23A1163

UNITED STATES SUPREME COURT

DR. J. DAVID GOLUB	**DKT. NO. 24-_____**
	(2ND CIR.) USCA
	DKT. NO. 389 AND 1258
PETITIONER	
PLAINTIFF-APPELLANT	
	APPLICATION
VS.	**U.S. SUPREME COURT APPLICATION TO STAY THE MANDATE, ~~EXTEND THE TIME~~ TO FILE A MANDAMUS PETITION U.S. SUPREME COURT Or GRANT *SUA SPONTE* RELIEF**
BERDON LLP	
RESPONDENT	
DEFENDANT-APPELLEE	

DATED, FILED AND SERVED: ON OR BEFORE APRIL 29, 2024
VIA: U.S. FIRST CLASS MAIL AND ELECTRONIC E-MAIL

APPLICATION TO JUSTICE SONIA SOTOMAYOR

For *meritorious good cause*, pursuant to the Collateral Order Doctrine, Application ~~for an Extension of Time~~ to Stay the Mandates, Stay the prospective State Court proceedings and Extend the time to file a Petition for Mandamus to Vacate the Second Circuit Court of Appeals unconstitutional due process violations, sanctions, and filing prohibitions that have no basis in fact and law, are illegal, false, fraudulent and untrue allegations that impermissibly create[d] irreparable permanent reputational non-harmless injuries and damages to DRJDG or Alternatively, Grant Sua Sponte relief

Please take notice, for good and meritorious cause, based upon the attached supporting appendix, the petitioner-appellant-plaintiff files this application to stay the illegal Second Circuit Mandate and ~~extend the time~~ to file a mandamus petition, seeking *Sua Sponte* relief to vacate the illegal unconstitutional 40-year Second Circuit Court of Appeals collateral order based on false and untrue statements of fact and law, and grant leave of court to prosecute the valid and cogent appeals of the USDC-SDNY decisions, against the defendant-appellant, Berdon LLP, for claims of illegal employment termination, age discrimination, breach of employment contract, and tortious misconduct in connection with retaliation for internally notifying the defendant's partners as to tax fraud and accounting audit disclosure misstatements and disclosure fraud, as part of DRJDG's scope of employment and professional obligations and duties as the Tax Director of Nonprofit and Private Foundation clients.

COLLATERAL ORDER DOCTRINE[1] AND THE ALL WRITS ACT[2]

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[1] This Application adjudicates an important separate question from the main case because the unconstitutional order injects substantial prejudicial bias, violates due process, equal protection, first amendment claims and has permanently injured DRJDG's professional reputation. Cohen v. Benef. Loan Co., 337 U.S. 541 (1949).

[2] The All-Writs Act is a United States federal statute, codified at 28 U.S.C. § 1651, which authorizes the United States federal courts to "issue all writs. The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law, in carrying out justice when so required.

The Second Circuit Court of Appeals Order and Mandate filed on January 29, 2024 (Included as the last page in the Appendix[3] to this application) prohibiting DRJDG's appeal, while imposing monetary sanctions for the case of DRJDG vs. Tierney, GE-Kidder, Peabody& CO., et al., is absurd, irrational, illogical, illegal, violates Federal constitutional due process in contradiction to fundamental American Jurisprudence. Accordingly, it is a collateral order that fails to address the valid and meritorious substantive issues of Age Discrimination, Retaliatory discharge for whistleblowing and Breach of contract claims. See In Re United States, 139 S.Ct. 452 (2018)[4]. No other adequate means exists for DRJDG to remove and eradicate the prejudicial bias and stigma that has been created by the Second Circuit Court of Appeals in

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[3] DRJDG has included in the attached USSC Appendix the 29 page Stay of the Mandate that was filed in both of the USSC 2nd Circ. Appellate Docket Numbers 23-1258 and 23-389, in which motions to consolidate the actions were also filed by DRJDG and wholly ignored by the Second Circuit Court Appellate Court which is in abject denial by refusing to acknowledge it has created unprecedented irreparable reputational damage and harm to DRJDG.

[4] "...A stay is warranted if there is (1) "a fair prospect that a majority of the Court will vote to grant mandamus," and (2) "a likelihood that irreparable harm will result from the denial of a stay." Hollingsworth v. Perry, 558 U.S. 183, 190, 130 S.Ct. 705, 175 L.Ed.2d 657 (2010)(per curiam) . Mandamus may issue when "(1) 'no other adequate means [exist] to attain the relief [the party] desires,' (2) the party's 'right to issuance of the writ is clear and indisputable,' and (3) 'the writ is appropriate under the circumstances.' " Ibid. (quoting Cheney v. United States Dist. Court for D.C., 542 U.S. 367, 380–381, 124 S.Ct. 2576, 159 L.Ed.2d 459 (2004)). "The traditional use of the writ in aid of appellate jurisdiction ... has been to confine [the court against which mandamus is sought] to a lawful exercise of its prescribed jurisdiction." Id. at 380, 124 S.Ct. 2576 (quoting Roche v. Evaporated Milk Assn., 319 U.S. 21, 26, 63 S.Ct. 938, 87 L.Ed. 1185 (1943)).

its 40-year-old order which is wholly based on fraud, misrepresentations and untruths. Irreparable harm and damage have already resulted over a 50-year period and there is no expectation that it can be cured or remedied. The Appendix[5] to this application containing the stay of the mandate filed in the Second Circuit Cout of Appeals together with this application call for Sua Sponte relief to vacate the order, vacate filing sanctions and vacate monetary sanctions. DRJDG has clearly and overwhelmingly proved that he is entitled to such relief. See Mallard v. U.S. Dist. Court for S. Dist. of Iowa, 490 U.S. 296, 309, 109 S.Ct. 1814,

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[5] NOTICE TO STAY MANDATE TO FILE A MANDAMUS/PETITION TO THE UNITED STATES SUPREME COURT FOR AN APPLICATION TO VACATE THE PREJUDICIALLY BIASED, IRRATIONAL, UNSUPPORTED AND ERRONEOUS RULINGS IN THE SECOND CIRCUIT COURT OF APPEALS AS MATERIAL AND SUBSTANTIAL REVERSIBLE CONSTITUTIONAL FRAUD...MOTION TO STAY AND PROCEED TO A MANDAMUS PETITION TO PERFECT AND PROCEED TO APPELLATE REVIEW OF THE CLEARLY ERRONEOUS AND PREJUDICIALLY BIASED DECISION IN 1:19 CIV. 10309 (JGK)...MOTION TO STAY AND PROCEEDTO A MANDAMUS PETITION TO VACATE THE UNCONSTITUTIONAL "STIGMA PLUS" FILING SANCTIONS AND PENALTIES ERRONEOUSLY IMPOSED BY THIS COURT OVER A DECADE AGO THAT ARE CLEAR VIOLATIONS OF SUBSTANTIVE AND PROCEDURAL DUE PROCESS, VIOLATE EQUAL PROTECTION, VIOLATE THE FIRST AMENDMENT RIGHT TO JUDICIAL ACCESS TO THE FEDERAL COURTS AND ARE EIGHTH AMENDMENT VIOLATIONS FOR CRUEL AND UNUSUAL PUNISHMENT PERTAINING TO AN UNRELATED, IRRELEVANT AND MERITORIOUSLY VALID CIVIL ACTION FILED, OVER 35 YEARS AGO, IN 89 CIV. 5903 (CSH) AGAINST GE-KP, ET,AL, IN WHICH THE USDC-SDNY ORDERED THE DEFENDANTS TO RETURN TO DRJDG HIS FINANCIAL ASSETS AFTER THEY WERE ILLEGALLY AND FRAUDULENTLY CONVERTED FOR SECURITIES FRAUD, TORTIOUS CONVERSION OF DRJDG'S MARKETABLE PORTFOLIO LIQUID SECURITIES AND FINANCIAL ASSETS, 1099B TAX REPORTING FRAUD, AND TORTIOUS INTERFERENCE WITH A GEORGETOWN UNIVERSITY LAW SCHOOL EDUCATION CONTRACT.

104 L.Ed.2d 318 (1989). The right to issuance of the writ is "clear and indisputable," Allied Chem. Corp. v. Daiflon, Inc., 449 U.S. 33, 35, 101 S.Ct. 188, 66 L.Ed.2d 193 (1980). The Second Circuit Court of Appeals Order is a usurpation of its own power and an explicit example of a Court's unwillingness to admit it that it has made a serious devasting error in penalizing an individual, an American born citizen of the United States, in a case that should shock the conscience of every Court in the United States. As the Second Circuit Court of Appeals informed us in 2007, a Mandamus Petition must be issued in a case involving an appellate court order involving usurpation of power, issues of first impression and an indisputable clear abuse of discretion. See Stein v. KPMG, LLP 486 F.3d 753, 759 (2d Cir. 2007).[6] Moreover, every person

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[6] **"...As discussed above, mandamus is available to confine courts to their designated jurisdiction. Other "touchstones" of mandamus review are "usurpation of power, clear abuse of discretion and the presence of an issue of first impression." Steele v. L.F. Rothschild Co., Inc., 864 F.2d 1, 4 (2d Cir.1988) (internal quotation marks omitted). Three conditions must be satisfied before the writ may issue: first, the party seeking relief must have "no other adequate means to attain the relief he desires," second, the petitioner must show that his right to the writ is "clear and indisputable," and third, the issuing court must be satisfied that the writ is appropriate under the circumstances. Cheney v. United States Dist. Court, 542 U.S. 367, 380-81, 124 S.Ct. 2576, 159 L.Ed.2d 459 (2004) (internal quotation marks and citations omitted). The writ is, of course, to be used sparingly. In addition to avoiding its use as a substitute for an appeal, discussed above, "the principal reasons for our reluctance to condone use of the writ [are] the undesirability of making a district court judge a litigant and the inefficiency of piecemeal appellate litigation." Mallard v. United States Dist. Court, 490 U.S. 296, 309, 109 S.Ct. 1814, 104 L.Ed.2d 318 (1989). In the present matter, all of the standard requirements for granting mandamus relief are met, while the reasons underlying the traditional reluctance to resort to the writ are either not present or favor granting the writ.**

in the United States, whether he is an ordinary citizen, or the President of the United States of America, possesses due process and equal protection of the law under our constitution. See Harrington V. Purdue Pharma L.P. No. 23-124, ___ S.Ct. ___(2023) and compare with Trump v. Anderson No. 23-719, at *4 __S.Ct. ___ (U.S. Mar. 4, 2024):

"...Section 1 of the Amendment, for instance, bars the States from "depriv[ing] any person of life, liberty, or property, without due process of law" or "deny[ing] to any person . . . the equal protection of the laws."... "...Under the Amendment, States cannot abridge privileges or immunities, deprive persons of life, liberty, or property without due process, deny equal protection, or deny male inhabitants the right to vote (without thereby suffering reduced representation in the House). See Amdt. 14, §§1, 2..."

1) **The placement of DRJDG on the Second Circuit sanctions restrictive CM/ECF filing list is a clear and unequivocal *Stigma Plus* Constitutional violation. The placement on this list by the Second Circuit Court of Appeals *based solely* on the outrageous illegal misconduct committed by Tierney, GE-Kidder, Peabody & Co., Inc., et,al, in 89 Civ. 5903(CSH) (hereinafter GE-KP) has wholly destroyed DRJDG's professional reputation, a protected liberty and property interest. See Valmonte v. Bane 18 F.3d 992, 1000 (2d Cir. 1994). The *Stigma Plus* constitutional violation is empirically proven by the fact that the defendant, Berdon LLP and its counsel, did not dispute or defend the age discrimination claims, but solely relied on the placement of DRJDG on the sanctions list (impermissibly published in the ECF System for sanctions because the illegal acts of fraud in the GE-KP case is outrageous and should *shock the conscience of every Court in the United States*). This is the clear and uncontestable violation of DRJDG's protected due process, first amendment right to redress governmental wrongs and the invocation of liberty interests to vindicate legal rights in federal courts before objective and impartial tribunals, while at the same time secure equivalent new**

employment positions after the Berdon LLP employment termination for age discrimination pursuant to its accounting and tax fraud. See Appendix Doc #1 and the Addendum to this Application. The following factors support *Stigma Plus* liberty and property interests (1) the public disclosure of accumulated and synthesized personal information that would not otherwise be easily available; (2) the *actual* and potential harm to DRJDG's personal and professional life; (3) the foreseeable harm to DRJDG's reputation; and (4) the statutory branding of DRJDG as a public danger or a serial litigation violator, a fact that has been proven to be untrue over a 40-50 YEAR time period.

ADDENDUM
STIGMA PLUS DESTRUCTION OF DRJDG'S PROFESSIONAL REPUTATION AND THE DEPRIVATION OF LIBERTY AND PROPERTY INTERESTS IN EMPLOYMENT

The sanctions imposed by the Second Circuit Court of Appeals that solely rely on the outrageous illegal misconduct committed by GE-KP, having tortiously converted DRJDG's financial assets, refusing to liquidate the account when demanded by DRJDG in 1987 to pay GULC J.D. Law School tuition rises to valid incontrovertible *stigma plus* deprivation of liberty and property interests claims [7]:

"...No American citizen investor would contemplate that a broad arbitration clause that failed to address who was responsible to pay the costs and fees of arbitration would also encompass and mandate that the filing by GE-KP of fraudulent 1099B information tax returns over a six-year span, while retaining and tortiously converting the dividends and interest income that were earned on those assets would also be a matter contemplated in an arbitration clause, ie., theft, conversion of assets,

[7] Valmonte v. Bane, 18 F.3d 992, 1000 (2d Cir. 1994)

refusal to liquidate an account with *NET POSITIVE EQUITY* while simultaneously filing fraudulent 1099B IRS information tax returns to the IRS, reporting dividend and interest income with the customer's social security number, while taking and accumulating the interest and dividend cash receipts to pay GE-KP broker interest on *alleged fictitious* margin debt associated with the portfolio, *THAT THE DEFENDANTS REFUSED TO LIQUIDATE...".*

Do these fraudulent acts give rise to sanctions against DRJDG? What facts and events would shock the conscience of the Second Circuit Court of Appeals? If GE-KP fired a machine gun and murdered DRJDG, in daylight on 10 Hanover Square or Wall Street in New York City, would that act move this court[8]? See Mullen v. City of Fowler 582 Fed. Appx. 58 No. 13-3379-cv, at *3 (2d Cir. 2014). What is the definition of egregious, outrageous deprivation of property and liberty interests that *shocks the contemporary* conscience of every Judge sitting on every panel on the Second Circuit Court of Appeals or for that matter any federal court in every jurisdiction in the United States?

DRJDG's professional reputation (which has been permanently damaged) coupled with the deprivation of the tangible interest of

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[8] It is axiomatic that "[t]he first inquiry in every due process challenge is whether the plaintiff has been deprived of a protected interest in 'property' or 'liberty.'" Am. Mfrs. Mut. Ins. Co. v. Sullivan, 526 U.S. 40, 59 (1999) (citing U.S. CONST. amendment XIV; Mathews v. Eldridge, 424 U.S. 319, 332 (1976)). To establish a substantive due process claim, plaintiffs must further demonstrate that the *deprivation "is so egregious, so outrageous, that it may fairly be said to shock the* contemporary conscience." Velez v. Levy, 401 F.3d 75, 93 (2d Cir. 2005) (quoting County of Sacramento v. Lewis, 523 U.S. 833, 847 n.8 (1998)).

unfettered constitutional first amendment rights of access to the Federal Courts to adjudicate federal employment age discrimination claims pursuant to controlling U.S. Supreme Court and Second Circuit judicial precedent and controlling stare decisis is subsumed in both a liberty interest and a property interest sufficient to invoke the procedural protections of Constitutional Due Process. To prevail on this "*stigma-plus*" procedural due process claim— DRJDG has demonstrated that the (1) the Second Circuit Court of Appeals statements and references to the GE-KP federal civil action, grounded in tortious conversion as the reason to invoke restrictive filing sanctions against DRJDG, constantly and continuously relied upon by the defendant, Berdon LLP and Drogin, its legal counsel, in the USDC-SDNY as a defense to clear and unequivocal employment age discrimination are overwhelmingly derogatory to have clearly and convincingly injured his professional and personal reputation[9]. DRJDG has proved that reliance on the GE-KP Federal civil action as a basis for sanctions is fraudulent and false, and (2) coupled with the material state-imposed burden or state-imposed alteration of the plaintiff's status or rights, with filing sanctions, erroneous monetary penalties followed by refusal to permit CM/ECF

[9] **See USSC April 29, 2024, Appendix DOC #1 Footnote #14 Pages 23-25: Statement of Facts- *Golub VS. GE-Kidder. Peabody & CO., INC. et, al.*, 89 CIV. 5903 (CSH)**

filing rights constitute "*Stigma-Plus*" violations. See Vega v. Lantz, 596 F.3d 77, 81 (2d Cir. 2010): "the 'plus' imposed on DRJDG is the specific wrongful Court imposed adverse action clearly restricting the plaintiff's liberty and property interest in unfettered access to adjudicate his loss of employment and the termination or alteration of legal rights and status to vindicate substantive legal rights in the Courts". See Velez v. Levy, 401 F.3d 75, 87-88 (2d Cir. 2005). "We now hold that perfect parity in the origin of both the "stigma" and the "plus" is not required to state the infringement of a "stigma-plus" liberty interest. And the absence of a stringent "source parity" requirement is hardly surprising, given our rules on temporal proximity. When government actors defame a person or persons and — either previously or subsequently — deprive him or them of some tangible legal right or status, see Abramson v. Pataki, 278 F.3d 93, 101 (2d Cir. 2002), a liberty interest may be implicated, even though the "stigma" and "plus" were not imposed at precisely the same time. Lastly, the deprivation and stigma-plus violations need not be subsumed in government employment. See Neu v. Corcoran, 869 F.2d 662,667 (2ndCir. 1989), See also Page 12 of Doc #1 in the USSC Appendix, dated April 29, 2024.

