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): 19-438 Caption [use short title] Simmons v. Trans Express Inc.

Motion for: Certification of questions to the New York Court of Appeals.

Set forth below precise, complete statement of relief sought:

Certification of questions to the New York Court of Appeals.

MOVING PARTY: Plaintiff Appellant Charlene Simmons **OPPOSING PARTY:** Defednant-Appellee

- [x] Plaintiff
- [ ] Defendant
- [ ] Appellant/Petitioner
- [ ] Appellee/Respondent

MOVING ATTORNEY: Abdul K. Hassan, Esq. **OPPOSING ATTORNEY:** Emory Moore, Esq.

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Court-Judge/Agency appealed from: EDNY - Hon. Judge Eric N. Vitaliano, USDJ

Please check appropriate boxes:

Has movant notified opposing counsel (required by Local Rule 27.1):
- [x] Yes
- [ ] No (explain):

Opposing counsel's position on motion:
- [ ] Unopposed
- [x] Opposed
- [ ] Don't Know

Does opposing counsel intend to file a response:
- [x] Yes
- [ ] No
- [ ] Don't Know

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

Has 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? [x] Yes [ ] No (requests for oral argument will not necessarily be granted)

Has argument date of appeal been set? [x] Yes [ ] No If yes, enter date: January 17, 2020

Signature of Moving Attorney: Abdul Hassan **Date:** 01/23/2020 Service by: [x] CM/ECF [ ] Other [Attach proof of service]

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Charlene Simmons, Plaintiff-Appellant, -v- Trans Express Inc., Defendant-Appellee.	**MOTION TO CERTIFY QUESTIONS TO NEW YORK COURT OF APPEALS** 2d Cir. Case No.: 19 -438 EDNY Case No.: 18-CV-5938 (ENV)(RLM)

I. PRELIMINARY STATEMENT

Plaintiff-Appellant Charlene Simmons respectfully brings the instant motion pursuant to this Court's Rules, including Rule 27.2, to certify the following questions to the New York Court of Appeals:

Question 1 Whether the federal district court erred in dismissing on grounds of "res judicata" the federal and state statutory claims in this action which were not part of the prior Smalls Claims Court action and which are not the same as the claim in the Small Claims Court action, in light of the New York City Civil Court Act ("NYCCCA") § 1808, and the jurisdiction limits of New York City Small Claims Court ("NYCSCC").

Question 2: Whether the FLSA and/or NYLL preclude the application of the res judicata affirmative defense in this action, in light of the restrictions on waiver and forfeiture of wages and rights, under these laws.

If the NY Court of Appeals decides in Plaintiff's favor on the first question, the entire appeal will be disposed of, and it and this Court need not answer the second question.

In formulating the questions for certification, we must be guided by the settled rule that on a pre-answer motion to dismiss or on a motion for judgment on the pleadings, Plaintiff's factual allegations and assertions are taken as true and all reasonable inferences must be drawn in favor of Plaintiff. See i.e. *Chavez v. Occidental Chem. Corp.*, 933 F.3d 186, 195 (2d Cir. 2019), certified question accepted, No. 94, 2019 WL 4060825 (N.Y. Aug. 29, 2019) – such is especially warranted here, where Plaintiff is responding to a pre-answer affirmative defense and materials beyond her complaint. Material factual disputes are an independent ground for denying a motion to dismiss or for judgment on the pleadings.

As to the second question, *Brooklyn Savings Bank v. O'Neil*, 324 U.S. 697 (1945) - probably the leading FLSA case dealing with restrictions on waiver of wage rights, was decided by the New York Court of Appeals before it went to the United States Supreme Court. In addition, the second question also deals with New York Labor Law which has the same or similar restrictions as under the FLSA – 12 NYCRR 142-2.2 incorporates the "manner and methods" of the FLSA. See also NYLL 663(1) ("Any agreement between the employee, and the employer to work for less than such wage shall be no defense to such action."). Once again, however,

if the first question is answered in Plaintiff's favor, the second question need not be answered.

See also, *Barenboim v. Starbucks Corp.*, 698 F.3d 104, 118 (2d Cir.), *certified question accepted*, 20 N.Y.3d 914, 980 N.E.2d 528 (2012), and *certified question answered*, 21 N.Y.3d 460, 995 N.E.2d 153 (2013) ("In certifying these questions, we do not bind the Court of Appeals to the particular questions stated. Rather, the Court of Appeals may expand these certified inquiries to address any further pertinent question of New York law as it might pertain to the particular circumstances presented in these appeals. This panel retains jurisdiction and will consider any issues that may remain on appeal once the New York Court of Appeals has either provided us with its guidance or declined certification.").

