post hoc justification for interfering with my First Amendment rights in response to litigation by me in violation of findings about this in *Kennedy v. Bremerton School Dist.* that I referred to earlier in this section.

b. Baselessly and biasedly claiming that the information in my 6/12/22 filing in K2 wasn't sufficient to satisfy the legal requirement that applies to fraud on the court claims.

c. Imposing an unduly prejudicial filing restriction without valid grounds against me that has barred me from commencing further federal court civil actions in the Southern District of New York against NTT and Credit Suisse without her approval about matters that arose out of the events in my First Amended Complaint in K2.

d. Imposing that filing restriction against me without first satisfying the prerequisite for doing so that required her to inform me beforehand about her plans to impose that specific restriction in order to properly accord me my 1st and 14th Amendment to challenge that plan and to be fully heard about such a challenge before she could lawfully impose that restriction.

10. Whether the following relevant facts establish that the filing restriction that Judge Schofield issued against me on 6/28/22 in K2 that both **a)** prohibits me from commencing further litigation in the Southern District of New York against NTT and Credit Suisse without Judge Schofield's approval and **b)** bars me from seeking relief pursuant to FRCP Rule 60 about K2 is indefensible:

a. Judge Schofield has violated 18 U.S.C. §401, 18 U.S.C. §1509, 18 U.S.C. §1512, and my 1st and 14th Amendment rights by ignoring requests that I submitted in K2 after 6/28/22 on 9/2/22, 9/23/22, 10/2/22, 10/20/22, and 11/14/22 to **a)** commence further valid litigation against NTT and Credit Suisse and **b)** be granted reconsideration about her 6/28/22 memo endorsement.

b. Judge Schofield has clearly and repeatedly engaged in judicial misconduct in both K2 and K10 that has been "prejudicial to the effective and expeditious administration of the business of the courts"[1].

c. Personnel who work for the Pro Se Intake Office for the U.S. District Court for the Southern District of New York unlawfully waited until 2/23/23 (nearly 9 months) to process my 7/6/22 filing in K2 as that proximately blocked me from having Judge Schofield consider the request it contained in a timely manner for authorization to commence further valid litigation in the Southern District of New York against NTT and Credit Suisse.

d. The decision that was issued on 12/9/22 in K1 that is a related and earlier case with respect to K2 lifted all stays in that case after NTT and Credit Suisse **a)** defaulted on initiating an arbitration proceeding against me, **b)** forfeited their right to arbitrate matters against me by doing so, and **c)** fraudulently and pretextually misled Judge Schofield in K2 and Judge Jennifer Schecter in K1 about their interest in restricting my ability to litigate matters against them to an arbitral forum to block me from being able to litigate my claims against them as they continued to subject me to wage-theft that blocked me from being able to pay for arbitration costs.

e. Judges and other courthouse personnel who work for the New York City Civil Court in Manhattan have continued to demonstrate by their behavior that federal court intervention in K1 pursuant to the exceptions to the Younger Abstention Act and *ex Parte Young*

[1] This corresponds to one of the criteria for reporting complaints against judges pursuant to 28 U.S.C. §351.

is warranted as a result of further bad-faith behavior by them that has harassed me and caused me substantial and irreparable injury as recently as 11/18/22, 11/21/22, 12/5/22, and 12/9/22 that among other things induced me to not attend the 12/9/22 court hearing in K1 as a result of a court clerk having lied to me on 12/5/22 by telling me that there wouldn't be any court hearing in K1.

11. Whether remarks that Judge Gorenstein made on page 2 in the order that he issued on 8/6/18 in K10 and that were made by him to me on 10/31/19 that appear on pages 3 and 4 in the written transcript that was prepared from the court hearing that he held with me in K10 on 10/31/19 cement the fact that Judge Schofield prejudicially abused her discretion by refusing to personally intervene on my behalf in response to my 7/20/18 filing in K10 against federal court security officers ("CSOs") and personnel of the U.S. Marshals Service ("USMS") are among other facts that sufficiently establish that Judge Schofield abused her discretion in her 11/9/18 order in K2 by refusing to recuse herself from K2 to allow for the appearance of justice to exist in federal court litigation of mine that would otherwise be assigned to her.

12. Whether Judge Schofield could appear to be unbiased in K2 with respect to her findings in her 6/28/22 memo endorsement in K2 after she biasedly and prejudicially did the following in K2:

a. Ignored the fact that Francis Convery of NTT committed perjury in the sworn affidavit that was filed on 9/23/15 in K2.

b. Ignored a legal filing of mine that I filed in K1 on 11/12/13 before an attorney for NTT filed that in K2 on 9/23/15 as the information in that 11/12/13 filing of mine in K1 confirmed that I sought to have a judge in K1 compel Credit Suisse to fully comply with the subpoena that I was granted in K1 against Credit Suisse while that was before Judge Schofield biasedly granted a motion by Credit Suisse in K2 through her 5/17/16 decision in K2 that restricted my ability to litigate matters against Credit Suisse to arbitration.

c. Lied in her 5/17/16 decision in K2 about how the kick-out provision for Sarbanes-Oxley Act claims operates.

d. Baselessly and biasedly rejected civil RICO claims in her 5/17/16 decision in K2 that I sought to assert against NTT.

13. Whether the following information that I presented in my 6/12/22 filing in K2 satisfies a legal standard that is articulated in *Duka v. Alliance Tri-State Construction, Inc.*, No. 20-cv-6648 (ER) (S.D.N.Y. Sept. 29, 2021), applies to fraud on the court claims, and points out that it's sufficient to establish that a legal adversary unfairly hampered an opposing party's presentation of his claims to satisfy that legal standard:

a. My 1st and 14th Amendment ability and right to present my claims as clearly and effectively in K2 as I sought to do so was unfairly hampered by the following:

i. NTT unlawfully and prejudicially violated the discovery order that was issued on 4/12/13 in K1 by not providing me "all contractor records" by 5/31/13.

ii. Credit Suisse defied the subpoena for records that I was granted against it on 1/16/13 in K1 instead of trying to quash it.

iii. Francis Convery of NTT committed perjury about a material matter of fact and law partly about overtime pay in the sworn affidavit that he gave on 9/23/15 that was filed in K2 on that date.

14. Whether Judge Schofield's 6/28/22 memo endorsement in K2 confirms that she abused her discretion by ignoring relevant findings in the following court decisions as she neither **a)** let me exercise my right pursuant to *Dornberger v. Metropolitan Life Ins. Co.*, 961 F. Supp. 506 (S.D.N.Y. 1997) to plead information upon information and belief partly about fraud on the court and obstruction of justice against me by NTT and Credit Suisse in K2 and K1 nor **b)** conducted an evidentiary hearing in K2 and **c)** let me engage in meaningful discovery to ascertain the actual reasons why NTT and Credit Suisse both violated my rights to discovery material in K1 that proximately sabotaged my ability and right to clearly and effectively present my claims in K2:

a. *Vega v. Hempstead Union Free School Dist.*, 801 F.3d 72 (2d Cir. 2015) that confirms that discriminatory intent may need to be inferred from circumstantial evidence and that judges are required to use their common sense and judicial experience for that purpose.

b. *DaCosta v. City of New York*, 296 F. Supp. 3d 569 (E.D.N.Y. 2017) points out that the Second Circuit "has consistently emphasized that courts should "permit discovery when plaintiffs would otherwise not be able to state a claim for relief due to a lack of information about defendants and their practices."

c. *International Technologies Marketing, Inc. v. Verint Systems, Ltd.*, No. 15-cv-2457-(GHW) (S.D.N.Y. Mar. 18, 2019) confirms that the defendant was able to engage in discovery that led to its decision to pursue a claim of fraud on the court in that case.

15. Whether equitable tolling is warranted for the following reasons for claims that I would have otherwise asserted in K2:

a. I was compelled to engage in arbitration in K1 while it never was possible for me to do so largely due to wage-theft against me by NTT and Credit Suisse.

b. An attorney for NTT named Lisa Griffith committed a continuing violation and fraud on the court as recently as 3/1/22 in K5 by fraudulently claiming that NTT complied with the 4/12/13 discovery order in K1 while her lie about that causes the continuing violation doctrine to apply.

c. The 9/28/22 decision in *Elnenaey v. JP Morgan Chase Bank*, NA, No. 20-cv-5430 (RPK)(LB) (E.D.N.Y. Sept. 28, 2022) that affirmed that equitable tolling is warranted in instances in which a plaintiff is prevented from discovery of the nature of his claims within the limitations period by a defendant who wrongfully conceals material facts relating to the defendant's wrongdoing sufficiently establishes that equitable tolling is warranted for claims that I sought to assert in K2 because the fact that the violations by both NTT and Credit Suisse with my rights to discovery material in K1 proximately and unduly prejudiced my ability to present my claims in K2 as clearly and effectively as I would have otherwise done so.

d. *Yang Zhao v. Keuka College*, 264 F. Supp. 3d 482 (W.D.N.Y. 2017) confirms that equitable tolling is warranted in instances in which a court has misled a party in litigation and *Apollon Corp. v. Brandt*, 172 Misc. 2d 888, 659 N.Y.S.2d 694 (Civ. Ct. 1997) confirms that I was materially misled by Judge Sokoloff while she was a New York City Civil Court judge and assigned to K1 by being informed by her in her 6/9/17 decision in K1 that if I sought to be granted equitable relief about the 4/11/14 decision in K1 that granted NTT's motion to compel arbitration, I would need to seek that relief from a Supreme Court due to her claim in her 11/28/16 decision in K1 that the New York City Civil Court didn't have the power to grant equitable relief.

e. I have diligently pursued my claims against NTT and Credit Suisse in K1, K2, K5, and other related litigation.

f. The findings from Judge Schofield's decision in *360 Mortgage Group, LLC v. Fortress Investment Group LLC* that I discussed earlier in this section apply.

g. U.S. District Judge Lewis Kaplan pointed out the following in his 10/12/22 decision in *Carroll v. Trump*, No. 20-cv-7311 (LAK)(S.D.N.Y. Oct. 12, 2022):

i. "The defendant should not be permitted to run the clock out on plaintiff's attempt to gain a remedy for what allegedly was a serious wrong."

ii. "defendant's litigation tactics have had a dilatory effect and, indeed, strongly suggest that he is acting out of a strong desire to delay any opportunity plaintiff may have to present her case against him."

iii. Delaying the plaintiff's ability to pursue her claims in that case "would cause substantial injury to plaintiff".

h. *Trundle & Co. v. Emanuel*, No. 18-cv-7290 (ER) (S.D.N.Y. Oct. 6, 2020) cites *Matarese v. LeFevre*, 801 F.2d 98 (2d Cir. 1986) while pointing out that **a)** FRCP Rule 60(b)(6) should be liberally construed when substantial justice will be served, **b)** it confers broad discretion on the trial court to grant relief when appropriate to accomplish justice, and **c)** relief is warranted where there are extraordinary circumstances or where the judgment may work an extreme and undue hardship.

i. Extraordinary circumstances that apply and this is buttressed by the fact that *Amatucci v. Hamilton*, Civil No. 11-cv-512-SM (D.N.H. May 18, 2012) points out that "Wright & Miller, § 2864 at 366-68" describes "extraordinary circumstances" "as government inaction, unusual delays by courts, or egregious misconduct by parties".