FEDERAL SUBJECT MATTER JURISDICTION AND PRIMA FACIE CASE OF AGE DISCRIMINATION

DEFENDANT'S SOLE DEFENSE TO AGE DISCRIMINATION CLAIMS, RETALIATORY DISCHARGE FOR WHISTLEBLOWING AND BREACH OF CONTRACT IS AND WAS A CONTINUATION OF THE FRIVOLOUS IRRELEVANT DEFENSE AND STRATEGY TO INJECT STIGMA, STEREOTYPING AND PREJUDICIAL BIAS INTO THE USDC-SDNY IN VIOLATION OF CONSTITUTIONAL EQUAL PROTECTION FOR THE DELETERIOUS, INJURIOUS PERNICIOUS AND NOXIOUS PURPOSE TO DEFLECT AND DISTRACT THE COURT'S FOCUS AND ATTENTION AWAY FROM THE PRIMA FACIE CASE OF AGE DISCRIMINATION AMONG OTHER SERIOUS ILLEGAL ACTS OF MISCONDUCT COMMITTED BY DEFENDANT BERDON LLP AND FAILS TO PRESENT ANY LEGAL ARGUMENT OR FACTUAL STATEMENTS, OR EVIDENCE, TO REFUTE OR OPPOSE THESE CLAIMS, AS A MATTER OF LAW.

1) **THE USDC-SDNY DECISION IS OUTSIDE THE BOUNDS AND CONTOURS OF CONTROLLING UNITED STATES SUPREME COURT PRECEDENT[10], DISCARDS AND REJECTS WELL-ESTABLISHED CONTROLLING SECOND CIRCUIT JUDICIAL PRECEDENT AND STARE DECISIS UNDER THE AGE DISCRIMINATION IN EMPLOYMENT ACT OF 1967 (29 U.S.C. §623), AND THE LOWER COURT DECISION VIOLATES CONSTITUTIONAL EQUAL PROTECTION, SUBSTANTIVE AND PROCEDURAL DUE PROCESS AND HAS NO BASIS OR JUDICIAL STANDING TO BE THE LAW OF THE CASE.**

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[10] Swierkiewicz v. Sorema N.A., 534 U.S. 506 (2002), explaining the required minimal elements to establish a prima Facie case. See McDonnell Douglas Corp. v. Green four-part test. The USDC-SDNY failed to follow and apply the four-part test and defendant Berdon LLP never answered the amended federal civil complaint and never stated or articulated the reason for the dismissal, discharge and breach of the written employment contract, except at the exit termination interview in which the Managing Tax Partner, the Chief operating Officer and the HR Director expressly stated that "you are not a Team Player" (i.e., a bad fit).

Standard of Review Under 12(b)(6)

To survive a motion to dismiss pursuant to Rule 12(b)(6), a complaint "must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.' " Ashcroft v. Iqbal, 556 U.S. 662, 678, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009) (quoting Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007)). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Iqbal, 556 U.S. at 678, 129 S.Ct. 1937 (citing Twombly, 550 U.S. at 556, 127 S.Ct. 1955). "To survive dismissal, the plaintiff must provide the grounds upon which his claim rests through factual allegations sufficient 'to raise a right to relief above the speculative level.'" ATSI Commc'ns, Inc. v. Shaar Fund, Ltd., 493 F.3d 87, 98 (2d Cir. 2007) (quoting Twombly , 550 U.S. at 544, 127 S.Ct. 1955). See Zoulas v. N.Y.C. Dep't of Educ. 400 F. Supp. 3d 25, 47 (S.D.N.Y. 2019). Determining whether a complaint states a plausible claim is a "context-specific task that requires the reviewing court to draw on its *judicial experience and common sense*." Iqbal, 556 U.S. at 679, 129 S.Ct. 1937. The court must accept all facts alleged in the

complaint as true and draw all reasonable inferences in the plaintiff's favor. Burch v. Pioneer Credit Recovery, Inc. , 551 F.3d 122, 124 (2d Cir. 2008) (per curiam).

DRJDG had met his primary obligation by providing detailed facts associated with the defendant's decision to terminate his employment while retaining the *much younger*, "similarly situated" if not *identically situated* Employee-Principal, BS, who was responsible for Assurance, Auditing and Accounting for nonprofit clients. DRJDG had filed a "Prima Facie Case of Age Discrimination" against Defendant Berdon LLP. See Vega v. Hempstead Union Free Sch. Dist., 801 F.3d 72, 83 (2d Cir. 2015), in which the Second Circuit Court of Appeals clarified the required pleading standards for a Prima Facie Case of Age discrimination from the minimal pleading standard to the "plausibility standard of pleading."

"...McDonnell Douglas, 411 U.S. 792, 93 S.Ct. 1817, 36 L.Ed.2d 668. Under the test, a plaintiff must first establish a prima facie case of discrimination by showing that: "(1) she is a member of a protected class; (2) she is qualified for her position; (3) she suffered an adverse employment action; and (4) the circumstances give rise to an inference of discrimination." Weinstock v. Columbia Univ., 224 F.3d 33, 42 (2d Cir.2000) (citing McDonnell Douglas, 411 U.S. at 802, 93 S.Ct. 1817). Once a plaintiff has established a prima facie case, a presumption arises that more likely than not the adverse conduct was based on the consideration

of impermissible factors. Texas Dep't of Cmty. Affairs v. Burdine, 450 U.S. 248, 253–54, 101 S.Ct. 1089, 67 L.Ed.2d 207 (1981). The burden then shifts to the employer to "articulate some legitimate, nondiscriminatory reason" for the disparate treatment. McDonnell Douglas, 411 U.S. at 802, 93 S.Ct. 1817. If the employer articulates such a reason for its actions, the burden shifts back to the plaintiff to prove that the employer's reason "was in fact pretext" for discrimination.

The prima facie case established by DRJDG overwhelmingly meets the minimal and any and all requirements for an Age Discrimination Federal Civil Action. The retention of the much younger *identically situated* but clearly similarly situated Employee-Principal (BS) responsible for Non-Profit Accounting and Auditing Berdon clients, who committed violations of internal policies, but more importantly violated federal and State tax law, which DRJDG, as a Professor with over 40 years of professional experience as a Tax Director and as a Quality Control Accounting and Audit Director for several major accounting firms and the *subject matter expert* in all of these matters, sought to correct the errors with the Defendant's Tax partners and the Defendant's Quality Control Assurance Partners. Five days after receiving DRJDG's error reports including the violations of internal policies committed by BS pertaining to the authorization of filing tax returns (which BS had no such authority), defendant Berdon LLP

terminated DRJDG's written employment contract and retained the much younger Principal-Employee. If Age was not a factor, then what were the factors? Mixed motives of Age Discrimination and Accounting and Tax Fraud cover-up. As the Second Circuit Court of Appeals explained in Vega v. Hempstead Union Free Sch. Dist., 801 F.3d 72, 83 (2d Cir. 2015):

"...In 2002, the Supreme Court held in Swierkiewicz v. Sorema N.A. that "an employment discrimination plaintiff need not plead a prima facie case of discrimination" at the *motion to dismiss* stage. 534 U.S. 506, 515, 122 S.Ct. 992, 152 L.Ed.2d 1 (2002). The Court ruled that the "prima facie case" requirement of McDonnell Douglas applied only *at the summary judgment* phase because it "is an evidentiary standard, not a pleading requirement." Id. at 510, 122 S.Ct. 992. As the Court explained, "under a notice pleading system, it is not appropriate to require a plaintiff to plead facts establishing a prima facie case because the McDonnell Douglas framework does not apply in every employment discrimination case." Id. at 511, 122 S.Ct. 992. "Moreover, the *precise requirements* of a prima facie case can vary depending on the context and were 'never intended to be rigid, mechanized, or ritualistic.' " Id. at 512, 122 S.Ct. 992 (quoting Furnco Constr. Corp. v. Waters, 438 U.S. 567, 577, 98 S.Ct. 2943, 57 L.Ed.2d 957 (1978)..." However, DRJDG's pleadings and amended pleading overwhelmingly establish a clear and convincing case of Age Discrimination concurrently with a coverup of tax and accounting fraud perpetrated by the Audit Principal, B.S.

In fact, the "pretext" offered by Drogin, defendant's counsel's sole creative exasperating defense, (an example of legal genius) is Golub V. GE-Kidder, Peabody& Co., Inc., et,al, and the unconstitutional, illogical and irrational Second Circuit sanctions.

Furthermore, the Second Circuit Court of Appeals explained that the pleading standard established before the decisions in Iqbal and Twombly[11] did not change:

"...In EEOC v. Port Authority of New York & New Jersey, we answered the question in a different context. 768 F.3d 247 (2d Cir.2014). We held as follows: ...[U]ncertainty lingered as to whether Twombly and Iqbal overruled Swierkiewicz entirely, or whether Swierkiewicz survives only to the extent that it bars the application of a pleading standard to discrimination claims that is heightened beyond Twombly's and Iqbal's demand for facial plausibility. We reject the first proposition. Twombly's endorsement of Swierkiewicz mandates, at a minimum, that Swierkiewicz 's rejection of a heightened pleading standard in discrimination cases remains valid....

"...[W]e conclude that, while a discrimination complaint need not allege facts establishing each element of a prima facie case of discrimination to survive a motion to dismiss[12], see Swierkiewicz, 534 U.S. at 510, 122 S.Ct. 992 (noting that the prima facie case requirement is an evidentiary standard), it must at a minimum assert nonconclusory factual matter sufficient to " *'nudge [ ] [its] claims' ... 'across the line from conceivable to plausible'* " to proceed, Iqbal, 556 U.S. at 680, 129 S.Ct. 1937 (quoting Twombly, 550 U.S. at 570, 127 S.Ct. 1955)... "

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[11] In Swierkiewicz, the Court relied in part on the long-used minimal pleading standard adopted in *Conley v. Gibson*, 355 U.S. 41, 78 S.Ct. 99, 2 L.Ed.2d 80 (1957). See Swierkiewicz, 534 U.S. at 512–14, 122 S.Ct. 992. In Iqbal and Twombly, however, the Court abandoned Conley's "no set of facts" test and adopted instead a plausibility standard of pleading. Ashcroft v. Iqbal, 556 U.S. 662, 669–70, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009); Twombly, 550 U.S. at 562–63, 127 S.Ct. 1955. As a consequence, a question arose as to the continued viability of Swierkiewicz. See, e.g., Brown v. Daikin Am. Inc., 756 F.3d 219, 228 & n. 10 (2d Cir.2014) (noting suggestion that question was not "entirely settled" and declining to decide whether, after Twombly, Title VII plaintiff was required to plead facts sufficient to establish prima facie case under McDonnell Douglas); Fowler v. UPMC Shadyside, 578 F.3d 203, 211 (3d Cir.2009) (questioning continued vitality of Swierkiewicz).

[12] NOT A RULE 56 MOTION FOR SUMMARY JUDGMENT

In subsequent cases before the United States District Court for the Southern District of New York the judges have tackled the task of clarifying and elucidated on the pleading tensions addressed in Vega: "...In an age discrimination case, to survive a *motion to dismiss*, a plaintiff need only "plausibly allege that he is a member of a protected class, was qualified, suffered an adverse employment action, and has at least minimal support for the proposition that the employer was motivated by discriminatory intent." Zoulas v. New York City Dep't of Educ., 400 F.Supp.3d 25, 51 (S.D.N.Y. 2019) (quotation marks omitted). "[T]o defeat a motion to dismiss . . . an ADEA plaintiff must plausibly allege that he would not have [suffered the adverse employment action] but for his age." Lively v. WAFRA Inv. Advisory Grp., Inc., 6 F.4th 293, 303 (2d Cir. 2021). "Discrimination claims under the NYSHRL are largely subject to the same analysis." Brown v. Daikin Am. Inc., 756 F.3d 219, 226 (2d Cir. 2014). The NYCHRL does not require a plaintiff to identify a "materially adverse employment action[]." Mihalik v. Credit Agricole Chevreux N. Am., Inc., 715 F.3d 102, 114 (2d Cir. 2013). See Delarosa v. N.Y.C. Dep't of Educ. 21-CV-4051 (JPO), at *6 (S.D.N.Y. Jul. 14, 2022.

Judge Woods in Zoulas clarified the application of the elements, standards and tests[13] to overcome the motion to dismiss

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[13] The Court takes this opportunity to comment on one developing distinction regarding the pleading requirements for a discrimination claim under the ADEA—namely, whether a plaintiff in an ADEA case must plead "but-for" causation, or whether she may satisfy the pleading standard by merely providing minimal support for the proposition that the defendant was motivated by discriminatory intent. Courts in this District have applied different standards in a number of recent cases. Compare, e.g., Tsismentzoglou v. Milos Estiatorio Inc. , No. 18-CV-9664 (RA), 2019 WL 2287902, at *3 (S.D.N.Y. May 29, 2019) (requiring plaintiff to plead "but-for" causation to assert discrimination claim under the ADEA); Downey v. Adloox Inc. , 238 F. Supp. 3d 514, 519 (S.D.N.Y. 2017) (same); with Luka , 263 F. Supp. 3d at 484-85 (requiring plaintiff to plead minimal support for the proposition that defendant was motivated by discriminatory intent to assert discrimination claim under the ADEA); Ahmad v. White Plains City Sch. Dist. , No. 18-CV-3416 (KMK), 2019 WL 3202747, at *7 (S.D.N.Y. July 16, 2019) (same).

The different pleading standards applied by these courts may stem from a tension between two decisions by the Second Circuit issued in 2015: Vega v. Hempstead Union Free Sch. Dist. , 801 F.3d 72 (2d Cir. 2015), which seems to be the principal support for those courts that have applied a "but-for" pleading standard, and Littlejohn v. City of New York , 795 F.3d 297 (2d Cir. 2015), which reinforced the distinction between the standard of pleading and the burden of proof with respect to evidentiary matters.

In Vega v. Hempstead Union Free Sch. Dist., the Second Circuit stated that "the Supreme Court has held that a plaintiff alleging age discrimination under the Age Discrimination in Employment Act must allege 'that age was the but-for cause of the employer's adverse action.' " 801 F.3d 72, 86 (2d Cir. 2015) (quoting Gross v. FBL Fin. Servs. Inc., 557 U.S. 167, 177, 129 S.Ct. 2343, 174 L.Ed.2d 119 (2009)). Understandably—given its pedigree—district courts in the Second Circuit have relied on this description of the pleading standard for ADEA cases.

Like other courts, however, this Court does not read Gross to have established a pleading standard. See Tweedy v. City of New York, No. 1:18-CV-1470 (ALC), 2019 WL 1437866, at *4 (S.D.N.Y. Mar. 29, 2019) ("[T]he Supreme Court's holding in Gross addressed a plaintiff's burden of persuasion at trial and did not affect a plaintiff's pleading obligations under Swierkiewicz since establishing a prima facie case is an 'evidentiary standard and not a pleading requirement.' ") (quoting Swierkiewicz v. SoremaN.A.,534 U.S. 506, 510, 122 S.Ct. 992, 152 L.Ed.2d 1 (2002)); Fagan v. U.S. Carpet Installation, Inc., 770 F. Supp. 2d 490, 496 (E.D.N.Y. 2011) (noting that Gross does not impose an obligation on a plaintiff stating an age discrimination claim to plead but-for causation because standards of proof are distinct from pleading requirements). Rather, Gross appears to describe the burden

in an age discrimination case: In determining the adequacy of a claim under Rule 12(b)(6), a court is generally limited to "facts stated on the face of the complaint," "documents appended to the complaint or incorporated in the complaint by reference," and "matters of which judicial notice may be taken." Goel v. Bunge,

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of persuasion in ADEA cases. The language in Gross quoted by the Vega court as having established the pleading standard for ADEA cases reads in full as follows: "It follows, then, that under § 623(a)(1), the plaintiff retains the burden of persuasion to establish that age was the 'but-for' cause of the employer's adverse action." See Gross, 557 U.S. at 177, 129 S.Ct. 2343(emphasis added to identify language quoted in Vega). And the Supreme Court summarized its holding in Gross as follows: "We hold that a plaintiff bringing a disparate-treatment claim pursuant to the ADEA must prove, by a preponderance of the evidence, that age was the 'but-for' cause of the challenged adverse employment action." Id. at 180, 129 S.Ct. 2343. The Court understands from this text that the Supreme Court's decision in Gross set forth an evidentiary standard of proof, rather than a pleading standard.