II. ARGUMENT

In *Chavez v. Occidental Chem. Corp.*, 933 F.3d 186, 195–96 (2d Cir. 2019), *certified question accepted*, No. 94, 2019 WL 4060825 (N.Y. Aug. 29, 2019), the Second Circuit set forth the factors for certification to the New York Court of Appeals and stated in relevant part as follows:

> Before we certify a question, then, we consider "(1) whether the New York Court of Appeals has addressed the issue and, if not, whether the decisions of other New York courts permit us to predict[4] how the Court of Appeals would resolve it; (2) whether the question is of importance to the state and may require value judgments and public policy choices; and (3) whether the certified question is determinative

> of a claim before us." *Barenboim v. Starbucks Corp.*, 698 F.3d 104, 109 (2d Cir. 2012).

Here, as further explained below, and as the panel at oral arguments appear to recognize, all three factors weigh in favor of certification to the New York Court of Appeals.

1. MEMBERS OF THE PANEL OBSERVED AT ORAL ARGUMENT THAT THE SUBJECT QUESTIONS MAY BE SUITABLE FOR CERTIFICATION TO THE NEW YORK COURT OF APPEALS

At the January 17, 2020 oral argument, Judge Sullivan stated in relevant part as follows:

> **Judge Sullivan:** …maybe you want us to send this to them [NY Court of Appeals] to decide the issue

At the January 17, 2020 oral argument, Judge Hall stated in relevant part as follows:

> **Judge Hall:** So taking you back to something that Judge Sullivan mentioned at the outset, Shouldn't we at least consider certifying this to the New York Court of Appeals? Rather than pronounce what New York Law is and what New York collateral estoppel principles are and what New York's statutory interpretation rules are?

At the January 17, 2020 oral argument, Judge Bianco stated in relevant part as follows:

> **Judge Bianco:** …Aren't New York Courts the best judges of what their statutes mean

The questions presented cry out for certification to the New York Court of Appeals and certification is also in the best interests of this Court and the New York Court of Appeals.

2. GUIDANCE FROM THE NEW YORK COURT OF APPEALS IS ABSENT BUT VERY MUCH NEEDED

It appears undisputed that there is no decision or ruling from the New York Court of Appeals on the questions presented herein for certification. As such, we are left to determine whether decisions from other New York courts provide a sufficient basis to permit this Court to predict how the New York Court of Appeals would rule on the questions herein. Because the duty of this Court is to correctly determine how the New York Court of Appeals will rule, this Court should swiftly decline any invitation to speculate, guess or gamble. The bases for the prediction, it seems, must be clear and unambiguous, direct and without doubt – this standard is far from met and certification is warranted.

Importantly, the focus always remains on how the New York Court of Appeals will rule because this Court is only required to follow the New York Court of Appeals on questions of New York State law and is not required to follow New York's lower courts - to the extent lower court decisions are relevant, it is only in helping to predict how the New York Court of Appeal will rule. As explained below, those lower court decisions are not very helpful and certification to the New York Court of Appeals is warranted.

(A) THE APPELLATE DIVISION DECISIONS ARE INSUFFICIENT TO PREDICT HOW THE NEW YORK COURT OF APPEALS WILL RULE ON THE QUESTIONS PRESENTED - THOSE DECISIONS CAN BE VIEWED AS CONSITENT WITH PLAINTIFF'S POSITION HEREIN, CAN ALSO BE VIEWED AS CONFLICTING IN SOME WAYS, AND THEY DID NOT ADDRESS OR DIRECTLY ADDRESS THE QUESTIONS AND ARGUMENTS HEREIN

The many and extensive arguments made herein, were never addressed or directly addressed in the New York Appellate Division decisions and as such, those cases are not a sufficient basis for predicting how the New York Court of Appeals will respond to the arguments and questions herein. See i.e. *Waters v. Churchill*, 511 U.S. 661, 678 (1994), ("cases cannot be read as foreclosing an argument that they never dealt with").