16. Whether a diligent review of the following establishes that NTT was legally required to cause me to be paid **a)** overtime pay for the overtime hours that I worked for Credit Suisse in 2012 as a result of the contract that NTT issued that enabled me to work for Credit Suisse then for a 1-year period and **b)** severance pay in response to the fact that personnel of NTT initiated the decision-making that caused me to be fired from that job in retaliation for valid complaints pertaining to violations of the Sarbanes-Oxley Act and Fair Labor Standards Act:

a. Findings in *Helix Energy Solutions Group, Inc. v. Hewitt*, No. 21-984 (U.S. Feb. 22, 2023), *Edelmann v. Keuka College*, No. 16-cv-6293-FPG (W.D.N.Y. Aug. 14, 2019) and *Barrier Assoc. Inc. v. Eagle Eye Advance LLC*, 2022 N.Y. Slip Op 51313 (NY: Supreme Court, Orange 2022) (holding that it's well established that the terms of a contract must be strictly construed against the drafter in instances in which those who draft a contract do so with ambiguous instead of explicit terms.)

b. The terms of the contract that NTT issued in January of 2012 that enabled me to work for Credit Suisse then for a 1-year period.

c. The job description that I was provided for that job.

d. An e-mail that Pierre Newman sent to me on 2/21/12 at 6:54 pm while he then worked for Credit Suisse.

e. A report (report number FLSA2006-42) that the U.S. Department of Labor's Wage and Hour Division issued on 10/26/06.

f. The fact that no one informed me before I began working for Credit Suisse in 2012 that NTT wouldn't cause me to be paid overtime pay for overtime that I worked for Credit Suisse between 2012 and 2013.

17. What concrete solutions are available to litigants who must contend with futility while plagued by judges who **a)** are biased and prejudiced against them across multiple sets of litigation, **b)** disregard material matters of fact, law, and evidence, and **c)** block recusal motions by being able to decide them while biased and prejudiced against those who submit them.

18. Whether the Second Circuit erroneously and prejudicially claimed in its 10/20/22 order in *Komatsu v. NTT Data, Inc.*, No. 22-1405 (2d Cir. Oct. 20, 2022) that my attempt to be granted authorization for leave to pursue an appeal was vexatious as it neglected to explain why it felt that was the case.

19. Whether the Second Circuit's concealment in its 10/20/22 order of its rationale for why it claimed in that order that my attempt to be granted authorization for leave was vexatious was actually a clear and prohibited projection of vexatious behavior by the Second Circuit on me that violated **a)** my First Amendment right to such an explanation about its rubber-stamped claim, **b)** meaningful appellate review of its decision to deny my request for leave to pursue an appeal, and **c)** my rights to be accorded special solicitude due to my status as a pro se litigant.

20. Whether hindsight as well as the totality of the facts and circumstances sufficiently establishes that the filing restriction that the Second Circuit imposed on me in November of 2021 has been and continues to be an abuse of discretion instead of in compliance with a narrow-tailoring requirement to not unlawfully obstruct my ability and First Amendment right to petition for redress in a timely and effective manner about meritorious matters while the Second Circuit would have full jurisdiction over them.

21. Whether **a)** relevant and unduly prejudicial new facts about obstruction of justice and fraud on the courts that has occurred as recently as 12/20/22 in K1 coupled with ongoing

obstruction of justice and fraud on the courts since 5/24/22 that has occurred in both **b)** K5 and K2 are of the sort that warrants reconsideration pursuant to FRCP Rule 60 of the decisions and orders that were issued since 5/17/16 in K2 and *Komatsu v. NTT Data, Inc.*, No. 16-2977 (2d Cir. July 12, 2018) (hereinafter referred to as "K3") partly to befit the interests of judicial economy and due to the exceptions to the Younger Abstention doctrine.

22. Whether Judge Schofield prejudicially and biasedly didn't rely on common sense nor judicial experience in her findings in her 6/28/22 memo endorsement by choosing not to draw an objectively reasonable adverse inference from the material fact that both NTT and Credit Suisse substantially and prejudicially violated their discovery obligations in K1 prior to 6/1/13 that sabotaged my ability and First Amendment right to pursue my claims in both **a)** K2 and **b)** K3 as thoroughly as I would have otherwise done by relying on discovery material that NTT and Credit Suisse would have otherwise provided to me prior to 6/1/13 in K1 in response to **c)** a subpoena that I was granted on 1/16/13 against Credit Suisse in K1 and **d)** the discovery order that New York City Civil Court Judge Lynn Kotler issued on 4/12/13 in K1 that NTT was required to fully comply with by 5/31/13.

23. Whether this Court should grant this petition for a writ of certiorari partly in response to the fact that **a)** New York City Civil Court Judges Elana Baron and Jose Padilla, Jr. caused the following relevant intervening changes to occur since 11/20/22 in K1 after **b)** Judge Sokoloff pointed out in her 6/9/17 decision in K1 that if I sought to be granted equitable relief about decisions and orders that were issued in K1 that I would need to seek such relief from a Supreme Court, and **c)** matters that were discussed on 5/22/18 during the oral arguments hearing in K3 included both the stay that was imposed in K1 and the lack of further proceedings at that time in K1:

a. Judge Baron lifted all stays in K1 through her 12/9/22 decision in K1.

b. Judge Padilla illegally violated CPLR 2221 by allowing himself to be assigned the task of adjudicating the order to show cause application ("OSC") that I filed on 12/20/22 in K1 that CPLR 2221 confirms needed to instead be assigned to Judge Baron because modification of her 12/9/22 decision in K1 was among the relief that I requested in that 12/20/22 OSC.

c. Judge Padilla clearly demonstrated a prejudicial and biased inability to properly consider the entirety of the 11/18/22 OSC that I filed in K1 as he illegally and completely ignored the material fact that I sought to be granted sanctions and equitable relief in K1 in response to the material fact that **a)** NTT and CS prejudicially violated their discovery obligations in K1 prior to 6/1/13 and b) an attorney for NTT named Lisa Griffith committed continuing violations since December of 2022 about the fact that NTT prejudicially violated Judge Kotler's 4/12/13 discovery order in K1 partly by lying in legal filings that were filed in K5 as she fraudulently claimed that NTT complied with Judge Kotler's 4/12/13 discovery order in K1.

24. Whether the fact that I have been harassed and experienced substantial and irreparable injury as a result of the following facts about how K1 and K5 have been conducted sufficiently

establishes that the exceptions to the Younger Abstention doctrine apply to warrant having this Court **a)** grant this petition for a writ of certiorari and order the consolidation of K1, K2, and K3 that will have a federal court be assigned those consolidated matters and b) grant me equitable tolling for my claims in K1, K2, and K3 due to the applicability of the continuing violation doctrine, Judge Sokoloff having misled me in her 11/28/16 and 6/9/17 decisions in K1, and c) NTT and CS having fraudulently concealed and withheld discovery material that they were instead legally required to provide to me before 6/1/13:

a. A New York City Civil Court clerk lied to my face on 12/5/22 in Room 325 of the New York City Civil Court located at 111 Centre Street in Manhattan by telling me that there wouldn't be any court hearing in K1 on 12/9/22 before Judge Baron's 12/9/22 decision in K1 confirmed that he lied to me.

b. Judge Padilla, Jr. illegally ignored the vast majority of the relief that I requested in my 11/18/22 OSC in K1.

c. New York City Civil Court court clerks illegally assigned my 12/20/22 OSC in K1 to Judge Padilla, Jr. as I stood in front of them in Room 118 in that courthouse while I correctly told them that CPLR 2221 required them to assign that OSC to Judge Baron instead.

d. While the New York State Supreme Court in Manhattan continued to be a court of general jurisdiction with the power to grant equitable relief, New York State Supreme Court Judge Alexander Tisch told me on 5/24/22 during an oral arguments hearing in K5 that he didn't have jurisdiction to grant me relief about matters in K1 in spite of the fact that Judge Sokoloff informed me in K1 on 6/9/17 that if I sought to be granted equitable relief about matters in K1 that I would need to pursue such relief from a Supreme Court.

e. While the New York State Supreme Court in Manhattan continued to be a court of general jurisdiction with the power to grant equitable relief, New York State Supreme Court Judge Alexander Tisch lied to me as he told me on 5/24/22 during an oral arguments hearing in K5 that he didn't have jurisdiction to grant me relief about matters in K1 in spite of the fact that Judge Sokoloff informed me in K1 on 6/9/17 that if I sought to be granted equitable relief about matters in K1 that I would need to pursue such relief from a Supreme Court.

f. Judge Tisch also lied to me during that 5/24/22 oral arguments hearing in K5 by telling me that he would issue a written decision within 60 days about what was discussed during that hearing. He still hasn't done so as of 1/5/23 in violation of CPLR §2219 that requires judges to issue written decisions within 60 days after a matter is brought to the attention of state-court judges in New York State.

g. Besides sending me on a wild goose chase in my efforts to be granted equitable relief about matters in K1 by having materially and prejudicially misdirected me about that on 6/9/17 and 11/28/16, Judge Sokoloff also baselessly imposed a sanction against me as a biased act of First Amendment retaliation as she

fraudulently claimed that I had engaged in "picketing" against NTT that instead was protected First Amendment conduct and certainly not picketing.

h. New York City Civil Court Judge Jennifer Schecter illegally didn't perform her legal duty in K1 to conduct an analysis to ascertain whether it was financially possible for me to engage in arbitration against NTT before she issued an order on 4/11/14 in which she biasedly and prejudicially granted a late motion to compel arbitration that was filed in K1 both **a)** more than 7 months after I commenced in November of 2012 and **b)** after NTT violated Judge Kotler's 4/12/13 discovery order in K1.

i. Judge Tisch ignored requests that I made in K5 to be provided free written transcripts of the proceedings in K5 and to have K5 to be converted to an electronic case.

RELATED CASES

1. *Komatsu v. NTT Data, Inc.*, No. 22-1405 (2d Cir. Oct. 20, 2022)
2. *Komatsu v. NTT Data, Inc.*, No. 16-2977 (2d Cir. July 12, 2018)
3. *Komatsu v. NTT Data, Inc.*, No. 15-7007 (LGS)(S.D.N.Y. May 17, 2016)
4. *Komatsu v. NTT Data, Inc.*, 139 S. Ct. 2027 (U.S. 2019)
5. *Komatsu v. NTT Data, Inc.*, No. 101264/2021 (Sup. Ct. NY Cty.)
6. *Komatsu v. NTT Data, Inc.*, cv-030955-12/NY (Civ. Ct., NY Cty.)
7. *Komatsu v. NTT Data, Inc.*, No. 16-069 (ARB, March 13, 2018)
8. *Komatsu v. NTT Data, Inc.*, No. 2016SOX00024 (OALJ, May 27, 2016)

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PETITION FOR A WRIT OF CERTIORARI

1. I, Towaki Komatsu, petition for a writ of certiorari to review **a)** the Second Circuit's judgment in *Komatsu v. NTT Data, Inc.*, No. 22-1405 (2d Cir. Oct. 20, 2022) (hereinafter referred to as "K4") about the 6/28/22 memo endorsement in *Komatsu v. NTT Data, Inc.*, No. 15-7007 (LGS)(S.D.N.Y. May 17, 2016) (hereinafter referred to as "K2") and **b)** closely-related litigation set forth below.

OPINIONS BELOW

I'm unaware whether the following decisions, orders, and memo endorsements were published:

#	Decision/Order/Memo Endorsement	#	Decision/Order/Memo Endorsement
1	The Second Circuit's 10/20/22 order (Pet. App. 1a) in K4.	6	The order dated 5/17/16 order in K2.
2	The district court's memo endorsement dated 6/28/22 (Pet. App. 2a) and 5/5/22 (Pet. App. 3a) in K2.	7	The decisions and orders that were issued in *Komatsu v. NTT Data*, Inc., cv-030955-12/NY (Civ. Ct., NY Cty.) on 12/9/22, 11/21/22, 6/9/17, 11/28/16, 10/6/15, 4/11/14, and 4/12/13.
3	This Court's 5/13/19 order in *Komatsu v. NTT Data, Inc.*, 139 S. Ct. 2027 (U.S. 2019).	8	The decision that was issued on 3/13/18 in *Komatsu v. NTT Data, Inc.*, No. 16-069 (ARB, March 13, 2018).
4	The Second Circuit's 7/12/18 order in *Komatsu v. NTT Data, Inc.*, No. 16-2977 (2d Cir. July 12, 2018).	9	The decision that was issued on 5/27/16 in *Komatsu v. NTT Data, Inc.*, No. 2016SOX00024 (OALJ, May 27, 2016).
5	The Second Circuit's 7/12/18 order in *Komatsu v. NTT Data, Inc.*, No. 16-2977 (2d Cir. July 12, 2018).		