In Littlejohn, decided the same year as Vega, the Second Circuit reinforced the distinction between an evidentiary standard and a pleading requirement. Littlejohn, 795 F.3d at 308. Guided by the Supreme Court's decision in Swierkiewicz v. Sorema N.A., 534 U.S. 506, 122 S.Ct. 992, 152 L.Ed.2d 1 (2002), the Second Circuit stated that a plaintiff in a Title VII matter need not plead the elements of a prima facie case under the McDonnell Douglas framework, because it was an evidentiary standard. Instead, the Circuit emphasized that such a plaintiff "need only give plausible support to a minimal inference of discriminatory motivation." Id. at 311.

Understanding the "but-for" causation requirement described in Gross as an evidentiary standard, it is somewhat difficult to justify grafting it into the pleading standard for an ADEA claim. At their most basic level, Swierkiewicz and Littlejohn stand for the proposition that a plaintiff's pleading standard does not track the burden of proof, and that enhanced pleading requirements for employment discrimination claims are inconsistent with Rule 8's simplified notice pleading standard. Swierkiewicz, at 515, 122 S.Ct. 992. The Court understands the Second Circuit's statement in Vega regarding the pleading standard applicable to ADEA cases to have been dicta because no ADEA claims were at issue in that decision; in that case, the Second Circuit substantively analyzed only claims arising under Title VII and equal protection claims arising under § 1983. As a result, here the Court follows the "minimal inference" standard described in Littlejohn and does not require the Plaintiff to plead "but-for" causation.

Ltd., 820 F.3d 554, 559 (2d Cir. 2016). In addition to the amended complaint, DRJDG has produced numerous documents in support of the illegal and unethical violations committed by the *significantly much younger* *similarly situated* if not *identically situated* Employee-Principal, BS. In addition, the defendant and its counsel, Drogin, received a "Litigation Hold" on all internal documents and electronic communications to the Defendants' tax partners and to the Principal, B.S., among others, covering the events leading up to and after the termination of DRJDG.

DRJDG has not only nudged the line but moved the entire line and case into the endzone, i.e., it must at a minimum assert nonconclusory factual matter sufficient to "'nudge [ ] [its] claims' ... 'across the line from conceivable to plausible'." Moreover, even under a "But For" causation requirement, the Age discrimination claim overwhelmingly survives. Why, because the much younger "identically situated" or even "similarly situated" employee-Principal, whose job duties were specific to Assurance, Financial Accounting and Auditing matters pertaining to Tax Exempt Organizations, i.e., Not for profit 501(c) (3) Berdon LLP clients was retained and continued to be employed by the defendant irrespective of the internal policy departures, and tax violations

committed on the one client, but for the age of DRJDG, he was terminated 5 days after he directly confronted BS and the Tax and Quality Control Partners, thereafter, with the material disclosure and tax filing errors. Accordingly, the lower court decision must be reversed and overturned. Drogin, Counsel for the defendant, had only *one* articulated defense, repetitiously and continuously submitted, even when warned by the lower court Judges to cease and desist, throughout the entire lower court proceeding. Drogin's sole defense on behalf of the defendant was to refer to the unconstitutional Second Circuit filing sanctions as a basis for a Rule 12(b)(6) dismissal, NOT A RULE 56 SUMMARY JUDGMENT DECISION, because the defendant can never survive such a motion. Drogin's sole defense was to infect these proceedings with stereotyping, stigma and bias to inflame the lower court Judges to proceed with zero objectivity in adjudicating the facts and law of this case.

DIVERSITY JURISDICTION

In the hearing held on October 12, 2022, and the sworn testimony provided in the hearing, the plaintiff, DRJDG, clearly established that

he was not a New York domiciled citizen[14] and, also, was not a New Jersey domiciled citizen[15] after recording a South Carolina sworn notarized Affidavit of common law marriage[16] establishing South Carolina domicile and citizenship[17] years before and significantly well

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[14] The test for domicile is intent. See Kennedy v. Trustees of Testamentary Trust of Last Will, 633 F. Supp. 2d 77 (S.D.N.Y. 2009): "...A party's citizenship for purposes of diversity jurisdiction is a mixed question of fact and law, which is properly resolved by the district court. *Palazzo ex rel. Delmage v. Corio*, 232 F.3d 38, 41-42 (2d Cir. 2000); Katz v. Goodyear Tire Rubber Co., 737 F.2d 238, 243 n. 2 (2d Cir. 1984) ("The question of jurisdiction need not be submitted to a jury."). The determination can be made based on affidavits and other supporting materials. Marine Midland Bank, N.A. v. Miller, 664, F.2d 899, 904 (2d Cir. 1981). *Those documents must be construed in the light most favorable to plaintiff.*

[15] A `totality of the evidence' approach is called for, and no single factor is conclusive, although the residence of a married person's spouse and children (if the couple has not separated) is given considerable weight. Pacho v. Enterprise Rent-A-Car, 510 F. Supp. 2d 331, 333 (S.D.N.Y. 2007).

[16] See USDC-SDNY Docket # 88, 5/20/2022, Sworn Signed Notarized South Carolina affidavit of common law marriage, August 8, 2014, and affidavit of domicile containing the December 11, 2015, deed establishing the purchase of the residential home at 831 Buckler Street, Charleston-Summerville South Carolina 29486.

[17] See Greer V. Carlson, 1:20-cv-05484 (LTS) (SDA), at *8 (S.D.N.Y. Oct. 14, 2020: "A party's citizenship under 28 U.S.C. § 1332 depends on his domicile at the time the legal action is commenced." Chevalier v. USA Exp. Moving & Storage Inc., No03-CV-09059 (PKL), 2004 WL 1207874, at *2 (S.D.N.Y. June 2, 2004) (citing Linardos v. Fortuna, 157 F.3d 945, 947-48 (2d Cir. 1998)); see also Van Buskirk v. United Grp. of Companies, Inc., 935 F.3d 49, 53 (2d Cir. 2019) ("For purposes of diversity jurisdiction, the relevant domicile is the parties' domicile at the time the complaint was filed." (citation omitted)). "Domicile is 'the place where a person has his true fixed home and principal establishment, and to which, whenever he is absent, he has the intention of returning.'" Palazzo ex rel. Delmage, 232 F.3d 38, 42 (2d Cir. 2000) (quoting Linardos, 157 F.3d at 948 (2d Cir. 1998)). "Domicile is established initially at birth and is presumed to continue in the same place, absent sufficient evidence of a change." Id. To effect a change of domicile, "two things are indispensable: First, residence in a new domicil[e]; and second, the intention to remain there." Id. (quoting Sun Printing & Publ'g Ass'n v. Edwards, 194 U.S. 377, 383 (1904)). To determine domicile, "[a] court must consider the entire course of a person's conduct in order to determine the relevant intent." Korb v. Merrill Lynch,

before employment as the Tax Director of Non-Profit and Private Foundations with the defendant, Berdon LLP, even began. Thereafter, the change in domicile to South Carolina was clearly declared pursuant to a filed sworn USDC-EDNY affidavit, in proceedings involving the unconstitutional deprivation of and illegal taking of his NYS Staten Island personal residence and domicile for over 25 years, in violation of fifth amendment due process under the Federal Constitution, by a corrupt Surrogate court Judge that has been subsequently replaced. Diversity Jurisdiction was satisfied in the USDC-EDNY case for treble damages for attorney misconduct and illegal destruction of DRJDG's personal property because all of the defendants maintained their domicile in NYS and DRJDG was clearly not domiciled in New York State because he no longer had a NYS residence. Moreover, empirically, DRJDG has and had demonstrated overwhelming evidenced that he established a new out-of state, South Carolina residence and had and has no intention of re-establishing domicile in NYS or establishing domicile in New Jersey, much to the chagrin of Mr. Drogin, who proffered the argument to the lower court Judges that maintaining a NYS Post Office Box constituted domicile in New York State.

Pierce, Fenner & Smith, Inc., No. 03-CV-10333 (CSH), 2006 WL 300477, at *1 (S.D.N.Y. Feb. 7, 2006).

SUMMARY AND CONCLUSION

1)The USDC-SDNY Judges assigned to this case were improperly and impermissibly influenced by the stereotyping and stigma[18] entered into the record by Drogin, counsel for defendant Berdon LLP, as the sole arguments presented to the lower court, who made no effort to present legitimate grounds, rationale, reasons, justification or basis for the abrupt employment termination of DRJDG. Throughout the lower court filings, Drogin repetitiously and continuously cited and referred to "litigation history" as some new Federal Rule of Civil Procedure "affirmative defense"(Is there a newly codified F.R.C.P. 12(b)(8) rule?) to Accounting/Lawyer Malpractice, client tax fraud, audit fraud, and financial statement disclosure fraud, tortious breach of contract and illegal age discrimination in violation of federal civil rights statutes.[19]

2)The Second Circuit Court of Appeals failed to adjudicate and provide due process in the appellate review of this case, relying on an incompetent irrational, illogical and unconstitutional order that was issued without any basis in law and fact and failed and fails to comport

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[18] https://definitions.uslegal.com/s/stigma/:
The term "stigma" is a situation where there has been "an official branding of a person" and due process is implied because "a person's good name, honor or integrity is at stake." Hindera v. Thai, 1995 U.S. Dist. LEXIS 22148 (S.D. Fla. July 28, 1995). https://www.lawinsider.com/dictionary/stigma:
Stigma means disqualification from social acceptance, derogation, marginalization and ostracism.

[19] **Under Federal Rules of Evidence 401, 402 and 403, the prior litigation in unrelated cases pertaining to unrelated subject matter has no relevance to the tortious misconduct committed by the defendants in these proceedings. Evidence is relevant if:**
(a) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action.
(b) the fact is of consequence in determining the action.

Relevant evidence is admissible unless any of the following provides otherwise: the United States Constitution; a federal statute; these rules; or other rules prescribed by the Supreme Court. Irrelevant evidence is not admissible. The prior litigation history has no relevance to these proceedings.

with controlling law.[20] The USSC must and should vacate the unconstitutional Second Circuit Mandate, *sua sponte* reverse, eradicate and expunge all monetary sanctions, filing prohibitions and remove DRJDG's name from the restricted ECF filing list.

3)The USDC-SDNY February 14, 2023, decisions clearly violate procedural and substantive due process, constitutional equal protection[21] and are outside of the acceptable parameters, perimeters and contours of controlling United States Supreme Court judicial precedent, stare decisis, and, by definition, Second Circuit controlling judicial precedent and stare decisis.

4)Defendant has failed to proffer any justification to terminate DRJDG while retaining the *identically situated* *or at best, similarly situated* much younger Employee-Principal wrongdoer, BS. Accordingly, DRJDG requests an award of monetary compensatory damages including punitive damages, especially given the intentional delays committed by the defendant and its counsel by presenting frivolous irrelevant defenses to stigmatize and stereotype DRJDG with falsehoods and absolute stupidity and nonsense about litigation history. (See USSC 4.29.2024 Appendix accompanying this motion).

5) Almost all of the New York Federal Court Judges are graduates of IVY League and other prestigious Law Schools. They have all

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[20] The USDC-SDNY February 14, 2023 decision is a clear abuse of discretion and violates substantive and procedural due process. A lower court decision that violates controlling U.S. Supreme Court judicial precedent and Appellate Court jurisprudence in applying those controlling judicial laws, holdings and precedents abuses it discretion when (1) its decision rests on an error of law or a clearly erroneous factual finding; or (2) cannot be found within the range of permissible decisions. Zervos v. Verizon N.Y., Inc., 252 F.3d 163, 169(2d Cir. 2001). See Johnson v. University of Rochester, 642 F.3d 121, 125 (2d Cir. 2011)

[21] Students for Fair Admissions v. Harvard, 600 U.S. 181 (2023), "For '[t]he guarantee of equal protection cannot mean one thing when applied to one individual and something else when applied to another person of another color, race, religion, gender, ethnicity or national origin, or age." "...Equality may require acknowledgment of inequality in University admission standards, but it has no place in the application of laws by independent unbiased judges in Federal and State Courts of law applying United States jurisprudence..."

subscribed to the Constitutional oath.[22] The website for the Federal Judges sitting on the USDC-SDNY bench declare allegiance to justice, not some concocted Order to suppress due process and equal protection.[23] The Second Circuit Mandate fails, as a matter of fact and law, and does not speak to "*light and truth*" as depicted in the Ivy League Yale University, Seal, Logo and Motto, in Latin and Hebrew, the fusion of Judaism, Christianity and Catholicism.[24]

(NOTARIZED SIGNATURE ATTACHED)
RESPECTFULLY SIGNED,

/S/ DR. J. David Golub
DR. JACK (JERRY) DAVID GOLUB
ATTORNEY - PRO SE-
PLAINTIFF-APPELLANT-PETITIONER
PROFESSOR OF LAW, TAXATION,
ACCOUNTING, FINANCE,
LAW & ECONOMICS AND
LAW & PUBLIC POLICY
(973) 454-0677
DRJDG1@COMCAST.NET

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[22] The Second Circuit Court of Appeals Judges all signed on to the Constitutional oath: " "I, _____, do solemnly swear (or affirm) that I will administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent upon me as _____ under the Constitution and laws of the United States; and ...

[23] "...The Judges of this court strive everyday to continue the tradition of treating each case, its litigants and advocates, with respect and dignity and to see that justice is done in each and every case in accordance with the rule of law..."

[24] https://en.wikipedia.org/wiki/Urim_and_Thummim LUX ET VERITAS; URIM and THUMMIM תומים and אורים See also, "How Hebrew Came to Yale" https://web.library.yale.edu/cataloging/hebraica/hebrew-at-yale

SWORN UNDER OATH AND UNDER PENALTIES OF PERJURY

RESPECTFULLY SIGNED,

FLDL- G410424520310

S/ DR. J. David Golub

DR. J. DAVID GOLUB,
ATTORNEY - PRO SE- PETITIONER-PLAINTIFF-APPELLANT
OBJECTANT-BENEFICIARY
PROFESSOR OF BUSINESS LAW, TAXATION,
LAW & ACCOUNTING AND FINANCE
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(973) 454-0677
DRJDG1@COMCAST.NET

On the 26th day of April, 2024, DR. J. David Golub, personally came to me, known to be the person described in and who executed the foregoing instrument. Such person duly swore to such instrument before me and duly acknowledged that he executed this instrument before me.

Notary Public

JOSE CUADRADO
MY COMMISSION # HH 101231
EXPIRES: March 7, 2025
Bonded Thru Notary Public Underwriters

Commission expires:

3-7-2025

UNITED STATES SUPREME COURT

DR. J. DAVID GOLUB	**DKT. NO. 24-_____**
	(2ND CIR.) USCA
	DKT. NO. 389 AND 1258
PETITIONER	
PLAINTIFF-APPELLANT	**APPENDIX**
	U.S. SUPREME COURT
VS.	**APPLICATION TO STAY**
	THE MANDATE, ~~EXTEND THE TIME~~ TO FILE A
BERDON LLP	**MANDAMUS PETITION**
RESPONDENT	**U.S. SUPREME COURT OR**
DEFENDANT-APPELLEE	**GRANT SUA SPONTE**
	RELIEF

DATED, FILED AND SERVED: ON OR BEFORE APRIL 29, 2024
VIA: U.S. FIRST CLASS MAIL AND ELECTRONIC E-MAIL

APPENDIX

For *meritorious good cause*, pursuant to the Collateral Order Doctrine, Application ~~for an Extension of Time~~ to Stay the Mandates, Stay the prospective State Court proceedings and ~~extend the time~~ to file a Petition for Mandamus to Vacate the Second Circuit Court of Appeals unconstitutional due process violations, sanctions, and filing prohibitions that have no basis in fact and law, are illegal, false, fraudulent and untrue allegations that impermissibly create[d] irreparable permanent reputational non-harmless injuries and damages to DRJDG, or Alternatively, *Grant Sua Sponte Relief*.