Second, the Appellate Division decisions, can very reasonably be viewed as being consistent with Plaintiff's position in this case which conflicts with Defendant's interpretation of these same Appellate Division decisions. For example, Plaintiff interprets the subject Appellate Division cases based on compelling reasons explained below, as holding that res judicata under NYCCCA §1808 only applies where the claim in the subsequent action is the same as the claim in the prior Small Claims Court action. Moreover, Defendant's interpretation that res judicata under NYCCCA § 1808 also bars subsequent different claims that were not asserted in the prior Small Claims Court action, was not material to the outcome in the Appellate Division cases. Those cases appear to involve the same

claim divided between two cases – unlike the situation here, where the statutory federal and state claims brought herein, were separate and different from the wrongful termination claim brought in the Small Claims Court action and were never asserted or brought in the prior Small Claims Court action. Any dispute as to whether the claims in the two actions here are the same of similar would be an independent basis for denying Defendant's motion to dismiss at the pre-answer stage where the role of the Court is not to resolve factual disputes.

Third, and very significantly, it appears that the only Appellate Division decision in the briefs (Pl. Br. 23), to focus and restate the current language of the statute NYCCCA §1808 is *Katzab v. Chaudhry*, 48 A.D.3d 428, 849 N.Y.S.2d 804 (2008), in which the Appellate Division rejected the application of res judicata and stated in relevant part as follows:

> The Supreme Court erred in granting his motion to dismiss the complaint on the ground of res judicata. New York City Civil Court Act § 1808 provides that "[a] judgment obtained under this article shall not be deemed an adjudication of any fact at issue or found therein in any other action or court; except that a subsequent judgment obtained in another action or court involving the same facts, issues and parties shall be reduced by the amount of a judgment awarded under this article." Accordingly, it was error to accord the action between the plaintiff Sofia Katzab and the defendant in Small Claims Court res judicata effect and to dismiss the complaint on that basis

Based on the New York Supreme Court's decision in *Katzab v Chaudhry,* No. 10383/2006, 2006 WL 6102979 (N.Y. Sup. Ct. Sep. 21, 2006), Plaintiff Sofia Katzab had a contract with a doctor for cosmetic surgery. She subsequently sued

the doctor in New York City Small Claims Court for breach of contract, personal injury and medical malpractice. At a certain point during the Small Claims Court action, she withdrew the medical malpractice and personal injury claims which she later brought in a second action in Supreme Court. Plaintiff Katzab did obtain a money judgment in the small claims action. In the second action, the defendant argued that the "second action should be dismissed because it is based on the same set of facts and dates as set forth in the first action, which are barred by res judicata." The N.Y. Supreme Court dismissed the action on res judicata grounds but the N.Y. Appellate Division reversed in light of NYCCCA § 1808 – the same post-amendment language of NYCCCA § 1808 that Plaintiff relies upon in this case.

Notably, the Appellate Division in *Merrimack Mut. Fire Ins. Co. v. Alan Feldman Plumbing & Heating Corp.*, 102 A.D.3d 754, 754–55, 961 N.Y.S.2d 183, 184–85 (2013), reaffirmed the holding in *Katzab* and stated in relevant part as follows:

> We note that our decisions in *Katzab v. Chaudhry*, 48 A.D.3d 428, 849 N.Y.S.2d 804 and *McGee v. J. Dunn Constr. Corp.*, 54 A.D.3d 1010, 864 N.Y.S.2d 553 are not to the contrary, as the claims in those cases were not the same as the ones previously asserted in small claims actions. Here, the plaintiff insurance company's claim to recover for property damage to the Karsons' home allegedly caused by the defendant's negligence is the same as the claim brought by its subrogee David Karson in the District Court, which was dismissed after trial.

In other words, the Appellate Division in *Katzab* and *Merrimack* agreed with Plaintiff herein, that a res judicata only applies under NYCCCA § 1808 if the claim in the second action is the *same* as the claim in the prior small claims action. These cases also teach us what is a *same* claim for purposes of NYCCCA § 1808. In this regard, the Appellate Division in *Katzab* and *Merrimak* held that even though the breach of contract, personal injury and medical malpractice claims in *Katzab* were based on the same facts and events – the doctor's malpractice, the personal injury and malpractice claims were not the same as the breach of contract claim for purposes of NYCCCA § 1808. Here, the federal and state statutory wage claims are much more unrelated to and distant from the wrongful termination claim in Small Claims Court. In so holding, the Appellate Division in *Katzab* necessarily rejected the reasoning that res judicata under NYCCCA § 1808 precludes claims that could have been brought but were not brought in small claims court – the entire basis of the lower court's decision and Defendant's position in this matter. In fact, unlike here, the Plaintiff in *Katzab* actually asserted in Small Claims Court, the claims that the Appellate Division allowed her to reassert in her second action when it rejected the res judicata affirmative defense under NYCCCA § 1808.