JURISDICTION

1. The Second Circuit's 10/20/22 order in K4 denied me authorization to pursue an appeal about the 6/28/22 memo endorsement in K2. Pursuant to this Court's 1/6/23 order in *Komatsu v. NTT Data, Inc.*, No. 22A601, the time to file this petition was extended to 3/19/23. This Court has jurisdiction pursuant to 28 U.S.C. §1254(1).

2. The 11/28/16 decision that were issued in *Komatsu v. NTT Data, Inc.*, cv-030955-12/NY

(Civ. Ct., NY Cty.) (hereinafter referred to as "K1") appears on page 168 in the PDF file for my 12/27/22 filing (Dkt. 114) in K2 and informed me that if I sought to be granted equitable relief in K1 in response to the 4/11/14 order in K1 that compelled arbitration, I would need to seek such relief from a court with the power to grant equitable relief. That 4/11/14 order appears on page 158 in the PDF file for my 12/27/22 filing in K2. The 6/9/17 decision in K1 appears on page 161 in the PDF file for my 12/27/22 filing in K2 and clarified that information somewhat by indicating that I would need to seek that relief from a Supreme Court without specifying whether that meant the New York State Supreme Court in Manhattan or this Court. On 5/24/22, New York State Supreme Court Judge Alexander Tisch claimed during an oral arguments hearing in *Komatsu v. NTT Data, Inc.*, No. 101264/2021 (Sup. Ct. NY Cty.) (hereinafter referred to as "K5") that **a)** he would issue a written decision in K5 within 60 days about what was discussed during that hearing and **b)** he didn't have jurisdiction to grant me relief about K1. He hasn't issued any written decision about that 5/24/22 oral arguments hearing in violation of my 1st and 14th Amendment rights, the public's corresponding First Amendment rights, and CPLR §2219. He hasn't done so even after I submitted a written complaint to New York State Supreme Court Administrative Judge Adam Silvera about the fact that Judge Tisch hadn't performed that legal duty. Judge Silvera was then a supervising judge for Judge Tisch and was legally required to intervene about that. The preceding discussion confirms that the exceptions to the Younger Abstention doctrine that consist of bad-faith, harassment, and substantial and irreparable injury are satisfied by judicial misconduct in K5 to enable a federal court to promptly intervene in ongoing state-court litigation in which I asserted federal claims pertaining to the Fair Labor Standards Act. The 12/9/22 order in K1 appears on page 198 in the PDF file for my 12/27/22 filing in K2 and lifted all stays in K1. That occurred after **c)** a New York City Civil Court court

clerk lied to my face on 12/5/22 by claiming that there wouldn't be a court hearing in K1 on 12/9/22 before that lie was proven to be a lie by the 12/9/22 order in K1 and **d)** the order that New York City Civil Court Judge Jose Padilla, Jr. issued on 11/21/22 in K1 confirmed that he illegally and prejudicially ignored the vast majority of the relief that I sought in the order to show cause application ("OSC") that I filed in K1 on 11/18/22. My sworn affidavit for that 11/18/22 filing in K1 appears on page 48 in the PDF file for my 12/27/22 filing in K2. Judge Padilla's 11/21/22 order in K1 appears on page 197 in the PDF file for my 12/27/22 filing in K2 and confirms that he committed fraud on the court and obstruction of justice against me through that order. He also violated *Vargas v. Sotelo*, 2017 N.Y. Slip Op 50417 (Civ. Ct. 2017) (holding that judges are required to diligently consider the entire pleadings) and my First Amendment rights to petition for redress and my due process rights by doing so. His assignment to K1 then also was an unduly prejudicial and discriminatory procedural anomaly that violated the legal requirement pursuant to both *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 129 S. Ct. 1800, 173 L. Ed. 2d 738 (2009) and CPLR §2221 that required New York State Supreme Court Judge Lynn Kotler to be assigned to that OSC in response to the fact that its subject matter primarily concerned her 4/12/13 order in K1 that appears on page 130 in the PDF file for my 12/27/22 filing in K2.

PRELIMINARY REMARKS

1. The section "Constitutional Provisions and Other Matters of Law Involved" (Pet. App. 20a) appears in the attached appendix instead of this petition's body due to how lengthy that section is. The additional acronyms shown in the next table's first column refer to ongoing and past litigation involving me to which I refer in this petition that is listed to the right in that table.

#	Acronym	Litigation
1	K3	*Komatsu v. NTT Data, Inc.*, No. 16-2977 (2d Cir. July 12, 2018)
2	K6	*Komatsu v. NTT Data, Inc.*, No. 16-069 (ARB, March 13, 2018)
3	K7	*Komatsu v. NTT Data, Inc.*, No. 2016SOX00024 (OALJ, May 27, 2016)

4	K8	*Komatsu v. NTT Data, Inc.*, 139 S. Ct. 2027 (U.S. 2019)
5	K9	*Komatsu v. New York City Human Resources Administration*, No. 100054/2017 (Sup. Ct., NY Cty., Feb. 26. 2020)
6	K10	*Komatsu v. City of New York*, No. 18-cv-3698 (LGS) (GWG) (S.D.N.Y. Sept. 27, 2021)
7	K11	*USA v. Komatsu*, No. 18-cr-651 (ST)(E.D.N.Y. Oct. 21, 2019)
8	K12	*Komatsu v. USA*, No. 21-cv-1838 (RJD)(RLM)(S.D.N.Y. Jan. 19, 2023)

2. The acronyms shown in the next table's first column refer to entities, places, and other things to which I refer in this petition that are described in that table's second column.

Acronym	**Corresponds to**
ARB	The USDOL's Administrative Review Board
CS	Credit Suisse Securities (USA) LLC
CSO	Federal court security officer
CSOs	Federal court security officers
DPM	The Daniel Patrick Moynihan federal courthouse in Manhattan
FLSA	The Fair Labor Standards Act
M.I.S.I. Co. Ltd.	Misi
MOU	Memorandum of Understanding
My NTT contract	The contract that I signed with Misi in January of 2012 to work for CS for 1 year in Manhattan
NTT	NTT Data, Inc.
NYCCC	The New York City Civil Court in Manhattan
NYSSC	New York State Supreme Court
OSHA	The U.S. Occupational Safety and Health Administration
Second Circuit	U.S. Court of Appeals for the Second Circuit
SOX	The Sarbanes-Oxley Act
TOA	The table of authorities for this petition
USDOL	U.S. Department of Labor
USMS	U.S. Marshals Service
WHD	The USDOL's Wage and Hour Division

3. In the interests of brevity, references to NTT that I'll make in this petition going forward include those that pertain to MISI that was a wholly-owned subsidiary of NTT in 2012 before it was merged into NTT later in 2012. Also, throughout this petition, I'll refer to the people listed in the second column of the next table in the manner shown in the third column of that table:

#	Person	Reference Used
1	Keith Backer	Keith
2	NYCCC Judge Elena Baron	Elena
3	Chaim Book	Chaim
4	Francis Convery	Francis
5	Edward Epstein	Ed
6	Rebecca Freund	Rebecca
7	U.S. Magistrate Judge Gabriel Gorenstein	Gabriel
8	Lisa Griffith	Lisa G.
9	NYSSC Judge Lynn Kotler	Lynn
10	CSO Ralph Morales	Ralph
11	Peter Moulton	Peter
12	Pierre Newman	Pierre
13	Sharin Newman	Sharin
14	NYCCC Jose Padilla, Jr.	Jose
15	Second Circuit Judge Barrington Parker	Barrington
16	Todd Parker	Todd
17	Sheldon Samlal	Sheldon
18	NYSSC Judge Jennifer Schecter	Jennifer
19	U.S. District Judge Lorna Schofield	Lorna
20	NYSSC Judge Lisa Sokoloff	Lisa S.
21	NYSSC Judge Alexander Tisch	Alexander

4. All references in this petition that refer to **a)** Ed, Keith, Sharin, Francis, and Rebecca refer to when they then worked for NTT and **b)** Sheldon, Pierre, and Ilyas when they worked for CS. All links to audio and video recordings, news articles, and LinkedIn profiles to which I refer in the body of this petition are instead shown in the Table of Authorities. All references that I make to "the USMS' crimes" that appear in this petition refer to how I previously described that in numbered paragraph 6 on page 3 in the second amended complaint that I filed in K12 on 6/2/22. Since this petition is primarily in response to the Second Circuit's 10/20/22 order in K4 and Lorna's 6/28/22 and 5/5/22 orders in K2, I won't include other decisions and orders listed above in this petition's appendix and will instead include information in this petition to clearly identify where such other decisions and orders have been filed for cross-referencing purposes.

5. References that I make in this petition to exhibits that appear in the appendix appear in parentheses as "(*see* Pet. App. #a)" in which the "#" symbol in this example is a placeholder that

corresponds to page in the appendix where the first page of the exhibit begins. I will also include references in the body section of this petition that refers to information in the TOA to assist this Court with being able to cross-reference between information in the TOA that partly includes links to relevant audio and video recordings, news articles, and reports and the corresponding information about that in this petition's body section. Such references in this petition's body will appear in parentheses as (*see* TOA #). In this instance, the "#" symbol is a placeholder that corresponds to the numbered paragraph in the TOA.

6. While including copies of relevant orders in the appendix that were issued in the underlying litigation that this petition is about, I will include just the page on which those orders are shown in those legal filings because **a)** I'm not currently employed while still being subjected to illegal wage-theft and employment blacklisting, **b)** I seek for this petition to be as concise as possible partly due to the mailing costs, and **c)** this Court can readily access those entire legal filings electronically by their docket numbers. For example, the text of the 6/28/22 memo endorsement by Lorna in K2 appears strictly on page 16 in the legal filing in K2 (*see* Dkt. 103).

7. Although information pertaining to the statement of the case that is shown in the next section is rather detailed and complies with this Court's rules, further detailed information about what this case is about and why this petition should be granted is presented in other parts of this petition too.

STATEMENT OF THE CASE

This case presents a request by me to this Court to reverse manifestly unjust and unduly prejudicial harm that I have experienced in violation of my First Amendment and other legal rights that began with violations of the FLSA, SOX (this refers to 18 U.S.C. §1514A), and civil RICO in 2012 by NTT and CS and their personnel before that was exacerbated by egregious

misconduct by judges, court clerks, and attorneys for NTT and CS in K1, K2, K3, K4, K5, and K7 that all correspond to related litigation that I commenced against NTT and CS.

A. Factual Background

1. The Nippon Telegraph and Telephone Corporation is NTT's corporate parent, is comprised of many businesses, and was a publicly-traded firm in the U.S. throughout 2012 as was CS. The businesses that NTT's corporate parent is comprised of include government contractors and others that provide services and products to private businesses and other organizations. This point is proven partly by a press release that is entitled "Law Enforcement & Criminal Justice" that was published by NTT Data. That press release indicates that NTT Data is a business partner partly of the Office of the United States Courts. NTT Data also issued a press release on 11/2/16 in which it announced that it closed its acquisition of Dell Services after that acquisition made NTT Data even bigger. These facts raise the distinct possibility about impermissible conflicts of interest and bias that courthouse personnel may have against me with respect to litigation of mine that is against NTT largely because the possible outcomes of such litigation may potentially imperil such partnerships by possibly requiring the termination of such partnerships in the event that I prevail in such litigation.

