

In the  
Supreme Court of the United States

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MICHAEL SKIDMORE  
TRUSTEE FOR THE RANDY CRAIG WOLFE TRUST,  
*Petitioner,*

v.

LED ZEPPELIN, ET AL.,  
*Respondents.*

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On Petition for a Writ of Certiorari to the  
United States Court of Appeals for the Ninth Circuit

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MOTION FOR LEAVE TO FILE  
AND BRIEF OF AMICUS CURIAE  
CALIFORNIA SOCIETY OF ENTERTAINMENT  
LAWYERS IN SUPPORT OF PETITIONER

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**BRIEF OF CALIFORNIA SOCIETY OF  
ENTERTAINMENT LAWYERS AS AMICUS CURIAE  
IN SUPPORT OF PETITIONER**

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## IDENTITY AND INTEREST OF AMICUS CURIAE

Pursuant to Supreme Court Rule 37, the California Society of Entertainment Lawyers (“CSEL”) respectfully submits this brief as *amicus curiae* in support of Petitioner Michael Skidmore, as Trustee for the Randy Craig Wolfe Trust.<sup>1</sup> In accordance with Supreme Court Rule 37.2(a), CSEL has sought the consent of the parties to file this brief. Counsel for Petitioner has granted consent; counsel for Respondents did not consent to said request.

CSEL is an association of attorneys (and, to a certain extent, creative professionals) representing artists in the entertainment industry. Founded in 2013 in response to the lack of artist-friendly professional societies in the Los Angeles entertainment law community, CSEL seeks to balance the influence of powerful conglomerates which dominate the entertainment industry with the rights of creative professionals. Since submitting its first *amicus curiae* brief in support of the Petitioner in *Petrella v. Metro-Goldwyn-Mayer, Inc.*,<sup>2</sup> CSEL has endeavored to identify lines of reasoning that lack integrity and/or violate longstanding precedent before those in a position to correct them, where those decisions erode the rights of creative professionals. Such an opportunity is presented here.

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<sup>1</sup> Pursuant to Rule 37.6, no counsel for a party authored this brief in whole or in part, and no person other than *Amicus Curiae* and its counsel made a monetary contribution to its preparation or submission.

<sup>2</sup> 572 U.S. 663 (2014).

CSEL's fear is that *Skidmore v. Led Zeppelin*, 952 F.3d 1051 (9th Cir. 2020) (*en banc*) (hereinafter referred to as the "*en banc* court/ decision/ majority/ dissent") will cause greater confusion regarding the substantial similarity analysis for proving plagiarism and further prejudice creative professionals in copyright infringement cases. Specifically, the *en banc* court's tortured opinion redefines originality contrary to this Court's decision in *Feist Publ'ns, Inc. v. Rural Rel. Serv. Co.*, 499 U.S. 340 (1991). Recent decisions purporting to follow the case have interpreted it to impose a novelty requirement in music infringement cases. CSEL therefore has an interest in having this matter heard by this Court, so that the Court can clarify the substantial similarity analysis in copyright infringement cases in order to provide predictability and adequate notice of the law. In addition, as pointed out in Petitioner's Brief, there is now a circuit split in this area of the law (Pet'r's Br. 25) which requires resolution.

Further, and, perhaps even more importantly, the *en banc* decision diminishes the copyright protections guaranteed under the Constitution for the purpose of incentivizing innovative and creative works. CSEL respectfully requests that the Court adopt the *en banc* dissent, which is a far more cogent decision, consistent with Supreme Court precedent (*Skidmore*, 952 F.3d at 1080 (Ikuta, J., concurring in part and dissenting in part, with Bea, J. joining)).



## SUMMARY OF THE ARGUMENT

Article I, Section 8, Clause 8 of the U.S. Constitution vests in Congress the power “To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.”<sup>3</sup> This is the purpose and goal of copyright law, i.e. essentially to give creators the right to monetize their creative work and prevent/redress the misappropriation thereof.

In a copyright infringement claim, a plaintiff can only succeed if there is copying of protected expression. *E.g., Feist*, 499 U.S. at 361 (“To establish infringement, two elements must be proven: (1) ownership of a valid copyright, and (2) copying of constituent elements of the work that are original.”). Expression must be original to be protected. *Id.* at 345 (“The *sine qua non* of copyright is originality.”). This question—whether an element is “original” or not—is key in determining whether two works are “substantially similar” enough to find misappropriation, or unlawful copying, as required by the second prong.

Today, there is a circuit split as to what the proper test is for determining substantial similarity.<sup>4</sup> For example, the Second Circuit recognized that breaking

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<sup>3</sup> This is the Patent and Copyright Clause of the Constitution; Congress was granted the explicit authority to pass the Copyright Acts of 1909 and 1976 under this Clause.