By way of reinforcement, the Appellate Division in *McGee v. J. Dunn Const. Corp*., 54 A.D.3d 1010, 864 N.Y.S.2d 553 (2008), upheld the following from the lower court's decision in *McGee v J. Dunn Const. Corp.*, No. 7340/2006,

2007 WL 6179709 (N.Y. Sup. Ct. Sep. 24, 2007), rejecting res judicata defense under NYCCCA § 1808:

> Plaintiffs' motion to dismiss defendants' First, Second and Third Counterclaims pursuant to the doctrine of res judicata [CPLR Rule 3211(a)(5)] is denied. The claims dismissed after the small claims trial in the Town of Carmel Justice Court related to quantum meruit claims for extra work performed over and above the contracted price. Any claim on these extras is barred.
>
> However, Uniform Justice Court Act §1808 does not allow for either "issue preclusion" or "collateral estoppel" of separate claims arising from the same transactions between the parties. See, Siegel, New York Practice, 4th Ed., §§585 and 443.

In other words, in affirming a ruling that the statute[1] allows "separate claims arising from the same transactions between the parties," the Appellate Division in *McGee* as also reaffirmed in *Merrimack*, rejected the reasoning and holding of the lower court and Defendant in this case.

We focused first on *Katzab*, *McGee* and *Merrimack* because this case also arose within the jurisdiction of the Second Department.

Turning to *Tovar v. Tesoros Prop. Mgmt., LLC,* 119 A.D.3d 1127 (3d Dep't 2014), from the Third Department, in relying on and citing to *Katzab, MaGee* and *Merimack* for its holding, the Appellate Division in *Tovar* confirmed that the small claims action as well as the subsequent action involved the same claim - under the same claims analysis in *Katzab, MaGee* and *Merimack* – the actions at issue in this

[1] The Small Claims statute in *MaGee* is not materially different from NYCCCA § 1808.

case involve different claims within the meaning of NYCCCA § 1808 and *Katzab, MaGee* and *Merimack*, etc.

Similarly, in *Chapman v. Faustin*, 150 A.D.3d 647, 55 N.Y.S.3d 219, 220 (1st Dep't, 2017), the Court appear to confirm that the same claim was brought in the small claims action as well as the subsequent action when it referred to "the claim" (singular), and stated that "*like* the small claims action brought by plaintiff Robert Chapman, seeks relief for defendants' alleged failure to render proper accounting services." As such, Chapman can very reasonably be read as being consistent with Plaintiff's interpretation of NYCCCA § 1808.

As set forth above, the Appellate Division cases, when properly read, are not inconsistent with Plaintiff's position that res judicata under section NYCCCA § 1808 is limited to the same claim – a situation that is not present in this case. Not surprisingly therefore, the federal courts in *Farbstein v. Hicksville Pub. Library*, 323 F. Supp. 2d 414 (E.D.N.Y. 2004) and *Walters v. T&D Towing Corp.*, No. 17CV0681JSAKT, 2018 WL 1525696, at 5 (E.D.N.Y. Mar. 28, 2018), also held that res judicata under NYCCCA § 1808 only applies to situations involving the same claim in prior and subsequent actions. Once again, any dispute as to whether the federal and state statutory claims here are the same as the wrongful termination claim in the small claims action would require a denial of Defendant's motion to

dismiss at the pre-answer stage as the role of the Court on such a motion is not to resolve factual disputes.

Even if reasonable minds can differ as so the meaning of New York's lower courts decisions, it is difficult or even impossible to argue that New York's lower courts decisions are a sufficient basis to accurately predict how the New York Court of Appeals will rule on the questions presented herein.

(B) THE APPELLATE DIVISION DECISIONS ARE NOT A GOOD PREDICTOR OF HOW THE NY COURT OF APPEALS WOULD RULE IN THIS CASE GIVEN THE VERY HIGH REVERSAL RATE, ESPECIALLY IN THE CONTEXT OF THIS CASE

As Yogi Berra famously said, "It's tough to make predictions, especially about the future." Here, the New York lower courts decisions when examined closely provide insufficient help in accurately predicting how the New York Court of Appeals will rule.

First, the Pillsbury law firm analyzed NY Court of Appeals reversal statistics and stated in relevant part as follows[2]:

> According to the New York State Unified Court System's 2017 Annual Report, during 2017 the four departments of the Appellate Division disposed of 9,569 appeals after argument or submission. The odds of obtaining a reversal or modification were 25 percent. Disappointed appellants will find comfort in the Court of Appeals' reversal rate: 33 percent of the 142 appeals decided by New York's highest court in 2017 resulted in a reversal. Not bad!