2. This petition is being filed largely because personnel of both NTT and CS committed violations partly of SOX and the FLSA against me in 2012 after both NTT and CS made fraudulent claims in reports that were published publicly about their commitment to complying with applicable laws. Such claims exist partly in a report that NTT issued in December of 2011 that is entitled "CSR Report 2011" (for example, page 42 in that report contains fraudulent misrepresentations about NTT's commitment to complying with various laws) as well as in a report that CS issued in March of 2012 that is entitled "Corporate Responsibility Report 2011"

(for example, page 15 in that report contains fraudulent misrepresentations about CS' **a)** opposition to forced labor and **b)** commitment to ensuring that its suppliers respect employment laws, labor rights, and human rights). Those claims by them would be appealing to those who choose to invest in firms based upon their commitment to complying with applicable laws.

3. On 4/27/12, personnel of NTT and CS violated SOX, the FLSA, and other laws by illegally causing me to be fired from the job that I had to work for CS in New York City on an outsourcing basis through NTT in retaliation for valid whistleblower complaints that I reported mostly in April of 2012 to personnel of CS and NTT. I worked roughly 50 hours on average per week in that job. CS personnel illegally coerced me to work overtime for that job and NTT illegally didn't cause me to be paid overtime pay for that. NTT misclassified me in my NTT contract (this appears on page 151 in the PDF file for my 12/27/22 filing in K2) as an independent contractor for that job instead of properly classified as an employee of both CS and NTT with respect to that job. CS established that this was true as a result of the fact that its personnel largely micromanaged and supervised the method, manner, and sequence in which I performed that job and required me to participate in mandatory training programs partly about SOX that CS administered to me. The fact that NTT **a)** issued my NTT contract in January of 2012 to Ikam Adeu Corporation - a company I then operated - that enabled me to have that job, **b)** illegally and unilaterally didn't pay overtime for that job and subjected that job to a professional day work arrangement in which I wouldn't be compensated for hours that I worked that were between 8 and 10 hours per day unless I worked for more than 10 hours per day, and **c)** determined how its personnel would illegally retaliate against me for valid complaints that I reported to CS and NTT about that job by initiating the process that caused me to be fired from

that job are sufficient control factors that cemented NTT's status as a joint-employer together with CS of mine then.

4. In situations when one of multiple recruiting firms that a business like CS uses to meet some of its personnel needs subjects personnel it recruits to outsource to its clients' businesses to professional day work arrangements for compensation as the other recruiting firms that are used by the same client businesses for that same purpose instead compensate the personnel that they outsource to those businesses pursuant to a standard 8-hour workday and possibly overtime pay, that circumstance is unfair and illegal competition with respect to the rivals that follow the 8-hour workday model in instances when it hasn't been disclosed to the personnel who are subjected to professional day work arrangements during the recruiting process that their compensation will be governed by a professional day work arrangement. This is largely because the compensation scheme that corresponds to a professional day work arrangement effectively and illicitly allows a recruiting firm to cause a client business to be provided 2 hours of free labor per day in instances in which their outsourced personnel work 10 hours per day while rivals of such suppliers would instead properly bill their client companies for those 2 hours of labor. As a result, professional day work arrangements violate the FLSA and retaliation for complaints about that violate SOX when either the recruiting firm or the client business is a publicly traded firm or a subsidiary of one.

5. While Keith recruited me for the job that I had with CS in 2012 through NTT, he e-mailed me a job description on 12/20/11 for that job. That job description appears on page 2 in my 9/4/15 filing in K2 that corresponds to docket number 1-11. That job description pointed out that I would need to have "a willingness to work overtime" without indicating that it would be unpaid overtime. The nature of the work that I would need to perform in that job as an I.T.

professional was also listed in that job description and was largely consistent with similar work that was determined in *Edelmann v. Keuka College*, No. 16-cv-6293-FPG (W.D.N.Y. Aug. 14, 2019) to not be exempt from overtime pay eligibility and entitlement. On 5/2/12, Rebecca sent an e-mail to Keith and Sharin at 4:24 pm (*see* Pet. App. 19a) in which she **a)** stated "$59.75 p/h" to indicate that my NTT contract had required NTT to issue payments in the amount of $59.75 per hour for the work that I performed for CS over a standard 8-hour workday as a result of that contract and **b)** used "DNU" as an acronym to mean "do not use" as that confirmed that NTT's personnel were illegally blacklisting me from other employment opportunities with NTT. With respect to this Court's findings about overtime pay in its 2/22/23 decision in *Helix Energy Solutions Group, Inc. v. Hewitt*, No. 21-984 (U.S. Feb. 22, 2023), the terms of my NTT contract indicated that NTT would issue payments to cause me to be compensated for the work that I performed for CS in that job while those terms indicate that those payments by NTT would be pursuant to an hourly rate that was based upon a daily rate. Also, no mention of a professional day work arrangement exists in my NTT contract.

6. Prior to being fired from that job, I engaged in protected activity partly by:

a. Reporting a valid complaint to Sheldon face-to-face in April of 2012 in CS' offices about the fact that NTT illegally wasn't causing me to be paid overtime for the overtime that I was working for CS as I asked him if an arrangement could be made for me to keep working for CS, but through a different recruiting firm instead of NTT. Sheldon was then the manager of the team for which I worked at CS on its trading floor. He told me then that he would talk to Philip Sheehan of CS about my inquiry and that my conversation with him then never happened.

b. Reporting a valid complaint to Pierre against a coworker of mine at CS named Salahuddin Ilyas about the fact that he was harassing me at work as I asked Mr. Newman to fix that in his capacity as the assistant manager of the team that I then worked on. I made that request in an instant message that I sent to Pierre through an electronic messaging program named Microsoft Office Communicator or Microsoft Lync.

c. Reporting valid complaints to other personnel of CS in 2012 about the fact that CS personnel were illegally violating my NTT contract's terms by not allowing me to operate autonomously as an independent contractor as I performed my job for CS while they instead were micromanaging how I performed that job instead that was provable by information in a computer system named Remedy that CS then used and e-mail records that CS controlled. Pierre sent an e-mail to my personal e-mail address on 2/21/12 at 6:54 pm after I had already completed my work for CS on that date. That e-mail appears on page 4 in docket number 1-11 for my 9/4/15 filing in K2. The information in that e-mail reflects this point about the fact that CS personnel were unlawfully violating my NTT contracting by supervising me and controlling my work for CS in 2012. This information refers to information in Remedy about a Microsoft Excel issue tied to someone whose first name is Diarra.

d. Reporting valid complaints to personnel of NTT prior to and during April of 2012 partly about the fact that **a)** NTT was violating my NTT contract's terms that prompted me to seek a revision of that contract to include a provision about penalties[2] for noncompliance, **b)** personnel of CS were illegally violating my NTT contract's terms through tortious interference while behaving as an ordinary employer of me by coercing me to work longer than my

[2] Ed sent an e-mail to Sharin on 4/10/12 at 3:52 pm that appears on page 12 of my 9/4/15 filing in K2 that corresponds to docket number 1-11) in which he confirmed that I sought penalties against NTT.

colleagues at CS who were full-time employees of CS instead of complying with my NTT contract's terms that confirmed that I was entitled to independently determine the hours that I worked for CS, and **c)** Sharin lied by claiming that the work that I performed for CS as a result of my NTT contract was subject to a professional day work arrangement while I was then being discreet while implicitly also complaining about the fact that NTT illegally wasn't causing me to be paid overtime for the work that I was performing for CS. On 5/19/22, I filed a motion in K3 and page 130 in the PDF file for that motion shows an e-mail that I sent to Ed on 4/26/12 at 7:47 am that confirms that I engaged in protected conduct as I pointed out that I previously had asked Keith about the fact that personnel of CS were illegally violating my NTT contract's terms by requiring others and I who were classified by CS as contingent workers to work longer than my colleagues at CS who **a)** were full-time employees of CS and **b)** worked on the same team as me at CS as I also apprised Ed in that e-mail that my NTT contract didn't include any information about a professional-day work arrangement. Sharin sent an e-mail on 4/10/12 at 3:50 pm partly to Ed in which she lied by claiming that the work that I performed for CS as a result of my NTT contract was governed by a professional day work arrangement with a maximum of 10 hours per day. That e-mail is shown on page 12 in my 9/4/15 filing in K2 and corresponds to docket number 1-11.

B. Procedural History

1. I timely reported complaints to WHD personnel on 10/10/12 against both NTT and CS as I informed WHD staff then that NTT personnel retaliated against me by causing me to be fired from the job that I had with CS in 2012 in retaliation for complaints that I reported to both personnel of CS and NTT about the fact that I wasn't being paid overtime for overtime that I worked for that job. I also reported to WHD then that I was a misclassified independent

contractor for that job while NTT and CS were actually my joint-employers because of the degree of control that CS and NTT had over how I performed that job and how I was retaliated against by being fired in response to my complaints to CS and NTT. The information that I reported to WHD then implicated violations of both the FLSA and SOX by both NTT and CS against me. However, WHD personnel falsely stated in a WHISARD Information Complaint Form dated 10/10/12 that they prepared from the information that I reported to WHD on that date that timesheets hadn't been kept for the hours that I worked for CS in 2012. However, some of those same timesheets appear between pages 175 and 186 in the PDF file that corresponds to my 12/27/22 filing in K2. Also, though that WHISARD form indicates that the "most critical act" about the information that I reported to WHD then was about the FLSA, that view by WHD staff just indicates that its staff didn't feel that the SOX violations by NTT and CS were as important as the FLSA violations. WHD chose not to do anything for me other than to prepare that WHISARD report with inaccuracies prior tor refusing a request I made to WHD to fix them. When I reported a SOX claim against NTT and CS on 10/10/12 to WHD instead of OSHA, I did so after OSHA issued a press release on 2/28/91 that is entitled "Memorandum of Understanding (MOU) between the Employment Standards Administration and OSHA" (*see* TOA # 117). That MOU established a referral system partly between WHD and OSHA to cause their personnel to forward information between those agencies about complaints that people like me reported to them partly about SOX and FLSA violations. OSHA later issued a similar MOU for similar reasons on 8/4/21 that is entitled "Memorandum of Understanding Between the U.S. Department of Labor, Occupational Safety and Health Administration and the U.S. Department of Labor, Wage and Hour Division" (*see* TOA # 119). This information and 29 CFR §1980.103(d)

establish that equitable tolling was warranted for my 10/10/12 SOX complaint to WHD for filing with OSHA because I indirectly filed that with WHD instead then by mistake.

2. On 11/21/12, I commenced K1 against NTT as I asserted wage-theft and breach of contract claims against it in my complaint in K1. After doing so, the following occurred mostly in K1:

a. An attorney named Lawrence Pearson e-mailed me on 3/14/13 while he then represented CS in regards to a subpoena for records[3] that I was granted in K1 on 1/16/13 against CS that was served upon CS on 1/23/13. He informed me in a PDF file[4] that was attached to that e-mail that CS wouldn't comply with that subpoena's terms. He nor anyone else ever attempted to have that subpoena quashed. Through that subpoena, I mainly sought to be provided e-mails that I sent and were otherwise sent to me in 2012 to and from the e-mail account that CS assigned to me while I worked for it in 2012.

b. On 12/26/12, Chaim was an attorney who represented NTT in K1 while he filed an answer for NTT in K1 in response to my complaint in K1. In that answer, he claimed on page 2 that the damages that I experienced with respect to my claims in K1 were caused by or contributed to by my own actions. He also claimed on page 3 in that answer that I wasn't entitled to the damages that I sought in K1. Both of those claims were lies and entitled me to meaningful discovery material that was in NTT and CS' possession to prove they were lies. That filing was thereafter was included as the second exhibit that was annexed to the affirmation in opposition that Todd filed in K2 on 9/23/15 in his capacity as NTT's in K2 (hereinafter referred to as "Todd's 9/23/15 affirmation").