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Thurgood Marshall U.S. Courthouse 40 Foley Square, New York, NY 10007 Telephone: 212-857-8500

MOTION INFORMATION STATEMENT

Docket Number(s): 23-1258 (AND 23-389)

Caption [use short title]

Motion for: TO STAY THE MANDATE AS CONSTITUTIONAL FRAUD AND FILE A MERITORIOUS MANDAMUS APPLICATION/PETITION TO THE UNITED STATES SUPREME COURT TO VACATE UNCONSTITUTIONAL SECOND CIRCUIT FILING RESTRICTIONS AND BASELESS MONETARY PENALTIES

APPLICATION TO JUSTICE SOTOMAYOR
DOC #1 23-1258

Set forth below precise, complete statement of relief sought:

TO STAY THE MANDATE AS CONSTITUTIONAL FRAUD, TO FILE A UNITED STATES SUPREME COURT MANDAMUS PETITION/APPLICATION TO REVERSE AND ERADICATE STIGMA-PLUS SUBSTANTIVE AND PROCEDURAL DUE PROCESS VIOLATIONS, PERTAINING TO GE-KP,ET,AL., THE DEFENDANTS-TORTIOUS CONVERTERS OF FINANCIAL ASSETS, IN THE UNRELATED AND MERITORIOUS USDC-SDNY 89 CIV.5903(CSH), AND VACATE THE CM/ECF, FILING RESTRICTIONS AND MONETARY SANCTIONS AS PROCEDURAL AND SUBSTANTIVE STIGMA PLUS VIOLATIONS, ILLEGALLY PREVENTING UNBIASED AND OBJECTIVE APPELLATE REVIEW

DR. J. D. GOLUB VS. BERDON LLP

MOVING PARTY: DR. J. D. GOLUB **OPPOSING PARTY:** BERDON LLP

☑ Plaintiff ☐ Defendant

☑ Appellant/Petitioner ☐ Appellee/Respondent

MOVING ATTORNEY: DR. J. D. GOLUB VS. BERDON LLP **OPPOSING ATTORNEY:** LAURENT DROGIN

[name of attorney, with firm, address, phone number and e-mail]

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(973) 454-0677 AND DRJDG1@COMCAST.NET

LAURENT DROGIN
TARTER, KRINSKY & DROGIN LLP, 1350 BROADWAY
N.Y. N.Y. 10018 (212) 216-8000

Court- Judge/ Agency appealed from: USDC-SDNY DKT. NO. 1:19-CV-10309 JUDGE J. G. KOELTL/ MAGISTRATE JUDGE G.W. GORENSTEIN

Please check appropriate boxes:

Has movant notified opposing counsel (required by Local Rule 27.1):
☑ Yes ☐ No (explain): COUNSEL FOR THE DEFENDANTS HAVE BEEN SERVED WITH THE MOTION TO CONSOLIDATE VIA E-MAIL AND CM/ECF

Opposing counsel's position on motion:
☐ Unopposed ☐ Opposed ☑ Don't Know

Does opposing counsel intend to file a response:
☐ Yes ☐ No ☑ Don't Know

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUCTIONS PENDING APPEAL:

Has this request for relief been made below? ☐ Yes ☑ No

Has this relief been previously sought in this court? ☐ Yes ☑ No

Requested return date and explanation of emergency:

Is oral argument on motion requested? ☑ Yes ☐ No (requests for oral argument will not necessarily be granted)

Has argument date of appeal been set? ☐ Yes ☑ No If yes, enter date:

Signature of Moving Attorney:

/S/DR.J. DAVID GOLUB **Date:** FEBRUARY 02, 2024 Service by: ☑ CM/ECF ☑ Other [Attach proof of service]

SECOND CIRCUIT COURT OF APPEALS

DR. J. D. GOLUB	:	**DKT. NO. 23-1258**
	:	
PLAINTIFF-APPELLANT PETITIONER	:	**MOTION TO STAY MANDATE #23-1258 WITH #23-389**
	:	
VS.	:	**MOTION TO STAY MANDATE TO PROCEED TO UNITED STATES SUPREME COURT TO FILE A MANDAMUS PETITION TO VACATE ILLEGAL FRAUDLENT CONSTITUTIONAL VIOLATIONS**
BERDON LLP	:	
DEFENDANTAPPELLEE RESPONDENT	:	
	:	**NOTICE OF APPEALS #23-1258 AND #23-389 FILED SEPTEMBER 07, 2023 FILED MARCH 16, 2023**

FILED AND SERVED VIA CM/ECF SECOND CIRCUIT COURT OF APPEALS
USDC-SDNY DKT. NO.1:19-CV-10309, (J.G. KOELTL M.J. G.W. GORENSTEIN)
RETURN DATE: FRAP RULES OR COURT ORDER
DATED: FEBRUARY 02, 2024, FILED AND SERVED VIA ELECTRONIC MAIL SECOND CIRCUIT COURT OF APPEALS
DATED: FEBRUARY 02, 2024, FILED AND SERVED VIA CM/ECF SYSTEM[1]

NOTICE OF MOTION TO STAY MANDATE

[1]**This motion includes a valid cogent request and demand to grant DRJDG, a U.S. Citizen and Professor of Law, unrestricted filing access to the CM/ECF, Second Circuit Court of Appeals. There is no *dejure or defacto* justification on the part of the Second Circuit Court of Appeals to continue these fraudulent unconstitutional filing restrictions and prohibit the prosecution of meritorious claims of Age Discrimination against the defendant. The prohibition on filing legal papers through the CM/ECF filing is a "*stigma plus*" violation of substantive and procedural due process and deprivation of property and liberty interests in prosecuting federal age employment discrimination, because the sanction relies on a false, erroneous and untrue characterization of the GE-Kidder, Peabody & Company, Inc. et,al., litigation, in spite of the absolute indisputable meritorious cogent legitimacy of 89 CIV. 5903 USDC-SDNY (CSH) for unconscionable fraud, tortious interference of a GULC Law School education contract, tortious conversion of financial assets and intentional tax fraud. See Note 12 to this motion. It is a continuation of an Eighth Amendment Constitutional *violation of cruel and unusual punishment*, because the prosecution of this case *was and is* valid and under rational and reasonable legal analysis *was and is not* subject to fine as a contempt of court under 18 U.S.C. § 402.**

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Thurgood Marshall U.S. Courthouse 40 Foley Square, New York, NY 10007 Telephone: 212-857-8500

MOTION INFORMATION STATEMENT

Docket Number(s): 23-1258 (AND 23-389)

Caption [use short title]

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APPLICATION TO JUSTICE SOTOMAYOR DOC #1 23-389

Set forth below precise, complete statement of relief sought:

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DR. J. D. GOLUB VS. BERDON LLP

MOVING PARTY: DR. J. D. GOLUB **OPPOSING PARTY:** BERDON LLP

☑ Plaintiff ☐ Defendant

☑ Appellant/Petitioner ☐ Appellee/Respondent

MOVING ATTORNEY: DR. J. D. GOLUB VS. BERDON LLP **OPPOSING ATTORNEY:** LAURENT DROGIN

[name of attorney, with firm, address, phone number and e-mail]

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LAURENT DROGIN
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N.Y. N.Y. 10018 (212) 216-8000

Court- Judge/ Agency appealed from: USDC-SDNY DKT. NO. 1:19-CV-10309 JUDGE J. G. KOELTL/ MAGISTRATE JUDGE G.W. GORENSTEIN

Please check appropriate boxes:

Has movant notified opposing counsel (required by Local Rule 27.1):
☑ Yes ☐ No (explain): COUNSEL FOR THE DEFENDANTS HAVE BEEN SERVED WITH THE MOTION TO CONSOLIDATE VIA E-MAIL AND CM/ECF

Opposing counsel's position on motion:
☐ Unopposed ☐ Opposed ☑ Don't Know

Does opposing counsel intend to file a response:
☐ Yes ☐ No ☑ Don't Know

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUCTIONS PENDING APPEAL:

Has this request for relief been made below? ☐ Yes ☑ No

Has this relief been previously sought in this court? ☐ Yes ☑ No

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Has argument date of appeal been set? ☐ Yes ☑ No If yes, enter date:

Signature of Moving Attorney:

/S/DR.J. DAVID GOLUB **Date:** FEBRUARY 02, 2024 Service by: ☑ CM/ECF ☑ Other [Attach proof of service]

SECOND CIRCUIT COURT OF APPEALS

DR. J. D. GOLUB	:	**DKT. NO. 23-1258**
	:	
PLAINTIFF-APPELLANT PETITIONER	:	**MOTION TO STAY MANDATE #23-1258 WITH #23-389**
	:	
VS.	:	**MOTION TO STAY MANDATE TO PROCEED TO UNITED STATES SUPREME COURT TO FILE A MANDAMUS PETITION TO VACATE ILLEGAL FRAUDLENT CONSTITUTIONAL VIOLATIONS**
BERDON LLP	:	
DEFENDANTAPPELLEE RESPONDENT	:	
	:	**NOTICE OF APPEALS #23-1258 AND #23-389 FILED SEPTEMBER 07, 2023 FILED MARCH 16, 2023**

FILED AND SERVED VIA CM/ECF SECOND CIRCUIT COURT OF APPEALS
USDC-SDNY DKT. NO.1:19-CV-10309, (J.G. KOELTL M.J. G.W. GORENSTEIN)
RETURN DATE: FRAP RULES OR COURT ORDER
DATED: FEBRUARY 02, 2024, FILED AND SERVED VIA ELECTRONIC MAIL SECOND CIRCUIT COURT OF APPEALS
DATED: FEBRUARY 02, 2024, FILED AND SERVED VIA CM/ECF SYSTEM[1]

NOTICE OF MOTION TO STAY MANDATE

[1]**This motion includes a valid cogent request and demand to grant DRJDG, a U.S. Citizen and Professor of Law, unrestricted filing access to the CM/ECF, Second Circuit Court of Appeals. There is no *dejure or defacto* justification on the part of the Second Circuit Court of Appeals to continue these fraudulent unconstitutional filing restrictions and prohibit the prosecution of meritorious claims of Age Discrimination against the defendant. The prohibition on filing legal papers through the CM/ECF filing is a *"stigma plus"* violation of substantive and procedural due process and deprivation of property and liberty interests in prosecuting federal age employment discrimination, because the sanction relies on a false, erroneous and untrue characterization of the GE-Kidder, Peabody & Company, Inc. et,al., litigation, in spite of the absolute indisputable meritorious cogent legitimacy of 89 CIV. 5903 USDC-SDNY (CSH) for unconscionable fraud, tortious interference of a GULC Law School education contract, tortious conversion of financial assets and intentional tax fraud. See Note 12 to this motion. It is a continuation of an Eighth Amendment Constitutional *violation of cruel and unusual punishment*, because the prosecution of this case *was and is* valid and under rational and reasonable legal analysis *was and is not* subject to fine as a contempt of court under 18 U.S.C. § 402.**

TO FILE A MANDAMUS PETITION/APPLICATION TO THE UNITED STATES SUPREME COURT FOR A JUDICIAL ORDER TO VACATE THE PREJUDICIALLY BIASED, IRRATIONAL, UNSUPPORTED AND ERRONEOUS RULINGS IN THE SECOND CIRCUIT COURT OF APPEALS AS MATERIAL, PREJUDICIAL AND SUBSTANTIAL NONHARMLESS REVERSIBLE CONSTITUTIONAL FRAUD

MOTION TO STAY THE MANDATE AND PROCEED TO A MANDAMUS PETITION/APPLICATION TO THE UNITED STATES SUPREME COURT TO VACATE THE SECOND CIRCUIT UNCONSTITUTIONAL MONETARY AND FILING SANCTIONS AND PROCEED TO PERFECT APPELLATE REVIEW OF THE CLEARLY ERRONEOUS AND PREJUDICIALLY BIASED DECISION IN 1:19 CIV. 10309 (JGK)

MOTION TO STAY THE MANDATE AND PROCEED TO A MANDAMUS PETITION/APPLICATION TO THE UNITED STATES SUPREME COURT TO VACATE THE UNCONSTITUTIONAL

"STIGMA PLUS" FILING SANCTIONS AND PENALTIES ERRONEOUSLY IMPOSED BY THIS COURT OVER A DECADE AGO THAT ARE CLEAR VIOLATIONS OF SUBSTANTIVE AND PROCEDURAL DUE PROCESS, VIOLATE EQUAL PROTECTION, VIOLATE THE FIRST AMENDMENT RIGHT TO JUDICIAL ACCESS TO THE FEDERAL COURTS AND ARE EIGHTH AMENDMENT VIOLATIONS FOR CRUEL AND UNUSUAL PUNISHMENT PERTAINING TO AN UNRELATED, IRRELEVANT AND MERITORIOUSLY VALID CIVIL ACTION FILED, OVER 35 YEARS AGO, IN 89 CIV. 5903 (CSH) AGAINST GE-KP, ET,AL, IN WHICH THE USDC-SDNY ORDERED THE DEFENDANTS TO RETURN TO DRJDG HIS FINANCIAL ASSETS, AFTER THEY WERE ILLEGALLY AND FRAUDULENTLY CONVERTED FOR OVER 5 YEARS, AS SECURITIES FRAUD, TORTIOUS CONVERSION OF DRJDG'S MARKETABLE PORTFOLIO LIQUID SECURITIES AND FINANCIAL ASSETS, 1099B TAX REPORTING FRAUD, AND TORTIOUS INTERFERENCE WITH A GEORGETOWN UNIVERSITY LAW SCHOOL EDUCATION CONTRACT

Please take notice, for good and meritorious cause, based upon the attached supporting documents, the petitioner-appellant, moves this Court to grant this motion/application to stay the mandate for good cause to file a mandamus application/petition[2] to the United States Supreme Court, to expunge, reverse and vacate the Second Circuit monetary and filing sanctions which are *Constitutional Fraud* and order the prosecution of the valid and cogent appeals of the USDC-SDNY decisions, against the defendant-appellant, Berdon LLP, for claims of illegal employment termination, age discrimination, breach of employment contract, and tortious misconduct in connection with retaliation for internally notifying the defendant's partners as to tax fraud and financial accounting audit disclosure misstatements and disclosure fraud, as part of DRJDG's scope of employment and professional obligations and duties as the Tax Director of Nonprofit and Private Foundation clients.

1) **DRJDG was granted Second Circuit Court of Appeal CM/ECF access and registration to file legal papers for Docket #23-1258 on Monday, October 2, 2023, by the Second Circuit Court of Appeals**

[2] **The All Writs Act (28 U.S. Code § 1651) gives the "Supreme Court and all courts established by Act of Congress" the authority to issue writs of mandamus "in aid of their respective jurisdictions and agreeable to the usages and principles of law. Under 28 U.S. Code § 1253, any party may appeal to the Supreme Court from an order granting or denying, after notice and hearing, an interlocutory or permanent injunction in any civil action, suit or proceeding required by any Act of Congress to be heard and determined by a district court of three judges.**

Clerk's office after verifying his upgraded Pacer account, with Pacer and completing, signing and submitting the CM/ECF Pro Se Filing Request Form. (See Appendix DOC #5) See Appellate Docket entries #20 and #21.

2) **DRJDG did *not* receive access to file papers in the Second Circuit Court of Appeal CM/EC. See multiple attached communications to the Clerk's Pro Se Office from October 2, 2023, through October 6, 2023. SEE 10.06.2023 Appendix DOC #2 Appellate Docket entries #20 and #21. The placement of DRJDG on the Second Circuit Court of Appeals sanctions and restrictive CM/ECF filing list are clear and unequivocal *Stigma Plus* Constitutional violations. The placement of DRJDG on this list by the Second Circuit Court of Appeals *based solely* on the outrageous illegal misconduct committed by GE-Kidder, Peabody & Co., Inc., et,al, in 89 Civ. 5903(CSH) (hereinafter GE-KP) has completely and wholly destroyed DRJDG's professional reputation, a protected liberty and property interest. See Valmonte v. Bane 18 F.3d 992, 1000 (2d Cir. 1994).[3] The *Stigma Plus* constitutional violation is empirically proven by the fact that the defendant, Berdon LLP and especially its counsel, Drogin, chose not to defend the age discrimination claims, but rather solely relied on the placement of DRJDG on the sanctions list, as its sole defense and "get out of jail card" (impermissibly and erroneously published in the ECF System for sanctions because the illegal acts of fraud in the GE-KP case are outrageous and should *shock the conscience of every Court in the United States*). Drogin incessantly and repetitiously has entered only one "Bull Shit" defense, in all of the Courts, to the illegal misconduct**

[3] **"...The question of whether one's good name and standing, and the interest in protecting that reputation, constitutes a protectible liberty interest has been considered in a string of Supreme Court and Second Circuit cases. The Supreme Court held in 1971 that a protectible liberty interest may be implicated "[w]here a person's good name, reputation, honor, or integrity is at stake because of what the government is doing to him." Wisconsin v. Constantineau, 400 U.S. 433, 437, 91 S.Ct. 507, 510, 27 L.Ed.2d 515 (1971). A year later, the Court held that a government employee's liberty interest would be implicated if he were dismissed based on charges that imposed "on him a stigma or other disability that foreclosed his freedom to take advantage of other employment opportunities." Board of Regents v. Roth, 408 U.S. 564, 573, 92 S.Ct. 2701, 2707, 33 L.Ed.2d 548 (1972)..."**

committed by the defendant-employer, Berdon LLP, in its decision to terminate DRJDG, upon his internal communications to the managing tax partner about the fraudulent tax and accounting filings orchestrated by their A&A Principal, Sackstein. This is the clear, indisputable, and uncontestable violation of DRJDG's protected due process, first amendment right to redress governmental wrongs and the invocation of liberty interests to vindicate legal rights in federal courts before objective and impartial tribunals, while at the same time secure equivalent new employment positions after the Berdon LLP employment termination for age discrimination pursuant to its accounting and tax fraud. It is also a clear and unequivocal violation of the eighth amendment of the U.S. Constitution for cruel and unusual punishment.