[2] https://www.pillsburylaw.com/en/news-and-insights/appellate-division-review-april-2018.html

> This shows that our appellate courts are hard at work—and not just rubber stamps.

Borrowing from the above excerpt, this Court, like the New York Court of Appeals, is not a rubber stamp for the New York Appellate Division. As we explained above, when carefully examined, the Appellate Division decisions do not address or directly address the questions and arguments in this case, and furthermore, those decisions can very reasonably be viewed as consistent with Plaintiff's position in this case. However, the fact that there is a very high reversal rate of 33 percent of Appellate Division rulings, weighs heavily against relying on Appellate Division rulings at this current time as to how the NY Court of Appeals will rule.

Significantly, the reversal rate at the NY Court of Appeals appears to be 100% when the interpretation in question is contrary to the plain language of the statute. In *Majewski v. Broadalbin-Perth Cent. Sch. Dist.*, 91 N.Y.2d 577, 583, 696 N.E.2d 978, 980 (1998), the New York Court of Appeals stated in relevant part as follows:

> As the clearest indicator of legislative intent is the statutory text, the starting point in any case of interpretation must always be the language itself, giving effect to the plain meaning thereof. As we have stated:
>
> "In construing statutes, it is a well-established rule that resort must be had to the natural signification of the words employed, and if they have a definite meaning, which involves no absurdity or contradiction, there is no room for construction and courts have no right to add to or

> take away from that meaning" (*Tompkins v. Hunter,* 149 N.Y. 117, 122–123, 43 N.E. 532; *see also, Matter of Raritan Dev. Corp. v. Silva,* 91 N.Y.2d 98, 667 N.Y.S.2d 327, 689 N.E.2d 1373).

It is rare for even lower courts to interpret statutes contrary to their language, but if Defendant is correct about the lower court decisions (it is not), then those decisions are in conflict with the plain language of the statute – because it appears undisputed that this action would be allowed under the plain language and text of NYCCCA § 1808 which provides for a judgment on a claim in a subsequent action even based on the "same facts, issues and parties."

In *Kimmel v. State*, 29 N.Y.3d 386, 392, 80 N.E.3d 370, 374 (2017), the NY Court of Appeals stated in relevant part as follows:

> In interpreting the term "action" we are guided by the principle that a statute should be construed to avoid rendering any of its provisions superfluous …
>
> Under the State defendants' interpretation, therefore, the statutory exclusion for "an action brought in the court of claims" would have no meaning ...

Powerful proof that Defendant's interpretation is contrary to the statutory language and would render it superfluous and meaningless, and therefore not be accepted by the NY Court of Appeals, is the fact that no one could identify a concrete example of when the statutory language allowing a subsequent claim based on the "same facts, issues and parties," will have application and effect, if Defendant's interpretation of the statute is correct. Defendant struggled to put forth

an example and the example it offered at oral argument is based on an erroneous legal premise that federal Fair Credit Reporting Act ("FCRA"), claims can only be brought in federal court. The example is therefore a nullity because under 15 USC § 1681(p), "An action to enforce any liability created under this subchapter may be brought in any appropriate United States district court, without regard to the amount in controversy, *or in any other court of competent jurisdiction*…." In fact, FCRA claims are often brough in state court. See i.e. *Aldrich v. N. Leasing Sys., Inc.*, 168 A.D.3d 452, 91 N.Y.S.3d 401 (1'st Dep't 2019). Moreover, in Defendant's example, it appears that the Plaintiff would be required under the lower court's interpretation to bring all her claims in a higher court with jurisdiction to handle all of them at one time. This example also requires the Court to answer another question even about traditional res judicata – whether as the district court held, that the jurisdictional exception to res judicata doesn't apply when it is the monetary aspect of jurisdiction that is involved – an issue that the New York Court of Appeals can also address in answering the questions presented for certification.

Another unique aspect of res judicata and collateral estoppel that further warrants certification to the New York Court of Appeals is the fact that as recognized by the U.S. Supreme Court and the New York Court of Appeals, courts thend to conflate and use the terms res judicata and collateral estoppel

interchangeably – thus creating uncertainty and confusion in the jurisprudence that requires higher court review and clarification. *Allen v. McCurry*, 449 U.S. 90, 94, FN 5 (1980) and *Ryan v. New York Tel. Co.,* 62 N.Y.2d 494, 500–01, 467 N.E.2d 487, 490 (1984).