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[3] That subpoena is shown on page 131 and 132 of the PDF file for my 12/27/22 filing in K2.
[4] That PDF file is shown on page 157 of the PDF file for my 12/27/22 filing in K2.

c. Lynn issued a discovery order on 4/12/13 in K1 while she was then a NYCCC judge. That order was partly based upon the subpoena that I was granted against CS on 1/16/13 and she ordered NTT on 4/12/13 to provide itself "all contractor records" by 5/31/13 as she clearly made a mistake by directing NTT to provide itself those records instead of me. That established that she impermissibly wasn't paying proper attention to details before other judges assigned to K1, K2, K3, K4, K5, and K9 prejudicially did the same at my expense while all of that litigation included matters about my claims against NTT. Through her remark in her 4/12/13 order in K1 about "all contractor records" Lynn was referring partly to my NTT contract, the work that I performed for CS in 2012, and communications between NTT and CS in relation to my NTT contract and I by her remark about "all contractor records". However, both NTT and CS substantially violated Lynn's 4/12/13 order by not causing me to be provided discovery material that order covered and Chaim didn't apprise any judge assigned to K1 prior to 6/1/13 about any problem that he had with fully complying with her 4/12/13 order that may have otherwise spurred Lynn to issue an to compel full compliance with her 4/12/13 order. After Lynn issued that order, Chaim materially deceived me by claiming that he would try to get me the discovery material that I sought in K1 both from NTT and CS partly to try to let me avoid a fight against CS over records that were in CS' possession. He made such claims in he following excerpt from an e-mail that he sent to me on 4/12/13 at 1:10 pm:

> **From:** Chaim B. Book <cbook@mb-llp.com>
> **To:** "towaki_komatsu@yahoo.com" <towaki_komatsu@yahoo.com>
> **Sent:** Friday, April 12, 2013 at 01:10:15 PM EDT
> **Subject:** RE: recent invoice
>
> Mr. Komatsu,
>
> It was nice meeting you in person today.

> I will gather the various documents from my client and review them and get them to you as soon as possible.
>
> I will also see if I can get you the documents that you were seeking from Credit Suisse so you can avoid a fight with them over those documents.

d. *Impact Car Park, LLC v. Mutual Redevelopment Houses, Inc.*, 2021 N.Y. Slip Op 30950 (Sup. Ct. 2021) states the following that confirms that NTT and CS were legally required in K1 to fully comply with both **a)** Lynn's 4/12/13 discovery order and **b)** the 1/16/13 subpoena that I was granted in K1 against CS while these findings confirm that they were required to do so for material that partly included information that I could otherwise obtain that includes material that may possibly have already been in my possession:

> "Non-parties are subject to the same obligation as parties to provide "full disclosure of all matter material and necessary in the prosecution or defense of an action.""

e. On or about 7/15/13 and while Peter then was a NYCCC judge, he denied a motion that Chaim filed in K1 on 6/24/13 in which Chaim included an affirmation in which he sought to have me compelled to arbitrate my claims in K1 against NTT. That affirmation was thereafter was included as the third exhibit that was annexed to Todd's 9/23/15 affirmation. After NYCCC Judge Debra Rose Samuels issued an order on 8/14/13 that vacated Peter's 7/15/13 order in K1 in response to a stipulation between Chaim and I that was reached and allowed that to occur, I filed an affidavit in K1 on 11/12/13 in which I pointed out on pages 3 and 7 that **a)** CS refused to comply with the subpoena that I was granted against it on 1/16/13 in K1 and **b)** I sought to have a judge in K1 compel CS to comply with that subpoena. I also otherwise opposed that motion to compel arbitration in that 11/12/13 filing. My 11/12/13 filing in K1 was included as the fourth exhibit that was annexed to Todd's 9/23/15 affirmation.

f. On 4/11/14 and while Jennifer then was a NYCCC judge, she demonstrated that the exceptions to the Younger Abstention doctrine applied to K1 to warrant federal court

intervention in K1 by engaging in bad-faith and harassment against me that caused me substantial and irreparable harm partly to my discovery rights in K1 as she committed fraud on the court, obstruction of justice, plain and structural error as well as a prohibited and unduly prejudicial procedural anomaly in K1 through her 4/11/14 order in K1 in which she prejudicially and vexatiously ignored all of the following:

i. Both the fact that CS illegally defied the 1/16/13 subpoena that I was granted against it in K1 and my 11/12/13 request in K1 to have CS compelled to comply with that subpoena for the reasons that I just discussed.

ii. NTT's legal duty to have fully complied with Lynn's 4/12/13 order that both **a)** effectively transformed my 1/16/13 subpoena against CS that was issued by the Chief Clerk of the NYCCC as the designee of a judge for that purpose into a court-ordered subpoena and **b)** NTT violated partly by prejudicially not providing me my records that were in NTT's possession that would be about what information CS' had provided to NTT about whether the job that I worked for CS in 2012 would be eligible for overtime pay and/or subject to a professional day work arrangement and whether NTT was prohibited from violating applicable laws in regards to the personnel that it recruited for jobs with CS.

iii. The legal duty that she then had pursuant to the decision in *Matter of Rockland (Primiano Constr.)*, 51 N.Y.2d 1, 431 N.Y.S.2d 478, 409 N.E.2d 951 (1980) to determine whether there had been "compliance with any condition precedent to access to the arbitration forum" by NTT as that confirmed that she was required to determine whether NTT had fully complied with Lynn's 4/12/13 discovery order in K1. The fact that NTT didn't do so naturally meant that Jennifer should needed to have upheld my 1st and 14th Amendment rights as well as the enforceability of Lynn's 4/12/13 order by refusing to consider NTT's motion to

compel arbitration in K1 until after NTT fully complied with Lynn's 4/12/13 order and CS fully complied with the subpoena that I was granted on 1/16/13 in K1. This point is about **a)** not putting the cart before the horse in litigation from a procedural due process standpoint to not allow a legal adversary to gain an unfair advantage and **b)** plain and structural error by Jennifer by biasedly and prejudicially ignoring the fact that orders that judges issue need to be fully and promptly complied with that *Maness v. Meyers*, 419 U.S. 449, 95 S. Ct. 584, 42 L. Ed. 2d 574 (1975) confirms.

iv. Her legal duty pursuant to the 2010 decision in *Brady v. Williams Capital*, 928 N.E.2d 383, 14 N.Y.3d 459, 902 N.Y.S.2d 1 (2010) that required her to first perform a diligent analysis to determine whether it was financially possible to engage in arbitration against NTT before she would then be able to possibly grant NTT's motion to compel arbitration in K1. She instead biasedly and prejudicially rubber-stamped Chaim's motion to compel arbitration in K1 on 4/11/14 through the order that she issued then in K1.

v. The fact that NTT's attorneys in K1 forfeited NTT's right to engage in arbitration against me by **a)** waiting too long (more than 7 months after I commenced K1) to file a motion to compel arbitration against me in K1 and **b)** prejudicially violating Lynn's 4/12/13 discovery order in K1. *Morgan v. Sundance, Inc.*, 142 S. Ct. 1708, 596 U.S., 212 L. Ed. 2d 753 (2022) is about the fact that a court determined that a party in litigation waived its right to engage in arbitration by waiting nearly 8 months after a lawsuit was filed to file a motion to compel arbitration in it. Chaim waited until roughly 7/3/13 to file a motion to compel arbitration in K1. After Peter's 7/15/13 order in K1 denied that motion and a subsequent stipulation between Chaim and I caused Peter's 7/15/13 order to be vacated, Chaim resubmitted that motion to compel arbitration in K1. Chaim filed his motion to compel arbitration in K1 only after he

engaged in preliminary settlement discussions with me on 4/12/13 through the e-mail that he sent to me at 1:10 pm while he prejudicially deceived me then too by claiming that he would try to cause NTT to be in full compliance with Lynn's 4/12/13 discovery order.

g. On 10/6/15 and while Jennifer then was a NYSSC judge, she prejudicially lied in the order[5] that she then issued in K1 as she continued to commit fraud on the court and obstruction of justice against me. She did so then by lying as she claimed that **a)** she hadn't overlooked nor misapprehended anything when she issued her 4/11/14 order in K1 and **b)** there was no reason to grant me any relief about that 4/11/14 order. The fact that Jennifer's 10/6/15 order in K1 was issued while she was then a NYSSC judge and that order was about her 4/11/14 order in K1 procedurally established that every single time that I sought reconsideration of decisions and orders that were issued in K1, those matters would need to be assigned to the specific judges who issued those original decisions and orders. *FCC v. Fox Television Stations, Inc.* confirms this by pointing out that agencies that include the judiciary must act consistently and follow their own rules. Also, after Jennifer issued her 4/11/14 order in K1, an unknown court attorney in K1 apprised both Christopher Neff in his capacity as an attorney for NTT and I during a court hearing in K1 about a proposal that court attorney had in which NTT would possibly agree to pay all of the arbitration costs to enable me to engage in arbitration against NTT. However, he pointed out then that in order for that to possibly occur, I would first need to agree to not pursue SOX claims against NTT and quickly agree to that proposal within one day or less. That was clearly bad-faith and coercive negotiating by him that I immediately rejected. That behavior by him buttresses my point about federal court intervention in K1. I don't recall the date of that court hearing.

[5] That 10/6/15 order appears on page 157 in the PDF file for the motion that I filed on 6/2/22 in K3.

h. On 6/9/17, Lisa S. issued a decision in K1 ash she confirmed on page 5 that I previously provided information in K1 that established that **a)** the AAA denied an application that I submitted to it to be granted a fee waiver to enable me to engage in arbitration against NTT and **b)** it was financially impossible for me to engage in arbitration against NTT. She also vaguely pointed on that same page that she previously informed me in her 11/28/16 decision in K1 that if I sought to be granted equitable relief about Jennifer's 4/11/14 decision in K1 that granted NTT's motion to compel arbitration, I would need to seek that relief from a Supreme Court without specifying which court she was then referring to. Contrary to this lie by her, her remarks on page 4 in her 11/28/16 decision in K1 instead referred me to a court that had the power to grant me equitable relief about Jennifer's 4/11/14 order in K1. Such courts partly include federal courts in New York City. Lisa S. previously claimed on page 4 in her 11/28/16 decision in K1 that the NYCCC didn't have the power to grant equitable relief. *Apollon Corp. v. Brandt*, 172 Misc. 2d 888, 659 N.Y.S.2d 694 (Civ. Ct. 1997) and hindsight confirms that claim by Lisa S. was false and that she prejudicially sent me on a wild-goose chase to be granted equitable relief about Jennifer's 4/11/14 order in K1 by misleading me. Lisa S. also fraudulently and abusively imposed a sanction against me as a form of illegal First Amendment retaliation through her 6/9/17 decision in K1. While doing so, she lied on page 7 in that decision by claiming that I had engaged in picketing against NTT. Contrary to her lie, I merely and lawfully exercised my First Amendment rights by contacting business partners of NTT mainly via e-mail as I urged them to cancel their business with NTT in response to the fact that NTT was committing wage-theft and employment blacklisting against me as a form of whistleblower retaliation. The preceding discussion reinforces my earlier remarks about the need for federal court intervention in K1.

i. On 5/24/22, Alexander conducted an oral arguments hearing in K5 remotely between Lisa G. in her capacity as an attorney for NTT and I. He did so after I commenced K5 in November of 2021 in response to Lisa S.' 11/28/16 and 6/9/17 decisions in K1 that I discussed above. However, Alexander told me on 5/24/22 that he didn't have jurisdiction to grant me relief about K1 that included Jennifer's 4/11/14 order in K1. Although I asked Alexander to be provided free written transcripts of the court hearings in K5, he opted to violate my First Amendment rights in K5 by ignoring that. He also lied on 5/24/22 by claiming that he would issue a written order within 60 days about what we discussed on 5/24/22. He hasn't done so.