What exactly are the sanctions for and about in Golub vs. GE-Kidder, Peabody & Co, Inc.[4]? In 89 CIV. 5903(CSH), DRJDG presented valid, cogent, meaningful and meritorious claims. Ten to twenty years later, the judiciary vindicated DRJDG's legal arguments, specifically, the United States Supreme Court, in an opinion authored by Chief Justice Rehnquist, (with parts unanimously supported by all of the justices) further adjudicated the arbitration clause issues raised by DRJDG before Judge Haight in the USDC-SDNY in the *Randolph* case. See Note 3. So, what is the Court's basis for filing sanctions and penalties issued in Dockets #23-1258 and #23-389, other than a refusal to recognize and admit its own poor faulty judgments that lack wisdom, foresight, practicality, reasonableness, economic sense and are biased, prejudicial and clearly reversible erroneous

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[4] See Green Tree Financial Corp.-Alabama v. Randolph, 531 U.S. 79 (2000): The Supreme Court held that a party seeking to invalidate an arbitration agreement on the grounds that arbitration would be prohibitively expensive bears the burden of showing the likelihood of incurring such costs. Not only did GE-Kidder, Peabody & Co, Inc., et, al, convert DRJDG's financial assets, illegally report six years of annual fraudulent 1099B information tax returns from 1986 through 1991, refuse to return DRJDG's assets to pay Georgetown University Law Center tuition, and refuse to appear in arbitration and pay the fees to initiate the cost of arbitration, but they added third parties, such as the IRS and GULC, into their wrongdoing .

rulings[5]? On what basis? To protect the illegal wrongdoing by Jack Welch and Ralph DeNunzio[6] in managing the fraudulent activities of GE-KP? DRJDG's legal positions based on the facts clearly satisfied and met the U.S. Supreme Court's standard of "objective legal reasonableness," and the legal arguments rose to the level that should be judged against practicing attorneys and members of the Bar in any and all jurisdictions in the United States? Legal brain power, advocacy and lawyering skills are not monopolized or subsumed in an academic degree.

3) **Defendant Berdon LLP has no claims to qualified immunity under the Federal Age Discrimination Laws, nor can it seek insulation from liability after it purposefully, intentionally and strategically injected material and substantial prejudicial bias into the lower USDC-SDNY Court proceedings, based upon an irrelevant and erroneous "trumped up" false and fraudulent litigation history defense. Drogin, counsel for the defendant, never read the facts in 89 Civ. 5903(CSH) or does he even comprehend or care about the fact that Judge Haight ordered the Defendants in GE-KP to restore and return the portfolio securities to DRJDG, albeit some 6 years later, after they had committed annual 1099-B, 1099-DIV and 1099-INT tax reporting fraud, while at the same time withholding the assets and paying themselves the income from the account. Drogin's one and only sole strategic objective was to poison and contaminate the**

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[5] **"...This Court has recognized that federal statutory claims can be appropriately resolved through arbitration and has enforced agreements involving such claims, see, e.g., Rodriguez de Quijas v. Shearson/American Express, Inc., 490 U.S. 477. In determining whether such claims may be arbitrated, the Court asks whether the parties agreed to submit the claims to arbitration and whether Congress has evinced an intention to preclude a waiver of judicial remedies for the statutory rights at issue... Thus, a party seeking to invalidate an arbitration agreement on the ground that arbitration would be prohibitively expensive bears the burden of showing the likelihood of incurring such costs...**

[6] **Kidder, Peabody & Co. was an American securities firm, established in Massachusetts in 1865. The firm's operations included investment banking, brokerage, and trading. The firm was sold to General Electric in 1986. Following heavy losses, it was subsequently sold to PaineWebber in 1994. After the acquisition by PaineWebber, the Kidder Peabody name was dropped, ending the firm's 130-year presence on Wall Street.**

objectivity of the Court. What lawyering skills and advocacy does that depict?

4) **SEE ADDENDUM to this Motion. The following factors support *Stigma Plus* liberty and property interests (1) the public disclosure of accumulated and synthesized personal information that would not otherwise be easily available; (2) the *actual* and potential harm to DRJDG's personal and professional life; (3) the foreseeable harm to DRJDG's reputation; and (4) the statutory branding of DRJDG as a public danger or a serial litigation violator, a fact that has been proven to be untrue over a 40 YEAR time period. See Neu v. Corcoran, 869 F.2d 662, 667 (2d Cir. 1989) in which the Second Circuit Court of Appeals explained that Stigma Plus violations *do not* require government employment.[7] Moreover, the constant and incessant prejudicial bias injected into the meritorious USDC-SDNY proceedings for Federal Age Discrimination by Drogin, Counsel for defendant, Berdon LLP, in connection with this Court's incomprehensible and clearly erroneous sanctions imposed in the GE-Kidder, Peabody & Co., Inc., et, al, proceeding, created substantive and procedural due process violations, liberty interest violations, constitutional equal protection violations, constitutional first amendment violations and constitutional eighth amendment violations.**

5) **The Second Circuit Court of Appeals order requiring DRJDG to file a motion for Leave of Court in Docket #23-1258, dated September 15, 2023, was received by U.S. Postal mail September 25, 2023. See 12.06.2023 Appendix Doc#1. Appellate Docket entries #20 and #21.**

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[7] **"...On the one hand, Paul suggested that reputation, together with "some more tangible interests such as employment," could constitute a liberty interest. 424 U.S. at 701, 96 S.Ct. at 1160. It did not say that "employment" had to be government employment. Thus, *Paul might plausibly be interpreted as holding that any governmental defamation that causes a person to lose his job and impairs his ability to pursue his chosen profession or occupation is enough to constitute a deprivation of liberty, even if it does not occur in the course of dismissal from government employment or alteration of some other right or status recognized by state law.* The "plus," in other words, might simply be that a consequence of the defamation was deprivation of the right, recognized in Meyer v. Nebraska, supra, "to engage in any of the common occupations of life..."**

6) **The Motion to Recall the Mandate in Docket #23-389 and to reverse all filing restrictions and sanctions *was and is* meritorious and legally valid under the U.S. Constitution. It was and is well-grounded in meritorious causes of action because the Second Circuit Court of Appeals order refers to wholly unrelated meritorious federal civil actions against GE-KP, and Swaaley, et,al (USDC-EDNY). These *pending* proceedings are based on cogent legally valid substantive and procedural claims, as identified and explained in all of the filings before this court in the Motion to Recall the Mandate. (12.06.2023 APPENDIX DOC #3). See Appellate Docket entries #20 and #21.**

7) **The Motion to Stay the mandate and file a Mandamus Petition/Application to the United States Supreme Court is based on incontestable and unequivocal truth. The Second Circuit fails to provide any rational or legal basis to continue this constitutional fraud. In Docket #23-1258, the Second Circuit order to file a motion for leave of Court to file an appeal no longer cites the USDC-EDNY litigation because it is substantively valid, pending and ongoing in the New York State Courts (NYSAD 2nd Dept. and Richmond County Surrogate Court) and the gravamen of the action for fiduciary estate fraud and self-dealing is not prohibited under the *'probate exception'* in the USDC-EDNY, and, more importantly, it is a valid, meritorious, proper, cogent and just federal claim for fraudulent breach of fiduciary duties under subject matter jurisdiction *and* diversity jurisdiction. Michael Swaaley *aided and abetted* Norman Golub to execute multiple self-dealing fraudulent conveyances in breach of estate fiduciary duties. See NYSAD 2nd Dept. pending appeal Docket numbers 2023-05768, 2023-06094 and 2024-00743, and pending Richmond County Surrogate Court File No. 2009-505/C[8] establishing**

[8] **Claims of "aiding and abetting the breach of fiduciary duty" include an attorney representing a fiduciary of an estate who can be held liable if he "knowingly participated" in the breach of fiduciary duties. New York courts generally require three baseline elements to state a claim: "(1) a breach by a fiduciary of obligations to another, (2) that the defendant knowingly induced or participated in the breach, and (3) that plaintiff suffered damages as a result of the breach." Kaufman v. Cohen, 307 A.D.2d 113, 125, 760 N.Y.S.2d 157, 169 (1st Dept. 2003)). Just as the fiduciary may be liable for breaching his duty, or the "primary duty," to the beneficiary, the common law has long recognized that one who assists a fiduciary's**

multiple occurrences of self-dealing fraud, fraudulent accounting and theft of estate assets, accompanied by administrator perjury and subornation of perjury by counselor Swaaley to the administrator. In fact, as a defense to the illegal and unlawful attorney misconduct, fraud, tortious self-dealing of estate assets and deceit, Swaaley, another "self-proclaimed maven of the law, and American Jurisprudence" raised the same "Bull Shit" unrelated defense of Golub v. GE-Kidder, as Drogin had done, in these proceedings. Moreover, they continue to illegally advocate frivolous nonsensical fraudulent legal positions over a fifteen year period, in violation of well settled and well-established judicial precedent and stare decisis, the over 100 year-old century "No Further Inquiry Rule" in which a beneficiary to a trust or an estate, timely and explicitly, declares any and all self-dealing transactions by an administrator, as Null and Void, requiring the restoration of all ill-gotten proceeds and gains from illegal self-dealing, back into the estate[9]. According to these two incompetent members of the NYS Bar, who should be sanctioned and disbarred, the "No Further Inquiry Rule" somehow applies to all estate fiduciaries in the United States, but not to them. Why? Because of the same "Bull Shit" that Drogin blurted out on

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breach of duty may be liable to the beneficiary. See Mertens v. Hewitt Assoc., 508 U.S. 248, 255 (1993).

[9] The century old controlling judicial precedent forbids self-dealing by the fiduciary by making them voidable at the discretion of the affected beneficiaries. "...The No Further Inquiry Rule applies to cases of self-dealing by a trustee. It makes all self-dealing transactions entered into by the trustee per se voidable by the beneficiaries. An attempt to void such transactions requires no proof that the transactions were unreasonable or harmful because a trustee must act for the sole benefit of the beneficiaries..."
See https://www.law.cornell.edu/wex/no_further_inquiry_rule and M.B. Leslie, Dean of Cardozo Law School, "In Defense of the No Further Inquiry Rule"47 William & Mary Law Review (Nov. 2005. See Also, In Re Kilmer's Will,61 N.Y.S.2d 51 (Sur. Ct. Broome County 1946), discussed and analyzed in C.B. Baron, "Self-Dealing Trustees and the Exoneration Clause," 72 St. John's Law Review (Winter 1998). There are no exceptions, valid or invalid, to the century old, over 100-year-old, "No further Inquiry Rule", allowing a beneficiary to void self-dealing fraudulent estate transactions and conveyances executed by the administrator, Norman Golub, aided and abetted by Michael Swaaley. This includes any and all self-dealing fraudulent conveyances by a fiduciary conducted and executed through public auctions, especially where the fiduciary is the auction organizer.

numerous occasions to the lower Court Judges, in these proceedings.

8) The illegal wrongful misconduct, tax fraud and tortious asset conversion committed by GE-KP, as explained in the Motion to Recall the Mandate, is not only self-evident and *Res Ipsa Loquiter, but* it is also willful intentional malicious evil misconduct and tortious interference into an educational contract for the 1987-1990 Juris Doctor Law Program between Georgetown University Law Center and DRJDG. [SEE NOTE 14 to this motion]. The filing sanctions, monetary fines and penalties imposed against DRJDG are *Non-Harmless, illegal Constitutional Fraud*. They are irrational, bear no relationship to the case and are excessive under the Eighth amendment of the United States Constitution. See Timbs v. Indiana, 139 S. Ct. 682, 687 (2019): The Eighth Amendment prohibits the government's imposition of excessive fines. The excessive fines clause is similar to the prohibition against excessive bail. The court must balance the fine versus the nature of the offense. This protection applies to both civil and criminal cases. There is no creditable offense or wrong, justifying this Court's imposition of sanctions to effectively protect fraudulent wrongdoing by defendants GE-KP, et, al, and at the same time provide defendant Berdon LLP immunity from suit for Age Discrimination and viable overwhelming state law claims.

"...The Excessive Fines Clause traces its venerable lineage back to at least 1215, when Magna Carta guaranteed that "[a] Freeman shall not be amerced for a small fault, but after the manner of the fault; and for a great fault after the greatness thereof, saving to him his contentment ...." § 20, 9 Hen. III, ch. 14, in 1 Eng. Stat. at Large 5 (1225). As relevant here, Magna Carta required that economic sanctions "be proportioned to the wrong" and "not be so large as to deprive [an offender] of his livelihood." Browning-Ferris, 492 U.S., at 271, 109 S.Ct. 2909. See also 4 W. Blackstone, Commentaries on the Laws of England 372 (1769) ("[N]o man shall have a larger amercement imposed upon him, than his circumstances or personal estate will bear ...."). But cf. Bajakajian, 524 U.S., at 340, n. 15, 118 S.Ct. 2028 (taking no position on the question whether a person's income and wealth

are relevant considerations in judging the excessiveness of a fine)…" See Note 12 this motion.

DRJDG did not commit and has committed no wrong that would justify a fine or penalty in prosecuting the *pending* GE-Kidder, Peabody & Co. Inc., et, al. case. In fact, DRJDG was 20 years ahead of the Courts, given the U.S. Supreme Court decision in *Green Tree Fin. Corp.-Ala. v. Randolph* 531 U.S. 79, 85 (2000). This Court's fines are excessive and bear no relationship to reality. "…The right against excessive fines traces its lineage back in English law nearly a millennium, and from the founding of our country, it has been consistently recognized as a core right worthy of constitutional protection. *As a constitutionally enumerated right understood to be a privilege* of *American citizenship, the Eighth Amendment's prohibition on excessive fines applies in full to the States. Let me be perfectly clear, there is not a Judge sitting on the Second Circuit Court Panel, that substantively completed a three year J.D. Law School Program in approximately 3 months.*

9) **The USDC-SDNY lower Court decision in Golub v. Berdon LLP is in direct conflict with the application of the controlling Second Circuit Judicial Precedent pertaining to the fundamental minimum standards for pleading a *prima facie case of Federal Age Discrimination* to overcome the defendant's (Berdon LLP) frivolous FRCP 12(b)(6) motion to dismiss. The Appendix in the 12.06.2023 filings, i.e., the supporting documents clearly identify the conflict among Federal District Court Judges within the USDC-SDNY, regarding the minimum pleading standards. DRJDG's claims overwhelmingly satisfy all interpretations of the necessary elements for a *Prima Facie Age Discrimination* action. See 12.06.2023 Appendix DOC #4. See Appellate Docket entries #20 and #21.**

In addition to subject matter jurisdiction, DR. JDG rightfully asserts diversity jurisdiction, because after having been illegally and unconstitutionally evicted from his NYS permanent residence and domicile by the former corrupt surrogate court judge, Gigante, DRJDG declared his new South Carolina domicile in a filed sworn affidavit in the USDC-EDNY, years before filing the Federal employment Age Discrimination civil action against the

defendant Berdon LLP. DRJDG's domicile was not New Jersey or New York at the date of the filing of the USDC-SDNY Federal civil action against Berdon LLP, DKT. NO.1:19-CV-10309. Moreover, after having established his new Florida domicile in 2022, DRJDG had and has demonstrated no intention of returning to New Jersey or New York to make either of the states his permanent residence, place of abode, home and/or domicile.

10) The USDC-SDNY lower Court decision is in direct conflict with the application of the controlling United States Supreme Court decisions and Judicial Precedent pertaining to the fundamental minimum standards for pleading a prima facie case of Federal Age Discrimination[10] to overcome the defendant's (Berdon LLP) frivolous FRCP 12(b)(6) motion to dismiss. See 12.06.2023 Appendix DOC#4. See Appellate Docket entries #20 and #21.

11) Second Circuit Court of Appeals Docket #23-389 clearly identifies the non-harmless material errors in the lower court decisions:

ADDENDUM B: The statement of issues on appeal (See the embedded legal argument in both of the Notices of Appeal) and the Standard of Review[11]. See *McDonnell Douglas Corp. v. Green*

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[10] ***Swierkiewicz v. Sorema N.A.,*** **534 U.S. 506 (2002), explaining the required minimal elements to establish a prima Facie case. See *McDonnell Douglas Corp. v. Green* four-part test. The USDC-SDNY failed to follow and apply the four-part test and defendant Berdon LLP never answered the amended federal civil complaint and never stated or articulated the reason for the dismissal, discharge and breach of the written employment contract, except at the exit termination interview in which the Managing Tax Partner, the Chief operating Officer and the HR Director expressly stated that "you are not a Team Player" (i.e., a bad fit unlawful discrimination by showing that (1) he is a member of a protected class (2) who performed his job.**

[11] ***Applicable Law – De Novo Appellate Review***
The "ultimate issue" in any employment discrimination case is whether the plaintiff has met his burden of proving that the adverse employment decision was motivated at least in part by an "impermissible reason," i.e., that there was discriminatory intent. See *Reeves v. Sanderson Plumbing Prods., Inc.,* 530 U.S. 133, 146 126 S.Ct. 2097, 147 L.Ed.2d 105 (2000); Fields v. N.Y. State Office of Mental Retardation Dev'l Disabilities, 115 F.3d 116, 119 (2d Cir. 1997).

a. McDonnell Douglas Framework

In the absence of direct evidence of discrimination, a plaintiff in an employment discrimination case usually relies on the three-step McDonnell Douglas test. First, a plaintiff must establish a prima facie case of unlawful discrimination by showing that (1) he is a member of a protected class (2) who performed his job satisfactorily (3) but suffered an adverse employment action (4) under circumstances giving rise to an inference of discrimination. See *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802 n. 13 (1973) (noting that elements of prima facie case vary depending on factual circumstances); *Stratton v. Dep't for the Aging*, 132 F.3d 869, 879 (2d Cir. 1997) (ADEA).