As such, the error rate in trying to predict how the NY Court of Appeals would rule based on the Appellate Division decisions ranges from about 33 percent in general to probably 100 percent in situations where the interpretation is contrary to the language of the statute and renders it virtually meaningless - there are many forms of gambling with a higher likelihood of success. By contrast, an answer by the NY Court of Appeals to a certified question will be 100 percent correct on questions of New York law. Certification is warranted.

3. THE SUBJECT QUESTIONS ARE OF IMPORTANCE TO NEW YORK STATE AND MAY REQUIRE VALUE JUDGMENTS AND PUBLIC POLICY CHOICES

It is hard to overstate the great importance of the questions presented for certification to the NY Court of Appeals. The NYCSCC website[3] states that over 40,000 cases are filed in that court each year – more cases than filed in all of New York's federal courts each year. Extrapolating for the entire state, we can reasonably conclude that they are close to 100,000 or more small claims cases filed each year. We also know that because of the $5,000 cap in Small Claim Court

[3] https://www.nycourts.gov/COURTS/nyc/smallclaims/welcome.shtml

cases at the time of this case, the 100,000 or more litigants a year in New York Small Claims Court are at risk of losing almost all of their other claims if Defendant and the lower court are correct in their interpretation of NYCCCA § 1808 – almost every type of employment/civil rights claim is likely to exceed $5,000 or even $10,000.

The importance of the questions and the need for certification are even greaten given the impact on not just the state court system but the federal court system as well. While an opinion from this Court binds the federal courts in this Circuit, only a ruling from the NY Court of Appeals can bind both federal and state courts and beyond the Second Circuit as well, on these questions of New York State law. As this case demonstrates, small claims litigants often end up in federal court in addition to state court – this is likely because litigants who need the quick and informal process of NYCSCC but who often have employment and civil rights claims that are too big for NYCSCC and which are covered by a variety of federal and state laws. For example, a single mom who needs her last paycheck to pay the monthly rent or buy food for her children, needs the quick and informal process of NYCSCC and cannot wait years while her more complex wage, discrimination or other claims wind their way through the higher courts. It is of great importance to New York State whether a single mother should be forced to choose between paying rent or buying food on one hand, or her wage and civil rights on the other

hand, because of res judicata – imposition of such a drastic choice does not reflect New York's values and such a value and policy judgment should best be made by New York's highest court.

Similarly, whether the NYCCCA § 1808 should be interpreted to protect Defendants alone and not other segments of society from the effects of res judicata is also the type of important and highly consequential value and policy judgment that should be made by New York's highest court. At the outset, there is no such limitation in the statute or the interpreting caselaw.

In addition, a ruling by the NY Court of Appeals would allow Small Claim courts across New York to include such ruling in their educational materials for litigants. For example, if the NY Court of Appeals rules against Plaintiff Simmons, Small Claims Court personnel will no doubt educate and warn litigants that using New York's Small Claims courts will cause them to lose other claims they have that are too big for Small Claims Court – losses that can be in the tens or hundreds of thousands of dollars or even more. By way of further example, if NY Court of Appeals rules in favor of Plaintiff Simmons, Small Claims Court personnel can reassure litigants that they can use New York's Small Claims Court as intended without losing their other claims that are too big for Small Claims Court or which they may not even be aware of at the time of their Small Claims Court action.

A ruling by the New York Court of Appeals may also prompt the New York State legislature to take action in response. The legislature monitors rulings from New York's highest court and has in the past enacted legislation in response to such ruling where it saw fit. In fact, even before a ruling, the NY Court of Appeals is likely to benefit from third party briefing including from government agencies – further ensuring that a correct result is reached that also reflects New York's values and public policy.

4. DECISIONS ON THE QUESTIONS WILL BE DISPOSITIVE OF THE APPEAL

The decisions on the questions presented for certification will be dispositive of this appeal. For example, if the NY Court of Appeals rules in Plaintiff's favor on any one of the questions, a reversal in Plaintiff's favor will be required. Likewise, if the NY Court of Appeals rules against Plaintiff on all questions presented, affirmance of the lower court will be required. Once again, if the New York Court of Appeals rules in Plaintiff's favor on the first issue, it and this Court need not decide the second question.

III. CONCLUSION

Based on the foregoing, Plaintiff kindly requests that this Honorable Court grant this motion and certify the questions set forth above, to the New York Court of Appeals.

Dated: Queens Village, New York
January 23, 2020

Respectfully submitted,

Abdul Hassan Law Group, PLLC

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