<sup>4</sup> See, e.g., 4 *Nimmer on Copyright* § 13.03 (2019) (discussing all tests for determining substantial similarity established across all circuits).

works apart into their “protectible” elements or parts is not useful because its logical end results in a work with no originality. *See, Knitwaves, Inc. v. Lollytags Ltd.*, 71 F.3d 996, 1003 (2d Cir. 1995) (“[I]f we took this argument to its logical conclusion, we might have to decide that ‘there can be no originality in a painting because all colors of paint have been used somewhere in the past.’”). In contrast, the Ninth Circuit sometimes follows the judicially created requirement first appearing in *Cavalier v. Random House* to “filter out and disregard non-protectible elements” (hereinafter referred to as the “filtration rule”). *Cavalier v. Random House, Inc.*, 297 F.3d 815, 822 (9th Cir. 2002). However, the filtration rule is incompatible with this Court’s decision in *Feist* (and numerous other decisions of the Ninth Circuit).<sup>5</sup> *Feist* stands for the proposition that the selection and arrangement of non-protectible elements can meet the minimum “quantum” of originality to be copyrightable. 499 U.S. at 358-59, 363. These tests are fundamentally incompatible, as the filtration rule excludes unprotectible elements while the selection and arrangement test includes them in the analysis. Thus, the *en banc* majority erred by seemingly applying

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<sup>5</sup> *L.A. Printex Inds., Inc. v. Aeropostale, Inc.*, 676 F. 3d 841, 848-52 (9th Cir. 2012) (textile designs); *Swirsky v. Carey*, 376 F.3d 841, 847 (9th Cir. 2004) (music); *Metcalf v. Bochco*, 294 F.3d 1069, 1074 (9th Cir. 2002) (TV show); *Fleener v. Trinity Broad.*, 203 F.Supp.2d 1142, 1148-51 (C.D. Cal. 2001) (book); *Miller v. Miramax*, No. CV 99-08526 DDP (AJWx), 2001 U.S. Dist. LEXIS 25967 (C.D. Cal. Sept. 26, 2001) (film); *Three Boys Music Corp. v. Bolton*, 212 F.3d 477, 485 (9th Cir. 2000) (music); *Apple Computer, Inc. v. Microsoft Corp.*, 35 F.3d 1435, 1441-48 (9th Cir. 1994) (computer programs); *Harper House, Inc. v. Thomas Nelson, Inc.*, 889 F.2d 194, 197 (9th Cir. 1989) (organizer); *Worth v. Selchow & Righter Co.*, 827 F.2d 569, 572-74 (9th Cir. 1987) (trivia fact books).

both the filtration rule from *Cavalier*, and the “selection and arrangement” rule from the foregoing cases. *Skidmore v. Led Zeppelin*, 952 F.3d 1051, 1070, 74-75 (9th Cir. 2020). It has to be one or the other; they cannot co-exist. The original panel of the Ninth Circuit got it right, as did the *en banc* dissent. *Skidmore v. Led Zeppelin*, 905 F.3d 1116, 1137 (9th Cir. 2018) (“We vacate the amended judgment in part and remand for a new trial against Defendants because of . . . the district court’s failure to include a selection and arrangement jury instruction.”); *Skidmore*, 952 F.3d at 1080 (Ikuta, J., concurring in part and dissenting in part).

This Court should grant the petition for writ of certiorari to determine whether or not the filtration rule should be applied at all, ever, and to resolve the circuit split. This case presents an ideal opportunity for the Court to provide some well-needed predictability and consistency within this area of law.

Pursuant to the foregoing, CSEL respectfully submits this brief as *Amicus Curiae* to advocate for the adoption of the dissenting *en banc* opinion. The dissenting opinion found, in pertinent part:

[T]he jury instructions establish a legal principle that is erroneous, and if allowed to stand, establish a mistaken view of copyright protection. Reversal for a new trial is required.<sup>6</sup>

Finally, the aftermath of the convoluted *Skidmore* decision has been a complete perversion of copyright law, substantially contrary to the interests of creators.

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<sup>6</sup> *Skidmore*, 952 F.3d at 1085 (Ikuta, J., concurring in part and dissenting in part).

Specifically, recent cases in the Central District of California have interpreted *Skidmore* to impose a novelty or uniqueness standard for copyright protection which is not found in copyright law and works to the detriment of creative professionals. *See infra* Section B.2. This newly imposed judicial requirement makes it virtually impossible for plaintiffs to win these cases, as “there is nothing new under the sun” (*Ecclesiastes* 1:9). This requirement also runs afoul of *Feist*’s definition of originality. *Feist*, 499 U.S. at 345 (“Original . . . means only that the work was independently created by the author (as opposed to copied from other works), and that it possesses at least some minimal degree of creativity.”).