If the plaintiff establishes a prima facie case of unlawful discrimination, "a rebuttable presumption of discrimination arises and the burden then shifts to the defendant to articulate a legitimate, nondiscriminatory reason for the employment decision." Stratton, 132 F.3d at 879; see Reeves, 530 U.S. at 142-43.

If the employer articulates a nondiscriminatory reason for its actions, the presumption of discrimination is rebutted and it "simply drops out of the picture." *St. Mary's Honor Ctr. v. Hicks*, 509 U.S. 502, 510-11 (1993) (citation omitted); see *James v. N.Y. Racing Ass'n*, 233 F.3d 149, 154 (2d Cir. 2000). The burden then shifts back to the plaintiff to show, without the benefit of any presumptions, that more likely than not the employer's decision was motivated, at least in part, by a discriminatory reason. See Fields, 115 F.3d at 120-21; *Connell v. Consol. Edison Co.*, 109 F. Supp. 2d 202, 207 (S.D.N.Y. 2000).

To meet this burden, the plaintiff may rely on evidence presented to establish his prima facie case as well as additional evidence, which may include direct or circumstantial evidence of discrimination. *Desert Palace, Inc. v. Costa*, 539 U.S. 90, 99-101 (2003); *Harris v. City of New York*, No. 03 Civ. 6167 (DLC), 2004 WL 2943101, at *2 (S.D.N.Y. Dec. 21, 2004). It is not sufficient, however, for a plaintiff merely to show that he satisfies "McDonnell Douglas's minimal requirements of a prima facie case" and to put forward "evidence from which a factfinder could find that the employer's explanation . . . was false." *James*, 233 F.3d at 157. Instead, the key is whether there is sufficient evidence in the record from which a reasonable trier of fact could find in favor of plaintiff on the ultimate issue, that is, whether the record contains sufficient evidence to support an *inference of discrimination*. See id.; *Connell*, 109 F. Supp. 2d at 207-08.

As the Second Circuit observed in James, "the way to tell whether a plaintiff's case is sufficient to sustain a verdict is to analyze the particular evidence to determine whether it reasonably supports an inference of the facts plaintiff must prove — particularly discrimination." 233 F.3d at 157; see Van Zant v. KLM Royal Dutch Airlines, 80 F.3d 708, 714 (2d Cir. 1996) (to defeat summary judgment, plaintiff is obliged not just to produce "some" evidence, but must produce sufficient evidence to support a rational jury verdict in his favor); *Lapsley v. Columbia Univ.*, 999 F. Supp. 506, 513-16 (S.D.N.Y. 1998) (advocating elimination of McDonnell Douglas

411 U.S. 792, 804 (1973). Throughout the entire proceedings from inception of the employment termination of DRJDG, the defendant, Berdon LLP, and its counsel have failed to provide any valid defense to the employment termination. They have failed to produce any basis or, alternatively, have offered a *zero defense* to the abrupt breach of the written contractual employment agreement with the plaintiff accompanied by the exit conference that occurred with the Managing Tax Partner, the CFO and Human Resource Department which contained the "stray remarks"[12] about DRJDG's refusal to be a "Team Player" and

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test in favor of simplified approach focusing on ultimate issue of whether sufficient evidence exists to permit jury to find discrimination); see also *Norton v. Sam's Club*, 145 F.3d 114, 118 (2d Cir. 1998) ("The thick accretion of cases interpreting this burden-shifting framework should not obscure the simple principle that lies at the core of anti-discrimination cases. In these, as in most other cases, the plaintiff has the ultimate burden of persuasion.").
b. Verbal Comments and Stray Remarks

[12] Verbal comments constitute evidence of discriminatory motivation when a plaintiff demonstrates that a nexus exists between the allegedly discriminatory statements and a defendant's decision to discharge the plaintiff. See Schreiber v. Worldco, LLC, 324 F. Supp. 2d 512, 518-19 (S.D.N.Y. 2004); Zhang v. Barr Labs., Inc., No. 98 Civ. 5717 (DC), 2000 WL 565185, at *4 (S.D.N.Y. May 8, 2000) (citing cases). Often, however, an employer will argue that a purportedly discriminatory comment is a mere "stray remark" that does not constitute evidence of discrimination. See, e.g., *Danzer v. Norden Systems, Inc.*, 151 F.3d 50, 56 (2d Cir. 1998) ("Stray remarks, even if made by a decision maker, do not constitute sufficient evidence [to support] a case of employment discrimination."); *Campbell v. Alliance Nat'l Inc.*, 107 F. Supp. 2d 234, 247 (S.D.N.Y. 2000) ("`Stray remarks by non-decision-makers or by decision-makers unrelated to the decision process are rarely given great weight, particularly if they were made temporally remote from the date of the decision.'") (quoting *Ezold v. Wolf, Block, Schorr Solis-Cohen*, 983 F.2d 509, 545 (3d Cir. 1992)).

In determining whether a comment is a probative statement that evidences an intent to discriminate or whether it is a non-probative "stray remark," a court should consider the following factors: (1) who made the remark, i.e., a decisionmaker, a supervisor, or a low-level co-worker; (2) when the remark was made in relation to the employment decision at issue; (3) the content of the remark, i.e., whether a reasonable juror could view the remark as discriminatory; and (4) the context in which the remark was made, i.e., whether it was related to the decision-making process. See *Minton v. Lenox Hill Hosp.*, 160 F. Supp. 2d 687, 694 (S.D.N.Y. 2001); *Rizzo v. Amerada Hess Corp.*, No. 99 Civ. 0168 (DNH), 2000 WL 1887533, at *5 (N.D.N.Y. Dec. 29, 2000) ("An employer's discriminatory statements will rise above

refusal to participate in covering up material financial statement disclosure errors, financial statement audit fraud, including the fraudulent filing of an incorrect Fed 990 Tax Return, and failure to file a Fed 990-T and required New Jersey State Tax returns for a 501(c)(3) organization, for the Berdon LLP client, committed by the *significantly and much* younger identically situated if not similarly situated Audit Principal-employee, in charge of Non-profit Audit Assurance, B. Sackstein, who was retained and not terminated at that time. The burden shifting paradigm never took place in the lower Court, the USDC-SDNY proceedings, in clear violation of the equal protection clause, and in violation of constitutional substantive and procedural due process.[13] This legal

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the level of stray remarks . . . when the statements are: (1) made by the decision maker or one whose recommendation is sought by the decision maker; (2) related to the specific employment decision challenged; and (3) made close in time to the decision."); Ruane v. Continental Cas. Co., No. 96 Civ. 7153 (LBS), 1998 WL 292103, at *8 (S.D.N.Y. June 3, 1998); *Mosberger v. CPG Nutrients*, Civ. No. 01-100 (DWA), 2002 WL 31477292, at *7 (W.D. Pa. Sept. 6, 2002) ("Discriminatory stray remarks are generally considered in one of three categories — those made (1) by a non-decisionmaker; (2) by a decisionmaker but unrelated to the decision process; or (3) by a decisionmaker but temporally remote from the adverse employment decision.") (internal quotations and citations omitted).

Additionally, the Second Circuit has emphasized that "[a]lthough evidence of one stray comment by itself is usually not sufficient proof to show age discrimination, that stray comment may `bear a more ominous significance' when considered within the totality of the evidence." *Carlton*, 202 F.3d at 136 (quoting Danzer, 151 F.3d at 56); see also *Schreiber*, 324 F. Supp. 2d at 522-23. "Even `stray remarks in the workplace by persons who are not involved in the pertinent decision making process

. . . may suffice to present a prima facie case,' provided those remarks evidence invidious discrimination." *Belgrave v. City of New York*, No. 95 Civ. 1507 (JG), 1999 WL 692034, at *29 (E.D.N.Y. Aug. 31, 1999) (quoting Ostrowski, 968 F.2d at 182); see also *Malarkey v. Texaco, Inc.*, 983 F.2d 1204, 1210 (2d Cir. 1993) (holding that statements made by non-decisionmakers were properly received "because they showed the pervasive corporate hostility towards [plaintiff] and supported her claim that she did not receive a promotion due to her employer's retaliatory animus"); *Warren v. Halstead Indus., Inc.*, 802 F.2d 746, 753 (4th Cir. 1986) (holding that evidence of a "general atmosphere of discrimination," harassment, or threats is "relevant" to the determinations of intent and pretext.

[13] DRJDG had met the required primary obligation under the US Supreme Court McDonnel Douglas test by providing detailed facts associated with the defendant's decision to terminate his employment while retaining the "similarly situated" if not

"identically situated" Principal-employee, who was responsible for Assurance, Auditing and Accounting for nonprofit clients. DRJDG had filed a "Prima Facie Case of Age Discrimination" against Defendant Berdon LLP. See Vega v. Hempstead Union Free Sch. Dist., 801 F.3d 72, 83 (2d Cir. 2015), in which the Second Circuit Court of Appeals clarified the required pleading standards Dist., 801 F.3d 72, 83 (2d Cir. 2015), in which the Second Circuit Court of Appeals clarified the required pleading standards for a Prima Facie Case of Age discrimination from the minimal pleading standard to the "plausibility standard of pleading."

"...McDonnell Douglas, 411 U.S. 792, 93 S.Ct. 1817, 36 L.Ed.2d 668. Under the test, a plaintiff must first establish a prima facie case of discrimination by showing that: "(1) she is a member of a protected class; (2) she is qualified for her position; (3) she suffered an adverse employment action; and (4) the circumstances give rise to an inference of discrimination." Weinstock v. Columbia Univ., 224 F.3d 33, 42 (2d Cir.2000) (citing McDonnell Douglas, 411 U.S. at 802, 93 S.Ct. 1817). Once a plaintiff has established a prima facie case, a presumption arises that more likely than not the adverse conduct was based on the consideration of impermissible factors. Texas Dep't of Cmty. Affairs v. Burdine, 450 U.S. 248, 253–54, 101 S.Ct. 1089, 67 L.Ed.2d 207 (1981). The burden then shifts to the employer to "articulate some legitimate, nondiscriminatory reason" for the disparate treatment. McDonnell Douglas, 411 U.S. at 802, 93 S.Ct. 1817. If the employer articulates such a reason for its actions, the burden shifts back to the plaintiff to prove that the employer's reason "was in fact pretext" for discrimination.

The prima facie case established by DRJDG overwhelmingly meets the minimal requirements for an Age Discrimination case. The retention of the much younger identically situated but clearly similarly situated Employee-Principal (BS) responsible for Non-Profit Accounting and Auditing Berdon clients, who committed violations of internal policies, but more importantly violated federal and State tax law, which DRJDG, as a Professor with over 40 years of professional experience as a Tax Director and as a Quality Control Accounting and Audit Director for several major accounting firms and the subject matter expert in all of these matters, sought to correct the errors with the Defendant's Tax partners and the Defendant's Quality Control Assurance Partners. Five days after receiving DRJDG's error reports including the violations of internal policies committed by BS pertaining to the authorization of filing tax returns (which BS had no such authority) defendant Berdon LLP terminated DRJDG's written employment contract and retained the much younger Principal-Employee. If Age was not a factor, then what were the factors? Mixed motives of Age Discrimination and Accounting and Tax Fraud cover-up. As the Second Circuit Court of Appeals explained in Vega v. Hempstead Union Free Sch. Dist., 801 F.3d 72, 83 (2d Cir. 2015),

"...In 2002, the Supreme Court held in Swierkiewicz v. Sorema N.A. that "an employment discrimination plaintiff need not plead a prima facie case of discrimination" at the motion to dismiss stage. 534 U.S. 506, 515, 122 S.Ct. 992, 152 L.Ed.2d 1 (2002). The Court ruled that the "prima facie case" requirement of

procedural and substantive due process omission directly occurred because of the defendant and its counsel, Drogin's, (an amateur and deficient legal practitioner) incessant, "Bull Shit" argument and ongoing and continuous injection of references to the Second Circuit sanctions list, which has been clearly proven to be a wrongful and wholly erroneous reliance on the GE-KP civil action. See NOTE 12 and the 12.06.2023 Appendix DOC #2 and 12.06.2023 Appendix DOC #3. See Appellate Docket entries #20 and #21. This is clearly *Stigma-Plus* bias. SEE ADDENDUM to this motion.

Relief Requested

1.) **For just, valid, cogent, and meritorious good cause, including judicial economy, conserving judicial resources, avoiding waste of time while conserving operational and organizational efficiency, the MOTION TO STAY the consolidated Docket #23-1258 with Docket #23-389 should and must be granted (See DOC #2 in the 12.06.2023 Appendix), pursuant to filing a Mandamus Application/Petition to the United States Supreme Court to Vacate constitutional fraud.**

2.) **The filing sanctions and penalties issued by this court have no basis in law and fact and must be vacated as constitutional fraud because the pending action against GE-KP was and is a meritorious independent viable federal and state law action, in which GE-KP committed multiple layers and levels of fraud, wrongdoing and refused to proceed to arbitration. Under the Federal Rules of Evidence, Golub v. GE-KP, et, al., has no relevance whatsoever to the *indefensible* viable and significant**

McDonnell Douglas applied only at the summary judgment phase because it "is an evidentiary standard, not a pleading requirement." Id. at 510, 122 S.Ct. 992. As the Court explained, "under a notice pleading system, it is not appropriate to require a plaintiff to plead facts establishing a prima facie case because the McDonnell Douglas framework does not apply in every employment discrimination case." Id. at 511, 122 S.Ct. 992. "Moreover, the precise requirements of a prima facie case can vary depending on the context and were 'never intended to be rigid, mechanized, or ritualistic.' " Id. at 512, 122 S.Ct. 992 (quoting Furnco Constr. Corp. v. Waters, 438 U.S. 567, 577, 98 S.Ct. 2943, 57 L.Ed.2d 957 (1978)..."

age discrimination violations and breach of contract claims that are grounded in fact and law against the defendant Berdon LLP and Drogin's incessant and repetitious references to the GE-KP case was to poison the objectivity of the Courts, such that they could not refrain from adjudicating the case in a fair, objective, non-prejudical and impartial manner.

3.) The Motion to Stay the Mandate and proceed to a Mandamus Petition/Application to the United States Supreme Court for an order vacating Constitutional fraud and reversing the unconstitutional, illogical, unreasonable Second Circuit order pertaining to filing restrictions and sanctions relating to the GE-Kidder Peabody Inc. & Co.'s tortious conversion of DRJDG's financial assets over 39 Years ago. The Mandamus Petition/Application seeks further relief for A *scheduling order to file appellate briefs* to perfect the Consolidated Appeal to prosecute valid meritorious employment age discrimination claims including supplemental state law claims, against the defendant Berdon LLP, who illegally terminated DRJDG's employment on the comparative basis of age in addition to tortious and fraudulent breach of contract.

4.) The Motion to Stay the Mandate and proceed to a Mandamus Petition/Application to the United States Supreme Court to vacate the unconstitutional Second Circuit Court of Appeals CM/ECF filing access restrictions because they have no relevance to DRJDG's substantive valid claims, and extend the time in which to execute the payment of the Appellate Filing Fee and clarify whether it should be executed with the USDC-SDNY or with the Clerk of the Second Circuit Court of Appeals, or through the Pacer Account or CM/ECF filing system.[14] See Appellate Docket entries #20 and #21.

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[14] STATEMENT OF FACTS -GOLUB V. GE-KIDDER, PEABODY& CO., INC., 89 CV 5903 (CSH) (USDC-SDNY):

1) Petitioner's stock brokerage account was tortiously converted by Kidder Peabody & Co., Inc., a brokerage firm owned by General Electric Company (parent company). (Hereinafter GE-KP). In 1991 Petitioner received the physical return of original invested capital at nominal value. The capital assets (marketable securities) were stolen and converted by defendant GE-KP for the period 1986 until December

1991, until such time that aa legal action was filed in 89 Civ. 5903 (CSH) in 1989 in the United States District Court for the Southern District of New York. It has never been resolved, GE, Kidder, Peabody & Co., Inc. refused and refuse to proceed to arbitration, (Tierney died shortly after the case was filed.) This case has never been resolved and is subject to the jurisdiction of the Second Circuit Court of Appeals.