j. The PDF file for my 12/27/22 filing in K2 shows my 11/18/22 OSC in K1 on page 15 that Jose's 11/21/22 order in K1 was in response to. A diligent comparison between that order and OSC confirms that Jose committed fraud on the court and obstruction of justice against me through his 11/21/22 order by prejudicially and biasedly ignoring the material fact in flagrant violation of my 1st and 14th Amendment rights that the relief that I requested in that OSC was primarily about the fact that NTT violated Lynn's 4/12/13 discovery order in K1 as one of the things that I sought in that OSC was to retroactively strike pursuant to CPLR §3126 all filings by NTT's attorneys in K1 that were filed after 5/31/13 on account of the fact that NTT prejudicially violated Lynn's 4/12/13 discovery order. The fact that Jose was assigned to adjudicate the my 11/18/22 OSC violated my right to instead have that assigned to Lynn both because **a)** it concerned her 4/12/13 order in K1 and **b)** what I discussed earlier about the precedent that Jennifer set by issuing the 10/5/16 order in K1 while she was then a NYSSC judge. The fact that Lynn has been assigned to a lawsuit against NTT that corresponds to *Mandala v. NTT Data, Inc.*, No. 654705/2019 (Sup. Ct. NY Cty.) while she has been a NYSSC judge buttresses my point about the fact that no valid reason has existed for why she wasn't assigned matters in K1 since

11/18/22 that were also against NTT. What I discussed in this paragraph further confirms that federal court intervention in K1 has been and remains clearly appropriate due to the applicability of the exceptions to the Younger Abstention doctrine.

k. A court clerk who works for the NYCCC on its first floor lied to my face on 12/5/22 by claiming that Jose would be assigned the OSC that I filed then in K1 that was about his 11/21/22 order in K1. Also, a different court clerk who works for the NYCCC lied to my face on 12/5/22 in Room 325 of the NYCCC by claiming that there wouldn't be any court hearing in K1 on 12/9/22. That lie was the only reason why I didn't appear for the 12/9/22 court hearing that Elana held in K1 and *Elrod v. Burns*, 427 U.S. 347, 373 (1976) confirms that lie caused irreparable harm to my First Amendment rights when she opted to lift all stays in K1 in her 12/9/22 decision in K1 without also granting me any of other relief that I sought in my 11/18/22 OSC in K1 solely because I was absent from the 12/9/22 court hearing in K1 that wasn't my fault. Elana's 12/9/22 order in K1 **a)** lifted all stays in K1 and **b)** confirmed that I was lied to on 12/5/22 by being told then that Jose would be assigned my 12/5/22 OSC in K1. Elana lifted the stays in K1 in response to a request that I made in my 11/18/22 OSC in K1 for that to occur. That request was due to the fact that I pointed out that by having previously established that I couldn't possibly engage in arbitration against NTT because I couldn't pay for the costs of arbitration nor get a fee waiver from the AAA for that, the arbitration between NTT and I had been had. In my 5/3/22 filing (Dkt. 89) in K2, I pointed out to Lorna that *Billie v. Coverall North America*, Civil Case No. 3: 19-cv-00092 (JCH) (D. Conn. Mar. 16, 2022) that confirms that the plaintiffs in that case were able to litigate their claims in court after establishing that they couldn't pay arbitration costs and a judge in that case determined that arbitration had been had between the parties as a result of that circumstance. Lorna then fraudulently claimed in her 5/5/22 order (Dkt. 91) in K2

that my 5/3/22 filing in K2 was frivolous instead of acknowledging the fact that the information that I provided about *Billie v. Coverall* was a relevant new matter of law that warranted reconsideration pursuant to FRCP Rule 60 of her 5/17/16 decision in K2.

3. Although NTT was granted its motion to compel arbitration against me in K1 on 4/11/14 and Lorna biasedly and prejudicially restricted my ability through her 5/17/16 order in K2 to litigate claims of mine against CS to arbitration in spite of the fact that CS illegally defied the 1/16/13 subpoena that I was granted against it in K1, both NTT and CS defaulted on initiating an arbitration proceeding with the AAA against me pertaining to my claims against NTT and CS in K1 and K2. Their choice to default on that is in contrast to the fact that the decisions that were issued in **a)** *Flores v. the National Football League*, No. 22-cv-871 (VEC)(S.D.N.Y. Mar. 1, 2023), **b)** *Johnson v. Everyrealm, Inc.*, No. 22-cv-6669 (PAE)(S.D.N.Y. Feb. 24, 2023), and **c)** *Doe v. George Street Photo & Video, LLC*, No. 16-cv-02698-TSH (N.D. Cal. Oct. 1, 2018) confirm that defendants in those cases initiated arbitration proceedings with arbitral forums instead of the plaintiffs in those cases. Instead of doing so with me, attorneys for NTT and CS engaged in preliminary settlement discussions with me partly **d)** on 4/12/13 and 4/29/13[6] with Chaim and **e)** on 10/8/14 with David Marden while he then was an attorney who represented CS in a mediation meeting that I had partly with him. CS paid for that 10/8/14 mediation and the fact that the mediator charged $600 per hour for her services is relevant largely because this and other information is indicative of the material fact that both CS and NTT had sufficient funds which to commence an arbitration proceeding against me with the AAA. The fact that I attempted to initiate arbitration against NTT and CS in contrast to them against me necessarily reinforces the

[6] This is confirmed by an e-mail that Chaim sent to me on 4/29/13 at 3:43 pm that appears on page 137 of the PDF file for my 6/2/22 motion in K3.

fact that NTT and CS defaulted on whatever rights that they had to engage in arbitration against me. 9 U.S.C. §4 buttresses this point.

4. In addition to what I discussed above about Lorna's 5/17/16 decision in K2, she prejudicially ignored the following in that decision and otherwise in K2 as she committed fraud on the court and obstruction of justice against me:

a. The fact that Francis committed perjury about my NTT contract in the 9/23/15 affidavit (*see* Dkt. 12) that an attorney for NTT filed in K2 on 9/23/15 after Francis gave that affidavit on 9/23/15 while he was then NTT's Chief Operating Officer. In particular, Francis lied partly on page 4 of that affidavit in in numbered paragraph 12 by claiming that I wasn't entitled to payment by NTT on an hourly basis nor for overtime pay for the work that I performed for CS through NTT as a result of my NTT contract. He lied about that then **a)** before this Court's 2/22/23 decision in *Helix Energy Solutions Group, Inc. v. Hewitt*, No. 21-984 confirmed that I was owed overtime pay for that work, **b)** while information in the table on page 6 of my NTT contract confirmed this too and that my compensation for that work was on an hourly basis that was based upon a daily rate, and **c)** after Rebecca sent an e-mail partly to Sharin on 5/2/12 at 4:24 pm in which she stated that my compensation for that work was based upon an hourly rate.

b. The fact that information on pages 3 and 5 in the affidavit dated 11/12/13 that I filed in K1 confirms that before I was ordered to engage in arbitration against NTT and CS, I first sought on 11/12/13 to have a judge in K1 compel CS to comply with the subpoena that I was granted previously in K1 against CS that it refused to comply with. Lorna was required to pay proper attention to all of the information that was submitted in K2 and that included filings in K1.

c. Her legal duty that she shared partly with Jennifer to determine whether there had been "compliance with any condition precedent" by CS "to access" "the arbitration forum" with respect to me after **a)** I was granted a subpoena for records against CS on 1/16/13 in K1, **b)** CS illegally defied that subpoena, and **c)** CS prejudicially and substantially didn't cooperate with the 4/12/13 discovery order that was issued in K1.

5. In addition to what I just discussed about Lorna's 5/17/16 decision in K2, she prejudicially also did the following in that decision and otherwise in K2 as she committed further fraud on the court and obstruction of justice against me:

a. Her 5/17/16 decision in K2 confirms that she biasedly and prejudicially restricted my ability to litigate claims of mine against CS to arbitration in spite of the fact that **a)** I never agreed to arbitrate claims against CS in relation to my NTT contract and **b)** CS was equitably estopped from being able to restrict me to arbitration against it by having first defied the subpoena that I was granted in K1 against it on 1/16/13.

b. She falsely claimed in her 5/17/16 decision in K2 that I couldn't use SOX' kick-out provision (29 CFR §1980.114(a)) to kick out an appeal that I commenced to the ARB that corresponds to K6 about K7 to K2 if OSHA instead of the ARB or the Secretary of the USDOL didn't issue a final decision within 180 days after the filing of a complaint against NTT and CS to OSHA about the SOX complaint that I reported to OSHA against them.

c. She falsely claimed in her 5/17/16 decision in K2 that the SOX complaint that I reported to OSHA was untimely as she fraudulently omitted the fact that equitable tolling applied to my deadline for reporting that SOX complaint to OSHA for the reasons that I previously discussed in this petition.

d. She falsely claimed in her 5/17/16 decision in K2 that RICO claims that I sought to assert against NTT in K2 were conclusory instead of proven partly by e-mail evidence that I received from Chaim in K1 as some of the discovery material that I was owed in K1. The following are two examples of wire fraud by NTT's personnel against me in April and May of 2012 that confirm that I had valid civil RICO claims against NTT in K2:

i. As I pointed out earlier, remarks by Rebecca in an e-mail that she sent on 5/2/12 at 4:24 pm partly to Sharin in which she confirmed that NTT was required to cause me to be paid for the work that I performed for CS in 2012 as a result of my NTT contract at a rate of $59.75 per hour confirms that Sharin committed wire fraud against me when she sent an e-mail on 4/25/12 at 3:50 pm[7] partly to Ed in which she lied by claiming that the work that I performed for CS in 2012 as a result of my NTT contract was governed by a professionally day work arrangement ("pro-day") with a maximum of 10 hours per day for that.

ii. The following is a relevant excerpt from an e-mail that Ed sent to me on 5/18/12 at 8:48 am in which he lied by claiming that I wasn't eligible for overtime pay for the work that I performed for CS in 2012:

> **From:** Ed Epstein <Ed.Epstein@nttdata.com>
> **Date:** Fri, 18 May 2012 08:48:22 -0400
> **To:** towaki_komatsu@yahoo.com <towaki_komatsu@yahoo.com>
> **Subject:** RE: recent invoice
>
> You are not eligible for overtime.

iii. The following is an excerpt from an e-mail that Ed sent to me on 5/18/12 at 10:45 am in which he lied by claiminig that CS instead of NTT made the decision to fire me without any advance notice from the job that I had to work for CS through NTT on an

[7] That e-mail appears on page 12 in my 9/4/15 filing in K2 that corresponds to docket number 1-11.

outsourcing basis in 2012 as he lied about that to pretextually avoid having NTT required to perform its legal duty to provide me severance pay as a result of the provision in my NTT contract that required NTT to provide me 2 weeks of advance notice in the event that NTT decided to unilaterally terminate my NTT contract:

> **From:** Ed Epstein
> **Sent:** Friday, May 18, 2012 10:53 AM
> **To:** 'towaki_komatsu@yahoo.com'
> **Subject:** RE: recent invoice
>
> Not a problem. Why not copy the attorney at CS on this ... or should I?
>
> You're a vendor and your services were no longer needed due to your attitude. You proved that in our firm and at CS.
> We offered you to CS for free and outside of any contract limitations. They said no!
>
> In effect, they made the choice for you to longer be there not us.

iv. Before Ed made the preceding remark on 5/18/12, he sent an e-mail on 4/10/13 at 4:03 pm partly to Sharin and Keith that appears on page 11 of my 9/4/15 filing in K2 that corresponds to docket number 1-11.as he indicated that he wanted to fire me from the job that I then had to work for CS through NTT. This contradicts his 5/18/12 remark that I just discussed.

e. When Francis committed perjury in his 9/23/15 affidavit that was filed in K2 then about the matters that I discussed earlier, he committed wire fraud as a continuing violation that related back to what I just discussed about Ed and Sharin's remarks about whether I was eligible and entitled to have NTT issue payments for overtime pay to cause me to be paid that for the work that I worked for CS in 2012.

f. She prematurely and prejudicially abused her discretion in K2 by refusing in her 5/17/16 decision in K2 to exercise supplemental jurisdiction in K2 over my claims in K1. She

did so in defiance of **a)** findings about judicial economy in *Rosenberg v. City of New York*, 20-cv-4012 (LLS) (S.D.N.Y. July 13, 2020)[8] and **b)** the following before Lisa S. clearly informed me in her 11/28/16 decision in K1 that in the event that I sought to be granted equitable relief about the 4/11/17 order that was issued in K1, I would need to seek such relief from a court that that had the power to grant equitable relief that indisputably includes federal courts:

i. 28 U.S.C. §1367, FRCP Rule 42, *Baldwin County Welcome Center v. Brown*, 466 U.S. 147, 104 S. Ct. 1723, 80 L. Ed. 2d 196 (1984) (holding that "Courts are required to 'be sensitive to the problems faced by pro se litigants and innovative in their responses to them'"), the exceptions to the Younger Abstention doctrine and *ex Parte Young* that applied to K1, and the fact that *Exxon Mobil Corp. v. Saudi Basic Industries Corp.*, 544 U.S. 280, 125 S. Ct. 1517, 161 L. Ed. 2d 454 (2005) confirms that a federal court is authorized to grant declaratory relief for an independent claim concerning state-court litigation.