2) In 1986, 1987, 1988 and 1989, Petitioner wrote and called agents and officers of the defendants GE-KP to liquidate this brokerage account. The USDC-SDNY has received in evidence a letter with proof of mailing to the defendant S. Cathcart, now deceased, (President KP and Board of director-officer GE Company) demanding liquidation of the account because proceeds were needed by DRJDG to pay Georgetown University Law Center tuition for a Juris Doctor law program of law courses attended by Petitioner during that period. Rather than respond to the demand for liquidation, defendants intentionally ignored petitioner-plaintiff's letter. Officers of GE-KP instructed DRJDG in writing to proceed to arbitration and 1099B information statement returns were filed by GE-KP with the IRS for each calendar year 1986 through 1992, listing interest income and dividend income to the plaintiff's social security number, even though he had no access to these assets that were held, converted and restrained by GE-Kidder Peabody & Company.

3) In 1989, plaintiff filed a civil complaint with the Federal Court for the Southern District of New York and in the complaint demanded liquidation of the account. Defendants refused to liquidate the account, moved to compel arbitration and in January 1990, filed a 1099B IRS information statement reporting interest and dividend income to the plaintiff. For the years 1986 through 1991 Petitioner reported on his federal income tax individual return 1040 that the interest and dividend income reported by GE-KP was subject to litigation. In 1991 and 1992 fictitious hypothetical 1099B information statements were issued by GE-KP reporting the gross proceeds from the sale of investment securities. The statements also reported dividend and interest income which were netted against margin interest, even though the debt collateralized by the pledged assets remained on the account during the period 1986 through 1992. GE-KP refused to liquidate these accounts even though the petitioner was enrolled in the Georgetown Juris doctor program and demanded the funds to pay for tuition and living expenses.

4) Pursuant to the litigation in the USDC-SDNY, DRJDG argued and demanded that proceeds of the stolen and converted stock brokerage account should be returned to the petitioner. Ms. Sheila Chervin, (hereinafter Chervin) represented all defendants (not General Electric Co.) as in-house counsel from the filing date of the initial USDC-SDNY civil complaint. DRJDG filed a motion accompanied by a legal memorandum of law, that GE was a relevant party to the litigation under the "Pierce the Corporate Veil theory" especially since Cathcart a GE Board Member, was also chairman and President of Kidder, Peabody& Co., Inc. Evidence was presented to the USDC-SDNY demonstrating that that financially, operationally and structurally, Kidder, Peabody, Inc. was dominated, and controlled by the General Electric Company.

5) Chervin moved to stay litigation and compel arbitration. Under the directions of the Court and pursuant to an injunction filed by the petitioner, she released a partial sum of money to the petitioner because the assets in Petitioner's stock brokerage account were tortiously converted by GE-KP employees from 1986 through 1992. She was also informed in writing by the petitioner that GE-KP's decision to treat this partial payment as hypothetical sales, some six years later and after the fact (analogous to backdating stock options) was fraud, accompanied by the issuance of fraudulent IRS Fed Form 1099B information returns for the years 1986 through 1992. (The USDC-SDNY received documented evidence of copies of several letters that were sent to KP officers including Silas Cathcart, GE Officer and Board of Director and President of Kidder, Peabody & Co., Inc., between 1986 and 1989 demanding account liquidation).

The notices were filed with the USDC-SDNY. In 1995, in a memorandum of law signed and filed by the petitioner with the USDC-SDNY, prescient and omniscient legal arguments were presented to the court stating that if brokerage firms and other entities (such as Enron) in control of investment portfolios, such as 401K plans, qualified retirement plans, trusts, pension plans, etc., and arbitrarily refused to execute owner's instructions to liquidate investment accounts, the nation would be in grave financial danger and the citizenry would be furious and take whatever steps were necessary to eliminate such fraud. These arguments were wholly ignored by the federal courts.

6) In 1997 Chervin was called as a witness to testify before Judge Gale in the United States Tax Court regarding the 1099B information tax returns. Mr. Richardson was substituted as legal counsel and appeared with a signed sworn affidavit from Chervin that she had no knowledge or information to offer or testify about before the U.S. Tax Court about the 1099B information tax returns. This was a clear and unequivocal statement of perjury.

7) For the period 1998 through 2006, the petitioner prepared three independent AAA arbitration applications requesting GE-KP to appear. GE claimed it was not a party to arbitration. KP refused to appear, attend and pay fees, yet they withheld the financial securities in the accounts for the period 1986 through 1992. See and compare Arthur Andersen LLP v. Carlisle, 129 S.Ct. 1896 (2009) with KPMG LLP V. Cocchi, 565 U.S. 18 (2011). See Also Green Tree Financial Corp.-Alabama v. Randolph, 531 U.S. 79 (2000):

GE-KP, Inc.'s tortious conversion of marketable liquid financial assets is not a matter for arbitration. Nor is the filing of illegal IRS 1099B Tax information statements. Nor is the hypothetical sale of financial securities by GE-KP Inc., some (6) six years after the demand for liquidation by the plaintiff DRJDG. Moreover, Sheila Chervin, Counsel for Kidder, Peabody& Co., Inc. filed a motion to compel arbitration under a specious and vague arbitration agreement, which is wholly

silent as to who is responsible for the fees and costs of arbitration. See Securities and Exchange Commission v. Zandford, 535 U.S. 813 (2002) in a unanimous holding: "...Consequently, we have explained that the statute should be "construed `not technically and restrictively, but flexibly to effectuate its remedial purposes.' " 406 U.S., at 151 (quoting Capital Gains Research Bureau, Inc., 375 U.S., at 195). In its role enforcing the Act, the SEC has consistently adopted a broad reading of the phrase "in connection with the purchase or sale of any security." It has maintained that a broker who accepts payment for securities that he never intends to deliver, or who sells customer securities with intent to misappropriate the proceeds, violates § 10(b) and Rule 10b-5. See, e.g., In re Bauer, 26 S.E.C. 770 (1947); In re Southeastern Securities Corp., 29 S.E.C. 609 (1949). This interpretation of the ambiguous text of § 10(b), in the context of formal adjudication, is entitled to deference if it is reasonable, see United States v. Mead Corp., 533 U.S. 218, 229-230, and n. 12 (2001). For the reasons set forth below, we think it is..."

GE-KP Inc. refused to proceed to arbitration because it was and had become very clear that it fraudulently violated the securities laws. Moreover, it misappropriated, illegally withheld, stole and tortiously converted DRJDG's financial assets, portfolio accounts, and liquid marketable securities, because it sought to damage his professional reputation and obstruct his professional legal career pursuits and attainment of the Georgetown University Law Center Juris Doctor Law Degree. In 1992, the law was very unclear and ambiguous as to whether conversion of financial assets, marketable liquid securities was subject to arbitration clauses:

The Sixth Circuit decisions in Cohen v. PaineWebber, Inc., 2002 WL 63578 (Hamilton Cty. App. January 18, 2002), Painewebber, Inc. v. Cohen 276 F.3d 197, 209 (6th Cir. 2001) were adjudicated some 13 years after DRJDG (GOLUB) vs. GE-Kidder Peabody, Cathcart, Tierney and Denunzio, et, al. 89 Civ. 5903(CSH). Moreover, none of these decisions have ever addressed the tax fraud perpetrated by the defendants on the plaintiff, DRJDG and the Federal Government. No American citizen investor would contemplate that a broad arbitration clause that failed to address who was responsible to pay the costs and fees of arbitration would also encompass and mandate that the filing of fraudulent 1099B information tax returns over a six-year span would also be a matter contemplated in an arbitration clause, ie., theft, conversion of assets, refusal to liquidate an account while simultaneously filing fraudulent 1099B IRS information tax returns to the IRS, reporting dividend and interest income with the customer's social security number, while taking and accumulating the interest and dividend cash receipts to pay GE-KP broker interest on alleged margin debt associated with the portfolio, THAT THE DEFENDANTS REFUSED TO LIQUIDATE. What rational objective reasonable Federal or State Judge would agree to that absurd stupidity, nonsense other than unethical biased prejudicial politically motivated decisionmakers who fail to do the right thing, that is to protect the American capital markets that are besieged by self-destructive policies? In plain English that is unconscionable misconduct and Judicial fraud. DRJDG's filing of a federal civil complaint was and is rational reasonable and cannot be and can never be challenged as a frivolous filing by rational reasonable

ADDENDUM

STIGMA PLUS DESTRUCTION OF DRJDG'S PROFESSIONAL REPUTATION AND THE DEPRIVATION OF LIBERTY AND PROPERTY INTERESTS IN EMPLOYMENT

The sanctions imposed by this court that solely rely on the outrageous illegal misconduct committed by GE-KP, having tortiously converted

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judicial members of all of the combined panels of the Second Circuit Court of Appeals, beginning in 1989, the filing date) through the present date, irrespective of the Law School each one attended and irrespective of their judicial philosophy, i.e., whether it be characterized as, constructionism, activism, originalism (intent), conservativism, liberalism, constitutionalism, progressivism, or an idealistic standard to approach all cases with professional integrity, meaning strict adherence to the rule of law, keeping an open mind, and deciding each issue in a transparent, straightforward manner, without bias or any preconceived notion of how the matter is going to turn out. Moreover, this case is unresolved because the defendants refused to proceed to arbitration.

"...Although the arbitration provision is broad, stating that it covers any and all controversies pertaining to the brokerage account, we cannot say, as a matter of law, that a claim alleging such tortious conduct as *the aiding and abetting of a theft is subject to the arbitration provision here.* An arbitration clause itself is a contract. A contract requires a meeting of the minds as to the terms contained within. At the time that the parties entered into the contract, there was no meeting of the minds that the arbitration provision would cover claims alleging tortious forms of theft. If the parties had contemplated, at the time that they entered into the arbitration agreement, that PaineWebber would possibly steal from Ginsburg, that would surely be against public policy. Matters more likely to have been contemplated by both parties would have involved questions of whether a particular transaction was authorized or whether there was any miscalculation in the sum of money contained in the account. Here, the claims filed by Cohen alleged that PaineWebber and Wilhelm had engaged in conduct beyond the scope of the brokerage agreement. Zenni, allegedly with the knowledge of PaineWebber and Wilhelm, had sent altered and false monthly account statements to Ginsburg. Accordingly, under the stated circumstances in this case, we hold that, as a matter of law, the claims of unlawful conversion and fraudulent concealment, were not subject to the arbitration provision..." Cohen v. PaineWebber, Inc., 2002 WL 63578 (Hamilton Cty. App. January 18, 2002). See Also Green Tree Financial Corp.-Alabama v. Randolph, 531 U.S. 79 (2000)

DRJDG's financial assets, refusing to liquidate the account when demanded by DRJDG in 1987 to pay GULC J.D. Law School tuition rises to valid incontrovertible *stigma plus* deprivation of liberty and property interests claims [15]:

"...No American citizen investor would contemplate that a broad arbitration clause that failed to address who was responsible to pay the costs and fees of arbitration would also encompass and mandate that the filing of fraudulent 1099B information tax returns over a six-year span would also be a matter contemplated in an arbitration clause, ie., theft, conversion of assets, refusal to liquidate an account with *NET POSITIVE EQUITY* while simultaneously filing fraudulent 1099B IRS information tax returns to the IRS, reporting dividend and interest income with the customer's social security number, while taking and accumulating the interest and dividend cash receipts to pay GE-KP broker interest on *alleged fictitious* margin debt associated with the portfolio, *THAT THE DEFENDANTS REFUSED TO LIQUIDATE...*".

Do these fraudulent acts give rise to sanctions against DRJDG? What facts and events would shock the conscience of the Second Circuit Court of Appeals? If GE-KP fired a machine gun and murdered DRJDG, in daylight on 10 Hanover Square or Wall Street in New York City, would that act move this court[16]? See Mullen v. City of Fowler 582 Fed. Appx.

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[15] Valmonte v. Bane, 18 F.3d 992, 1000 (2d Cir. 1994)

[16] It is axiomatic that "[t]he first inquiry in every due process challenge is whether the plaintiff has been deprived of a protected interest in 'property' or 'liberty.'" Am. Mfrs. Mut. Ins. Co. v. Sullivan, 526 U.S. 40, 59 (1999) (citing U.S. CONST. amendment XIV; Mathews v. Eldridge, 424 U.S. 319, 332 (1976)). To establish a substantive due process claim, plaintiffs must further demonstrate that the *deprivation "is so egregious, so outrageous, that it may fairly be said to shock the*

58 No. 13-3379-cv, at *3 (2d Cir. 2014). What is the definition of egregious, outrageous deprivation of property and liberty interests that *shocks the contemporary* conscience of every Judge sitting on every panel on the Second Circuit Court of Appeals or any federal court including the United States Supreme Court?

DRJDG's professional reputation coupled with the deprivation of the tangible interest of unfettered constitutional first amendment rights of access to the Federal Courts to adjudicate federal employment age discrimination claims pursuant to controlling U.S. Supreme Court and Second Circuit judicial precedent and controlling stare decisis is subsumed in both a liberty interest and a property interest sufficient to invoke the procedural protections of Constitutional Due Process. To prevail on this "*stigma-plus*" procedural due process claim— DRJDG has demonstrated that the (1) this Court's statements and references to the GE-KP federal civil action, grounded in tortious conversion as the reason to invoke restrictive filing sanctions and monetary penalties against DRJDG, constantly and continuously relied upon by the defendant, Berdon LLP and Drogin, its legal counsel, in the USDC-SDNY as a defense to clear and unequivocal employment age

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contemporary conscience." Velez v. Levy, 401 F.3d 75, 93 (2d Cir. 2005) (quoting

discrimination are overwhelmingly derogatory to have clearly and convincingly injured his professional and personal reputation. DRJDG has proved that reliance on the GE-KP Federal civil action as a basis for sanctions is false, and (2) coupled with the material state-imposed burden or state-imposed alteration of the plaintiff's status or rights, with filing sanctions, erroneous monetary penalties followed by refusal to permit CM/ECF filing rights constitute "*Stigma-Plus*" violations. See Vega v. Lantz, 596 F.3d 77, 81 (2d Cir. 2010): "the 'plus' imposed on DRJDG is the specific wrongful Court imposed adverse action clearly restricting the plaintiff's liberty and property interest in unfettered access to adjudicate his loss of employment and the termination or alteration of legal rights and status to vindicate substantive legal rights in the Courts". See Velez v. Levy, 401 F.3d 75, 87-88 (2d Cir. 2005). "We now hold that perfect parity in the origin of both the "stigma" and the "plus" is not required to state the infringement of a "stigma-plus" liberty interest. And the absence of a stringent "source parity" requirement is hardly surprising, given our rules on temporal proximity. When government actors defame a person and — either previously or subsequently — deprive them of some tangible legal right

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County. of Sacramento v. Lewis, 523 U.S. 833, 847 n.8 (1998)).

or status, see Abramson v. Pataki, 278 F.3d 93, 101 (2d Cir. 2002), a liberty interest may be implicated, even though the "stigma" and "plus" were not imposed at precisely the same time.

RESPECTFULLY SIGNED,

/S/ DR. J. David Golub

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NOTARIZED SIGNATURE FOLLOWS

SWORN UNDER OATH UNDER PENALTIES OF PERJURY

RESPECTFULLY SIGNED,

/S/ DR. J. David Golub

FLOL- 6410-424-52-0310

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On the 2nd day of February 2024, DR. J. David Golub, personally came to me, known to be the person described in and who executed the foregoing instrument. Such person duly swore to such instrument before me and duly acknowledged that he executed this instrument before me.

Notary Public

JOSE CUADRADO
MY COMMISSION # HH 101231
EXPIRES: March 7, 2025
Bonded Thru Notary Public Underwriters

Commission expires:

3-7-2025

SECOND CIRCUIT COURT OF APPEALS

DR. J. D. GOLUB	:	**DKT. NO. 23-1258**
	:	
PLAINTIFF-APPELLANT PETITIONER	:	**MOTION TO STAY MANDATE #23-1258 WITH #23-389**
	:	
VS.	:	**MOTION TO STAY MANDATE TO PROCEED TO UNITED STATES SUPREME COURT TO FILE A MANDAMUS PETITION TO VACATE ILLEGAL FRAUDLENT CONSTITUTIONAL VIOLATIONS**
BERDON LLP	:	
DEFENDANTAPPELLEE RESPONDENT	:	
	:	**NOTICE OF APPEALS #23-1258 AND #23-389 FILED SEPTEMBER 07, 2023 FILED MARCH 16, 2023**

FILED AND SERVED VIA CM/ECF SECOND CIRCUIT COURT OF APPEALS
USDC-SDNY DKT. NO.1:19-CV-10309, (J.G. KOELTL M.J. G.W. GORENSTEIN)
RETURN DATE: FRAP RULES OR COURT ORDER
DATED: FEBRUARY 02, 2024, FILED AND SERVED VIA ELECTRONIC MAIL SECOND CIRCUIT COURT OF APPEALS
DATED: FEBRUARY 02, 2024, FILED AND SERVED VIA CM/ECF SYSTEM

MOTION TO STAY THE MANDATE TO FILE A MANDAMUS PETITION/APPLICATION TO THE UNITED STATES SUPREME COURT FOR A JUDICIAL ORDER TO VACATE THE PREJUDICIALLY BIASED, IRRATIONAL, UNSUPPORTED AND ERRONEOUS RULINGS IN THE SECOND CIRCUIT COURT OF APPEALS AS MATERIAL, PREJUDICIAL AND SUBSTANTIAL, REVERSIBLE CONSTITUTIONAL FRAUD

MOTION TO STAY THE MANDATE AND PROCEED TO A MANDAMUS/PETITION TO THE UNITED STATES SUPREME COURT TO VACATE THE SECOND CIRCUIT UNCONSTITUTIONAL MONETARY AND FILING SANCTIONS AND PROCEED TO PERFECT APPELLATE REVIEW OF THE CLEARLY ERRONEOUS AND PREJUDICIALLY BIASED DECISIONS IN 1:19 CIV. 10309 (JGK)

MOTION TO STAY THE MANDATE AND PROCEED TO A UNITED STATES SUPREME COURT MANDAMUS/PETITION TO VACATE THE UNCONSTITUTIONAL "STIGMA PLUS" FILING SANCTIONS AND PENALTIES, ERRONEOUSLY IMPOSED BY THIS COURT OVER A DECADE AGO THAT ARE CLEAR VIOLATIONS OF SUBSTANTIVE AND PROCEDURAL DUE PROCESS, VIOLATE CONSTITUTIONAL EQUAL PROTECTION, VIOLATE THE FIRST AMENDMENT RIGHT TO JUDICIAL ACCESS TO THE FEDERAL COURTS AND ARE EIGHTH AMENDMENT VIOLATIONS FOR CRUEL AND UNUSUAL PUNISHMENT PERTAINING TO AN UNRELATED,

IRRELEVANT AND MERITORIOUSLY VALID CIVIL ACTION FILED, *OVER 35 YEARS AGO*, IN 89 CIV. 5903 (CSH) AGAINST GE-KP, ET,AL, IN WHICH THE USDC-SDNY ORDERED THE DEFENDANTS TO RETURN TO DRJDG HIS FINANCIAL ASSETS, AFTER THEY WERE ILLEGALLY AND FRAUDULENTLY WITHHELD AND CONVERTED FOR OVER FIVE YEARS, AS SECURITIES FRAUD, TORTIOUS CONVERSION OF DRJDG'S MARKETABLE PORTFOLIO LIQUID SECURITIES AND FINANCIAL ASSETS, 1099B TAX REPORTING FRAUD, AND TORTIOUS INTERFERENCE WITH A GEORGETOWN UNIVERSITY LAW SCHOOL EDUCATION CONTRACT

AFFIDAVIT OF LEGAL SERVICE OF PROCESS

Certificate of Service

I hereby certify that the motion entitled:

TO STAY THE MANDATE AND TO PROCEED TO FILE A *MANDAMUS*[1] *APPLICATION/PETITION* TO THE UNITED STATES

[1] **The All Writs Act (28 U.S. Code § 1651) gives the "Supreme Court and all courts established by Act of Congress" the authority to issue writs of mandamus "in aid of their respective jurisdictions and agreeable to the usages and principles of law. Under 28 U.S. Code § 1253, any party may appeal to the Supreme Court from an order granting or denying, after notice and hearing, an interlocutory or permanent**

SUPREME COURT to vacate, reverse and expunge the *Fraudulent unconstitutional Second Circuit Court of Appeals* filing and monetary sanctions, because they are illegal constitutional fraud, (See Addendum) and, to proceed to file, leave, perfect, litigate and prosecute the Consolidated Second Circuit Court timely, meritorious, cogent Appeal in #23-1258 AND #23-389 against Berdon LLP, for Federal Age Discrimination Claims and supplemental state law claims, such as Breach of Contract, accompanied by the attached supporting documents and correspondence were served via e-mail on or before February 2, 2024 (Proof attached) and should also be filed through the CM/ECF system and sent electronically to the registered participants representing the defendant-Appellee as identified automatically on the Notice of Electronic Filing System (NEF), of the Second Circuit Court of Appeals.

COURTESY COPY FILED WITH THE USDC-SDNY THROUGH THE ECF SYSTEM

RESPECTFULLY SIGNED,

/S/ DR. J. David Golub

DR. JERRY (JACK) DAVID GOLUB
ATTORNEY - PRO SE-
PETITIONER-PLAINTIFF-APPELLANT
PROFESSOR OF BUSINESS LAW, TAXATION,
LAW, ACCOUNTING, FINANCE,
LAW & ECONOMICS AND
LAW & PUBLIC POLICY
(973) 454-0677
DRJDG1@COMCAST.NET

NOTARIZED SIGNATURE FOLLOWS

---

injunction in any civil action, suit or proceeding required by any Act of Congress to be heard and determined by a district court of three judges.

ADDENDUM

STIGMA PLUS DESTRUCTION OF DRJDG'S PROFESSIONAL REPUTATION AND THE DEPRIVATION OF LIBERTY AND PROPERTY INTERESTS IN EMPLOYMENT IN VIOLATION OF SUBSTANTIVE AND PROCEDURAL CONSTITUTIONAL DUE PROCESS, EQUALPROTECTION, THE FIRST AMENDMENT TO JUDICIAL ACCESS TO REDRESS WRONGS AND THE EIGHTH AMENDMENT PROHIBITION AGAINST CRUEL AND UNUSUAL PUNISHMENT THAT SHOULD OVERWHELMINGLY SHOCK THE CONSCIENCE OF THIS ENTIRE COURT, AND EVERY COURT IN THE UNITED STATES OF AMERICA INCLUDING THE UNITED STATES SUPREME COURT

The sanctions, including restricting access to the CM/ECF filing system imposed by this court, that solely rely on the outrageous illegal misconduct committed by GE-KP[2], having tortiously converted DRJDG's financial assets, in violation of Federal Securities Laws and Federal Tax Laws, by refusing to liquidate the portfolio account when demanded by DRJDG in 1987 to pay GULC J.D. Law School tuition, rises to valid incontrovertible unequivocal *stigma "plus"* claims, in addition to cruel and unusual punishment.\, which must shock the conscience of every judicial tribunal in the United States including the United States Supreme Court.

[2] **See Note 12 to the 12.06.2023 Motion for Leave of Court and See Note 12 to the 02/02/2023 Motion to Stay the Mandate and file a Mandamus Petition/Application to the United States Supreme Court.**

SWORN UNDER OATH UNDER PENALTIES OF PERJURY

RESPECTFULLY SIGNED,

/S/ DR. J. David Golub

FLDL- 6410-424-52-031-0

DR. J. DAVID GOLUB,
ATTORNEY - PRO SE-
PETITIONER-PLAINTIFF-APPELLANT
PROFESSOR OF BUSINESS LAW, TAXATION
LAW & ACCOUNTING AND FINANCE
LAW & ECONOMICS AND
LAW & PUBLIC POLICY
(973) 454-0677
DRJDG1@COMCAST.NET

On the 2nd **day of February 2024, DR. J. David Golub, personally came to me, known to be the person described in and who executed the foregoing instrument. Such person duly swore to such instrument before me and duly acknowledged that he executed this instrument before me.**

Notary Public

JOSE CUADRADO
MY COMMISSION # HH 101231
EXPIRES: March 7, 2025
Bonded Thru Notary Public Underwriters

Commission expires:

3-7-2025

DR. JD GOLUB <drjdg1@comcast.net> 2/2/2024 7:29 PM

Golub V. Berdon LLP 23-1258 and 23-389 2nd Circ. Motion

To Laurent S. Drogin <ldrogin@tarterkrinsky.com>

Attention Mr. Drogin:

The following papers are attached to this e-mail and are deemed served as follows:

1)TO STAY THE MANDATE AND TO PROCEED TO FILE A *MANDAMUS APPLICATION/PETITION* TO THE UNITED STATES SUPREME COURT to vacate, reverse and expunge the *Fraudulent unconstitutional Second Circuit Court of Appeals* filing and monetary sanctions, because they are illegal constitutional fraud, (See Addendum) and, to proceed to file, leave, perfect, litigate and prosecute the Consolidated Second Circuit Court timely, meritorious, cogent Appeal in #23-1258 AND #23-389 against Berdon LLP, for Federal Age Discrimination Claims and supplemental state law claims, such as Breach of Contract, etc.

2) AFFIDAVIT OF LEGAL SERVICE OF PROCESS

SIGNED,
DR. J.D. GOLUB
(973) 454-0677

On 12/06/2023 3:06 PM EST DR. JD GOLUB <drjdg1@comcast.net> wrote:

Attention Mr. Drogin:

The following papers are attached and are served as the motion for Leave of Court:

1) 12.06.2023 Motion for leave of Court to vacate the *unconstitutional* filing and monetary sanctions, and, to file, leave, perfect and prosecute the Consolidated Second Circuit Court Appeal for Federal Age Discrimination claims and supplemental state law claims, such as Breach of Contract;

2) The 12.06.2023 Appendix to the Motion containing (4) Four Exhibits;

3) The 12.06.2023 Affidavit of Legal Service of Process

DR. J.D. GOLUB
(973) 454-0677

- 02.02.2024 MOTION TO STAY TO FILE MANDAMUS APPLICATION TO U.S. SUPREMECOURT.pdf (1 MB)

- 02.02.2024 AFFIDAVIT OF LEGAL SERVICE OF PROCESS TO FILE MOTION TO STAY MANDATE.pdf (254 KB)

APPLICATION TO JUSTICE SOTOMAYOR
APPENDIX DOC #2

General Docket

Court of Appeals, 2nd Circuit

Court of Appeals Docket #: 23-1258 Golub v. Berdon LLP **Appeal From:** SDNY (NEW YORK CITY) **Fee Status:** Not Applicable		**Docketed:** 09/08/2023 **Termed:** 01/29/2024
Case Type Information: 1) Misc. Civil 2) Other 3) none		
Originating Court Information: **District:** 0208-1 : 19-cv-10309 **Trial Judge:** John G. Koeltl, U.S. District Judge **Trial Judge:** Gabriel W. Gorenstein, U.S. Magistrate Judge **Date Filed:** 11/04/2019 **Date Order/Judgment:** 08/08/2023	**Date NOA Filed:** 09/07/2023	**Date Rec'd COA:** 09/08/2023
Prior Cases: 23-389 **Date Filed:** 03/17/2023 **Date Disposed:** 07/13/2023		**Disposition:** Original Proceedings denied
Current Cases: None		
Panel Assignment: Not available		

J. David Golub Petitioner	J. David Golub, – Direct: 973-454-0677 [NTC Pro Se] 6189 Nobility Way Naples, FL 34142
Berdon LLP Respondent	Laurent S. Drogin, – Direct: 212-216-8000 [COR NTC Retained] Tarter, Krinsky & Drogin LLP 1350 Broadway New York, NY 10018

Dr. J. David Golub,

Petitioner,

v.

Berdon LLP,

Respondent.

09/08/2023	1	NOTICE OF CIVIL APPEAL, and district court docket, on behalf of Petitioner J. David Golub, RECEIVED.[3569100] [23-1258] [Entered: 09/15/2023 08:32 AM]
09/08/2023	2	DISTRICT COURT MEMORANDUM OPINION AND ORDER, dated 08/08/2023, RECEIVED.[3569102] [23-1258] [Entered: 09/15/2023 08:33 AM]
09/08/2023	8	ELECTRONIC INDEX, in lieu of record, FILED.[3569146] [23-1258] [Entered: 09/15/2023 09:13 AM]
09/15/2023	7	ORDER, dated 09/15/2023, dismissing appeal by 10/06/2023, unless Petitioner J. David Golub, submits a motion for leave to file, copy to pro se, FILED.[3569114] [23-1258] [Entered: 09/15/2023 08:44 AM]
10/04/2023	12	PAPERS, Image submitted of CM-ECF, RECEIVED.[3579672] [23-1258] [Entered: 10/11/2023 07:36 AM]
10/06/2023	13	PAPERS, Acknowledgment and Notice of Appearance Form, RECEIVED.[3582849] [23-1258] [Entered: 10/19/2023 11:34 AM]
10/06/2023	14	PAPERS, Motion to Consolidate, to extend time, to perfect the consolidated appeals, RECEIVED.[3582853] [23-1258] [Entered: 10/19/2023 11:43 AM]
10/10/2023	15	MOTION, for additional time for leave to appeal, to consolidate on behalf of Petitioner J. David Golub, FILED. No Service.[3585077] [23-1258] [Entered: 10/27/2023 08:01 AM]
10/16/2023	17	PAPERS, duplicate motion, for additonal time for leave to file, to consolidate, RECEIVED.[3585081] [23-1258] [Entered: 10/27/2023 08:25 AM]
10/27/2023	16	DEFECTIVE DOCUMENT,motion for additional to time for leave to file, to consolidate, [15], on behalf of Petitioner J. David Golub, FILED.[3585078] [23-1258] [Entered: 10/27/2023 08:03 AM]
10/27/2023	18	PAPERS, notices of docket activity, RECEIVED.[3586288] [23-1258] [Entered: 11/01/2023 08:39 AM]
11/03/2023	19	PAPERS, duplicate motion to consolidate, RECEIVED.[3591305] [23-1258] [Entered: 11/17/2023 12:32 PM]
12/06/2023	20	PAPERS, Motion, for leave of court to perfect and prosecute the appeal, to vacate sanctions, RECEIVED.[3597927] [23-1258] [Entered: 12/13/2023 01:16 PM]
12/06/2023	21	MOTION, for leave to appeal, on behalf of Petitioner J. David Golub, FILED. Service date 12/06/2023 by email.[3598698] [23-1258] [Entered: 12/15/2023 03:34 PM]
01/29/2024	31	NEW CASE MANAGER, Yana Segal, ASSIGNED.[3606821] [23-1258] [Entered: 01/29/2024 03:55 PM]
01/29/2024	32	LEAVE TO APPEAL, pursuant to court order, dated 01/29/2024, copy to pro se, DENIED.[3606822] [23-1258] [Entered: 01/29/2024 03:58 PM]
01/29/2024	33	CERTIFIED COPY OF ORDER, dated 01/29/2024, determining the appeal to SDNY, copy to pro se, ISSUED.[Mandate][3606823] [23-1258] [Entered: 01/29/2024 04:00 PM]
02/02/2024	34	PAPERS, motion to stay the mandate and to proceed to file a mandamus application to the US Supreme Court, RECEIVED.[3608013] [23-1258] [Entered: 02/05/2024 08:50 AM]

United States Court of Appeals for the Second Circuit
Thurgood Marshall U.S. Courthouse
40 Foley Square
New York, NY 10007

DEBRA ANN LIVINGSTON
CHIEF JUDGE

Date: February 05, 2024
Docket #: 23-389mv
Short Title: Golub v. Berdon LLP

CATHERINE O'HAGAN WOLFE
CLERK OF COURT

DC Docket #: 19-cv-10309
DC Court: SDNY (NEW YORK CITY)
DC Judge: Gorenstein
DC Judge: Koeltl

NOTICE OF NON-JURISDICTION

This is to acknowledge receipt of papers dated February 2, 2024, in the case referenced above. Because this case was mandated on July 3, 2023, this Court no longer has jurisdiction to entertain your request. For this reason, your papers are returned unfiled.

Inquiries regarding this case may be directed to 212-857-8541.

To appeal, please contact United States Supreme Court.

MANDATE

S.D.N.Y. – N.Y.C.
19-cv-10309
Koeltl, J.

United States Court of Appeals
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 29th day of January, two thousand twenty-four.

Dr. J. David Golub,

Petitioner,

v.

23-1258

Berdon LLP,

Respondent.

In 1991, 1993, and 2000, this Court, in several prior matters, imposed sanctions against Petitioner, which include a leave-to-file sanction and monetary sanctions totaling $1,500 under Fed. R. App. P. 38. *See Golub v. Berdon LLP*, 2d Cir. 23-389, doc. 79 (summarizing Petitioner's sanctions history); *Golub v. Tierney*, 2d Cir. 11-286, doc. 45 (same). In 2011, Petitioner was ordered that "[a]ny future application for leave to appeal in this Court must be accompanied by proof that [he] has paid the sanctions imposed in full." 2d Cir. 11-286, doc. 45. He now moves for leave to file this appeal. Upon due consideration, it is hereby ORDERED that the motion is DENIED because the appeal does not depart from Petitioner's "prior pattern of vexatious filings," *In re Martin-Trigona*, 9 F.3d 226, 229 (2d Cir. 1993), and Petitioner has not yet paid the $1,500 sanction imposed on him, *see Schiff v. Simon & Schuster, Inc.*, 766 F.2d 61, 62 (2d Cir. 1985) ("[A] litigant against whom Rule 38 sanctions have been imposed must comply with those sanctions before being permitted to pursue new matters in that court.").

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk of Court

A True Copy
Catherine O'Hagan Wolfe, Clerk
United States Court of Appeals, Second Circuit

MANDATE ISSUED ON 01/29/2024