6. After Lorna issued her 5/17/16 decision in K2, she continued to prejudicially committed fraud on the court and obstruction of justice against me in the following ways:

a. She pretextually issued an unlawful filing restriction against me in K2 through her 6/28/22 memo endorsement (see Dkt. 103) in K2 in which she barred me from both **a)** filing legal filings in K2 without prior approval by her that would be addressed to the Second Circuit and **b)** commencing further civil actions against NTT and CS in the Southern District of New York about matters that arose out of the events in my First Amended Complaint in K2.

b. Prior to issuing that filing restriction, she illegally didn't perform her legal duty to apprise me of a plan that she had to possibly impose a filing restriction against me that would bar me from both **a)** filing meritorious legal filings in K2 without prior approval by her and **b)**

[8] This holds that overlapping claims belong in a single lawsuit.

commencing further meritorious civil actions against NTT and CS in the Southern District of New York about matters that arose out of the events in my First Amended Complaint in K2. She instead irrelevantly informed me in her 5/5/22 order in K2 (*see* Dkt. 91) that I couldn't file frivolous filings in K2 in spite of the fact that I hadn't done so in contrast to her. Her failure to fully apprise me about that plan causes her 6/28/22 filing restriction against me to be unenforceable because she shirked her legal duty to provide me prior and complete notice about that plan in accordance with my due process and First Amendment rights to let me challenge it and my clear right to be fully heard by an impartial judge in K2 before a sanction could be imposed against me.

c. After Lorna issued her 6/28/22 memo endorsement in K2, Lorna has proven by plain and structural error by her that the terms of that order aren't enforceable by ignoring legal filings that I filed in K2 after 6/28/22 in which I sought for her to grant me approval to file legal filings in K2. For example, though I requested authorization to commence a new federal court civil action against NTT and CS through my 9/2/22 filing in K2 (see Dkt. 107), Lorna ignored that filing. Prior to doing so, though I asked the following question on page 4 in my 7/7/22 filing in K2 that I electronically filed via e-mail, Lorna never responded to that and the Pro Se office for the U.S. District Court for the Southern District of New York illegally didn't add that filing to the docket for K2 until 2/28/23 (*see* Dkt. 651) when it did so in response to the fact that I apprised the Pro Se office on 2/28/23 that it illegally hadn't added that filing to the docket for K2 when I first submitted it in K2:

> "am I authorized to pursue claims in a new federal civil action against NTT and CS that will be about their employment blacklisting of me?"

7. Lorna pretextually and prejudicially subjected me to obstruction of justice in K2 on 6/28/22 through the order that she then issued in K2 when she implicitly, arbitrarily,

capriciously, vexatiously, and discriminatorily denied me the following relief in defiance of my 1st and 14th Amendment rights and other prevailing legal standards:

a. Having her properly conduct an evidentiary hearing to question attorneys for NTT and CS and their personnel under oath to ascertain precisely why **a)** CS illegally and prejudicially didn't comply with the subpoena for records that I was granted on 1/16/13 in K1 against CS and **b)** NTT illegally and prejudicially didn't comply with the discovery order that was issued on 4/12/13 by Lynn in K1 that required NTT to provide me "all contractor records" by 5/31/13 that related to my NTT contract, the work that I performed for CS as a result of my NTT contract, and NTT's contract with CS that enabled NTT to recruit me to work for CS as a result of my NTT contract. On a related note, in her decision in *Ford v. WSP USA, Inc.*, No. 19-cv-11705 (LGS) (S.D.N.Y. Oct. 14, 2021), Lorna pointed out that a company that sets the number of hours worked and approves timesheets for workers may possibly be a joint-employer. She also emphasized a need for a litigant to be able to present information in litigation about whether different recruiting firms that an organization uses have uniformity among them in regards to whether they pay their personnel a flat rate per day that doesn't include overtime pay or whether overtime pay is also available for that. This point buttresses the fact that I was entitled to discovery material in K1 from NTT and CS prior to 6/1/13 that would enable me to learn **a)** whether NTT subjected others who worked for CS through NTT to professional day work arrangements and **b)** information about overtime pay availability that CS may have communicated to NTT for the job that I worked for CS in 2012.

b. Having her otherwise let me engage in meaningful discovery to ascertain this same information about the actual reasons and motives for why personnel of NTT and CS as well

as their attorneys prejudicially defied the 1/16/13 subpoena in K1 and 4/12/13 discovery order in K1 to which I just referred.

c. Having her comply with findings in *Vega v. Hempstead Union Free School Dist.*, 801 F.3d 72 (2d Cir. 2015) and *Regional Economic Community v. City of Middletown*, 294 F.3d 35 (2d Cir. 2002) by using the common sense that objective, impartial, and diligent judges are required to possess as well as their judicial experience to draw objectively reasonable inferences from the totality of the facts and circumstances to conclude that personnel of NTT and CS and their attorneys illegally, prejudicially, and intentionally and/or with reckless disregard for my rights to discovery material that is sufficient to establish intent defied the 1/16/13 subpoena and 4/12/13 discovery order that I just discussed.

8. Hindsight overwhelmingly confirms that Lorna also committed fraud against me in K2 through her 11/9/18 order (Dkt. 82) in K2 by refusing to recuse herself from K2 in response to my 11/5/18 letter motion (Dkt. 79) in K2 for her to recuse herself. The following facts prove this:

a. Remarks that Gabriel made to me on 10/31/19 in K10 during a conference in K10 and that appear between **a)** line 22 on page 3 and line 3 on page 4 and **b)** lines 12 and 18 on page 4 in the written transcript (Dkt. 279 in K10) of that conference confirm that he told me on 10/31/19 that he was powerless to provide me any relief about illegal and otherwise abusive acts and omissions against me by CSOs and USMS personnel inside of federal courthouses in New York City after page 2 of his 8/6/18 memo endorsement (Dkt. 28) in K10 revealed that he was biased against me as he claimed then that he felt that CSOs and USMS personnel would behave appropriately towards me inside of federal courthouses in New York City. Those remarks by him on 8/6/18 and 10/31/19 about CSOs and USMS personnel were preceded by the fact that my 7/20/18 filing in K10 (Dkt. 20) was a clear request by me to Lorna to perform her legal duty

partly pursuant to the Code of Conduct for U.S. Judges, *Ingraham v. Wright*, 430 U.S. 651, 97 S. Ct. 1401, 51 L. Ed. 2d 711 (1977) (this confirms that I was entitled to "be free from" and "obtain judicial relief for" "unjustified intrusions on personal security"), and *Sheppard v. Maxwell*, 384 U.S. 333, 86 S. Ct. 1507, 16 L. Ed. 2d 600 (1966) (holding that all judges are required to exercise proper control of court and this includes controlling the behavior of all courthouse personnel inside of courthouses to prevent illegal and abusive behavior) to promptly and decisively intervene on my behalf against CSOs and USMS personnel partly with respect to 18 U.S.C. §401, 18 U.S.C. §1509, and 18 U.S.C. §1512, and 18 U.S.C. §1513(e) in response to illegal and otherwise abusive ongoing acts and omissions by them against me inside of federal courthouses in New York City. Such behavior by them consisted of the USMS' crimes against me while I conducted myself in a lawful manner in contrast to CSOs and USMS personnel. Lorna's remarks in her 11/9/18 order in K2 as she fraudulently claimed that she hadn't acted negligently in response to my 7/20/18 filing in K10 are directly contradicted by Gabriel's remarks to me on 10/31/19 about that same matter, the fact that I was criminally assaulted by CSO Ralph Morales on 8/8/18 inside of DPM just 1 day after he was recorded on video in DPM on its first floor while illegally **a)** stalking and threatening me, **b)** shouting at me, and **c)** sticking a finger in my face in the immediate presence of other CSOs who illegally didn't comply with my demands to them to get him away from me. Back then, those other CSOs were on-duty as such while Mr. Morales was then off-duty as a CSO. The fact that Mr. Morales lied by claiming that I tried to assault him on 8/8/18 inside of DPM to cover-up the fact that he instead criminally assaulted me in DPM on 8/8/18 caused me to experience the malicious prosecution that corresponds to K11 in which I legally whipped Mr. Morales, other CSOs, the USMS, and the U.S. Attorney's Office for the Southern District of New York by virtue of its dismissal right

before I would have otherwise testified truthfully and in detail partly against Lorna. Despite the fact that I prevailed in K11, neither Lorna nor any other federal judge has granted me any relief about the USMS' crimes. This explains why I have continued to be pretextually and despicably persecuted by USMS personnel and CSOs inside of federal courthouses even after K11's dismissal. The fact that U.S. District Judge Raymond Dearie's pretextual, baseless, and unduly prejudicial dismissal of K12 confirms that he biasedly and illegally refused to grant me any relief about the USMS' crimes retrospectively confirms that Lorna needed to promptly do so in K10 in my response to my 7/20/18 filing in K10. K12 was mostly my countersuit about the fact that I prevailed in K11.

9. Barrington was among the Second Circuit's judges who issued its 5/26/22 order in K3 that upheld Lorna's 5/17/16 dismissal of K2. He also lied to my face on 5/22/18 during the oral arguments hearing that was held then in K3. That hearing was recorded on audio (*see* TOA # 122) by the Second Circuit. Barrington is heard in that recording at the elapsed time of 5 minutes and 50 seconds as he lied to me by claiming that he and the rest of the Second Circuit's panel that presided over that hearing had carefully read all of my papers in relation to K2 and K3. Contrary to his claim then, both during that hearing and in the Second Circuit's 7/12/18 decision in K3, that panel prejudicially and biasedly instead ignored **a)** my critically significant 11/12/13 filing in K1 that I discussed earlier in this petition, **b)** the fact that Lorna lied about SOX' kick-out provision in her 5/17/16 decision in K1, and **c)** the fact that Francis committed perjury in his 9/23/15 sworn affidavit in K2 that I discussed earlier. At the elapsed time of 10 minutes and 2 seconds in the audio recording of the 5/22/18 oral arguments hearing in K3, current Second Circuit Chief Judge Debra Ann Livingston is heard as she then stated that the principle issue that that panel then had was to determine whether the Second Circuit then had jurisdiction over the

matter that K3 then concerned or whether that matter was for a state-court to determine. She made such remarks then before **a)** *Helix Energy Solutions Group, Inc. v. Hewitt*, No. 21-984 (U.S. Feb. 22, 2023) and **b)** *Morgan v. Sundance, Inc.*, 142 S. Ct. 1708, 596 U.S., 212 L. Ed. 2d 753 (2022) were issued and retrospectively established that the Second Circuit erred by refusing in K3 to reverse Lorna's 5/17/16 decision in K2 and remand that to a different judge who wouldn't prejudicially and biasedly lie about SOX' kick-out provision, ignore Francis' perjury in his 9/2315 sworn affidavit in K2, and ignore my 11/12/13 in K1 that was filed in K2 on 9/23/15.

10. This Court's decision in *Bowsher v. Merck & Co.*, 460 U.S. 824, 103 S. Ct. 1587, 75 L. Ed. 2d 580 (1983) describes contractor records as follows:

> "books, documents, papers, and records of the contractor or any of his subcontractors engaged in the performance of and involving transactions related to such contracts or subcontracts"

11. 48 CFR §4.703(a) describes contractor records as follows:

> "contractors shall make available records, which includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form, and other supporting evidence to satisfy contract negotiation, administration, and audit requirements"

12. An online dictionary that was published by a web site named Law Insider that focuses on legal matters pertaining to contracts describes "contractor records" (*see* TOA # 110) as follows:

> **"Contractor Records** shall include all documents, records, communications, notes and other materials maintained by Contractor that relate to any Work performed by Subcontractors, and Contractor shall maintain all records related to the Work performed by Subcontractors required to ensure proper performance of that Work."

13. After Chaim deceived me on 4/12/13 by claiming that he would try to obtain the discovery material to which I was entitled as a result of Lynn's 4/12/13 discovery order in K1 that consisted of material that was in CS' possession as well as other discovery material that was in NTT's possession, I sent Chaim an e-mail on 4/15/13 at 7:23 pm that was a second request for

the production of documents in K1 to have him comply with Lynn's 4/12/13 order partly by causing me to be provided detailed copies of NTT's contracts with CS by 5/31/13. He and NTT prejudicially and substantially violated that order partly by having never provided me those contracts. The following text appears on the last page in that request for documents for K1 and identifies the additional discovery material that I then sought from NTT and was legally entitled to by Lynn's 4/12/13 order:

a. "All written and electronic communications that this Defendant has had within its organization and externally about the Plaintiff. These communications include, but are not limited to, e-mail messages, text messages, voicemail messages, faxes, written documents, pictures, other types of voice recordings, and other types of instant messages."

b. "Detailed copies of the contracts that this Defendant has with Credit Suisse."

14. In her 11/27/17 order in *Winfield v. City of New York*, No. 15-cv-5236 (LTS)(KHP) (S.D.N.Y. Nov. 27, 2017), U.S. Magistrate Judge Katherine Parker stated the following partly about illegal gamesmanship through noncompliance with discovery matters in litigation and this leads to what I will discuss next:

a. "Litigation is not a game. It is the time-honored method of seeking the truth, finding the truth, and doing justice."

b. "[p]arties cannot be permitted to jeopardize the integrity of the discovery process by engaging in halfhearted and ineffective efforts to identify and produce relevant documents".

15. Lisa G. committed fraud on the court in K5 and obstruction of justice against me on 3/1/22 in her capacity as an attorney for NTT. She did so partly on page 2 of the memorandum of law that she filed in K5 on 3/1/22[9] as she fraudulently claimed that **a)** NTT had provided me with the discovery material that NTT was required by Lynn's 4/12/13 order in K1 to provide to me by 5/31/13 and **b)** that order required NTT to provide me "certain discovery documents" instead of

[9] That memorandum of law appears on page 133 in the PDF file that corresponds to my 12/27/22 filing in K2.

"all contractor records" by 5/31/13. *Lawrence v. City of New York*, No. 15-cv-8947 (S.D.N.Y. July 27, 2018) states, "This Opinion & Order showcases the importance of verifying a client's representations." The fraud on the court and obstruction against me by Lisa G. that I just discussed was a continuing violation by her that related back to Chaim's 4/12/13 deceit against me about discovery matters in K1 that I discussed earlier. As a result, I'm entitled to sanctions for Lisa G.'s lies. Also, the continuing violation doctrine applies to claims that I seek to assert against NTT and CS in K2 to warrant equitable tolling of those claims due to such fraudulent withholding of discovery material from me that proximately blocked me from presenting my claims and rebuttal facts and arguments as clearly and effectively as I otherwise would have in K2 and other related litigation of mine against NTT and CS. *Elnenaey v. JP Morgan Chase Bank, NA*, No. 20-cv-5430 (RPK)(LB) (E.D.N.Y. Sept. 28, 2022) points out that equitable tolling for claims is warranted when a legal adversary fraudulently conceals probative information.

REASONS FOR GRANTING THE PETITION

1. The information that I have presented thus far in this petition and otherwise incorporated by reference within it as though fully set forth herein sufficiently confirms the following:

a. Lorna's 6/28/22 memo endorsement in K2 and the Second Circuit's 10/20/22 order that affirmed that 6/28/22 memo endorsement are indefensible. The filings restriction that Lorna imposed on me in K2 resulted from prohibited scapegoating of me and First Amendment retaliation in violation of findings in *Brown v. Glines*, 444 U.S. 348, 100 S. Ct. 594, 62 L. Ed. 2d 540 (1980) and *Elrod v. Burns* about the First Amendment right to petition and expressive association.

b. The arbitration that I was ordered to engage in against **a)** NTT by Jennifer's 4/11/14 order in K1 and **b)** CS by Lorna's 5/17/16 decision in K2 has been had by virtue of the

fact that NTT and CS never commenced an arbitration proceeding against me that would assigned to the AAA, the AAA denied me a fee waiver to commence an arbitration proceeding against NTT and CS, and I established in K1 that it was financially impossible for me to pay the arbitration costs to engage in arbitration against NTT and CS.

c. Equitable tolling for my claims against NTT and CS is warranted for the reasons that I discussed earlier and federal court intervention in K1 is warranted because the exceptions to the Younger Abstention doctrine apply and all stays have been lifted in K1.

d. I'm clearly entitled to retroactive and severe monetary sanctions against CS and NTT in response to violations by them of **a)** the 1/16/13 subpoena against CS in K1 that was I granted and **b)** Lynn's 4/12/13 discovery order that they both violated.

e. I'm clearly entitled to immediate partial summary judgment for FLSA and civil RICO claims against NTT.

2. The fact CS and NTT prejudicially defied the 1/16/13 subpoena that I was granted against CS in K1 and Lynn's 4/12/13 discovery order in K1 unduly and substantially prejudiced my ability and First Amendment right to **a)** prepare and submit a further amended complaint in K1 before 4/11/14; **b)** do the same in K2, K5, and to OSHA for K7 and K6 for SOX claims that I asserted against CS and NTT because I could and would have otherwise more clearly and effectively presented my claims and rebuttal arguments in such litigation if CS and CS had instead fully complied with the 1/16/13 subpoena and 4/12/13 discovery order in K1.

3. On a related note, NYSSC Judge Barry Ostrager issued a 3-page decision on 4/26/22 in *People v. Trump*, et. al., No. 451685/2020 (Sup. Ct. NY Cty.) that is available at https://iapps.courts.state.ny.us/nyscef/ViewDocument?docIndex=AGOE2B/J8aKGCPMyw0g9Nw== in which he imposed a daily sanction in the amount of $10,000 against Donald Trump as a

sanction for noncompliance with a subpoena and court order about discovery matters. That 4/26/22 decision was affirmed on appeal. I'm retroactively and prospectively entitled for similar reasons to that same daily sanction against NTT and CS.

4. The fact that NTT retaliated against me by subjecting me to employment blacklisting in response to complaints that I reported to NTT and CS personnel about overtime pay violations and worker misclassification that both implicated SOX violations is a major reason why this Court should directly or otherwise cause me to be granted both backpay and front-pay to my normal retirement age after *Padilla v. Metro-North Commuter RR*, 92 F.3d 117 (2d Cir. 1996) awarded such front-pay to the plaintiff. Reinstatement in the job that I had with CS in 2012 is also warranted. That is a remedy that the FLSA and SOX provide partly as make-whole relief. The SOX violations to which I just referred were partly in relation to a scheme by NTT to engage in unfair competition against its rivals for business with CS by subjecting me and perhaps others to wage-theft while letting CS obtain free labor as a result. That occurred as both CS and NTT made insincere claims to stakeholders that included shareholders about their commitment to complying with various laws that would otherwise have caused NTT and CS to have not committed illegal acts against me in 2012 and thereafter partly through employment blacklisting.

5. Concerning the SOX claims that I timely reported to WHD on 10/10/12 against NTT and CS prior to properly reporting them to OSHA that led to K7 and K6, all of the following apply:

a. The ARB remanded the SOX Section 806 matter that *Mara v. Sempra Energy Trading, LLC*, ARB No. 10-051, ALJ No. 2009-SOX-18 (ARB June 28, 2011) concerned as it confirmed that a complainant can engage in protected conduct under Section 806 without alleging the specific elements of fraud that include materiality, scienter, reliance, economic loss, and loss causation.

b. *Lockheed Martin Corp. v. Administrative Review Bd.*, 717 F.3d 1121 (10th Cir. 2013) affirmed that when complainants report violations of SOX to OSHA, reports about "violations of 18 U.S.C. §§ 1341, 1343, 1344, or 1348 need not also establish such violations relate to fraud against shareholders to be protected from retaliation under the Act."

c. According to information on page 6 in a report that OSHA published that is dated 9/27/18, entitled "Investigator's Desk Aid to the Sarbanes-Oxley Act (SOX) Whistleblower Protection Provision 18 U.S.C. 1514A" (*see* TOA # 118), and about SOX's Section 806, those who report a complaint about SOX violations don't need to point to a particular legal provision that he or she believes is being violated and there are no "magic words" that the complainant has to use to report his or her concerns.

d. On 8/8/16, I recorded a video recording (*see* TOA # 123) of my playback of voicemail messages that David Eisen of the USDOL left for me on 5/27/16 and 5/31/16 about SOX' kick-out provision that corresponds to 29 CFR §1980.114(a) while he was then a clerk USDOL Administrative Law Judge Adele Odegard and after she issued the decision in K7. In short, he confirmed in those voicemail messages that I could then exercise my rights pursuant to SOX' kick-out provision to kick-out my appeal to the ARB about K7 to a U.S. district court on account of the fact that the USDOL's Secretary hadn't issued a final decision about my SOX complaint to OSHA against NTT and CS within 180 days after I reported those complaints to OSHA. Mr. Eisen's LinkedIn profile (*see* TOA # 109) that contains information about his former employment with the USDOL.

6. A press release that the U.S. Attorney's Office for the District of Massachusetts published on 3/16/16 that is entitled "Owner of Boston Pizzeria Chain Arrested on Forced Labor Charges" (see TOA # 115) points out that forced labor that results from someone "being compelled to

work through the use of coercion is a federal crime. CS perpetrated that crime against me in 2012 while NTT facilitated and exacerbated that through wage-theft and blacklisting of me. Wage-theft and employment blacklisting as well as vicious snowball effects that result from that destroys the lives of those who are victimized by that and those who rely on such victims for support. My life has been ravaged by what I just discussed. That has prevented me at times from paying rent for an apartment, putting food on the table, being able to pay for essential dental care, and traveling to Japan to pay proper respects to my father who passed away in 2021. People that partly include my Mom for whom I'm a legal guardian following severe strokes that she suffered still rely on me for support and I owe it to them to fully, immediately, and continuously deliver on that. She urgently and continuously needs intensive rehabilitation therapies for that as NTT and CS have unconscionably kept me from being able to pay for that for her.

CONCLUSION

The petition for a writ of certiorari should be granted and the 6/28/22 and 5/17/16 decisions and orders in K2 should be reversed and remanded. K2 should be reassigned to a judge who has yet to be assigned to litigation in which I have been a party to allow for the appearance of justice in K2.

Respectfully submitted,

Date: March 17, 2023

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