## ARGUMENT

### I. COPYRIGHT LAW EXISTS TO INCENTIVIZE ARTISTS TO CREATE IN EXCHANGE FOR CERTAIN PROTECTIONS.

The purpose and goal of copyright law is “To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.” U.S. Const. art. I, § 8, cl. 8. In order to incentivize the creation of innovative and creative works, Congress passed the Copyright Acts of 1909 and 1976 to provide certain protections to creative professionals such as the exclusive rights set forth in § 106 of the Copyright Act. In fact:

Maximizing authors’ returns . . . may furnish the most likely route to promoting knowledge: “The economic philosophy behind the clause empowering Congress to grant patents and copyrights is the conviction that encouragement of individual effort by personal gain is the best way to advance public welfare. . . .”<sup>7</sup>

The *en banc* majority’s divergence from this Court’s precedent actually disincentivizes the production of creative works via its impossible-to-satisfy substantial similarity analysis. Recently, courts in the Central District of California have interpreted *Skidmore* to impose a heightened standard of originality. *See infra* Section B.2. To this author’s knowledge, plaintiffs

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<sup>7</sup> Jane C. Ginsburg, *Creation and Commercial Value: Copyright Protection of Works of Information*, 90 Colum. L. Rev. 1865, 1909 (1990) (quoting *Mazer v. Stein*, 347 U.S. 201, 219 (1954)).

virtually never win when standards like the filtration rule are applied.<sup>8</sup>

## II. INFRINGEMENT REQUIRES SUBSTANTIAL SIMILARITY . . . BUT WHAT KIND OF SIMILARITY IS SUBSTANTIAL ENOUGH?

The district court’s jury instructions incorrectly defined originality and failed to adequately explain the protectability of the original selection and arrangements of unprotectible elements; the original panel of the Ninth Circuit (as well as the dissenting opinion) found as much. *Skidmore v. Led Zeppelin*, 905 F.3d 1116, 1130 (9th Cir. 2018); *Skidmore*, 952 F.3d at 1084 (*en banc*) (Ikuta, J., concurring in part and dissenting in part).

### 1. *Feist* Is Binding Precedent That Should Have Controlled the *En Banc* Court’s Analysis.

The Court in *Feist* clarified that a selection and arrangement of unprotectible elements can be sufficiently original as to warrant copyright protection. 499 U.S. at 348. Furthermore, the Court narrowly defined originality. *Id.* at 345 (“To be sure, the requisite level of creativity is extremely low; even a slight amount will suffice . . . ‘no matter how crude, humble or obvious’ it might be.”) (citing 1 M. Nimmer & D. Nimmer, *Copyright* § 1.08[C][1]).

Prior music infringement cases in the Ninth Circuit have recognized this precedent when applying

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<sup>8</sup> See Robert F. Helfing, *Substantial Similarity in Literary Infringement Cases: A Chart for Turbid Waters*, 21:1 UCLA Ent. L. Rev. 1, 2 (2014); Steven T. Lowe, *Death of Copyright*, L.A. Lawyer, November 2010, at 32, 34-35.



the extrinsic test.<sup>9</sup> However, the Ninth Circuit itself has observed that “[t]he extrinsic test provides an awkward framework to apply to copyrighted works like music or art objects, which lack distinct elements of idea and expression.” *Swirsky v. Carey*, 376 F.3d 841, 848 (9th Cir. 2004) (emphasis added).

Here, the *en banc* court affirmed Jury Instruction Nos. 16 and 20, which state in pertinent part: “Copyright only protects the author’s original expression in a work and does not protect ideas, themes or common musical elements, such as descending chromatic scales, arpeggios or short sequences of three notes,” *Skidmore*, 952 F.3d at n.10, and “. . . any elements from prior works or the public domain are not considered original parts and not protected by copyright.” *Id.* at 1071. No “selection and arrangement” jury instruction was given. *Id.* at 1072. This is obviously confusing to jurors who are grappling with the complexities of copyright law. While the *en banc* decision gives lip service to the selection and arrangement test as the proper test, the court also applied *Cavalier’s* filtration rule, which “[f]ilters out and [d]isregards non-protectible elements,” by upholding these challenged jury instructions. *Skidmore*, 952 F.3d at 1070, 74-75. These distinct rules are incompatible, as one rule excludes unprotectible elements in the analysis, and the other includes them.

In a 2004 case of music infringement, the court in *Swirsky* held that “substantial similarity can be found in a combination of elements, even if those

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<sup>9</sup> See *Three Boys Music Corp. v. Bolton*, 212 F.3d 477 (9th Cir. 2000); *Swirsky v. Carey*, 376 F.3d 841 (9th Cir. 2004); *Williams v. Gaye*, 895 F.3d 1106 (9th Cir. 2018).

elements are individually unprotected.”<sup>10</sup> Without a true selection and arrangement instruction, a reasonable jury could easily conclude that no combination of notes in a song can be protectible, since all notes have been used elsewhere in the past. *See Skidmore*, 952 F.3d at 1084 (Ikuta, J., concurring in part and dissenting in part). This would be an unfortunate conclusion, as the appropriated portion in this case is obvious to the untrained ear. The dissent hit the nail on the head by stating that “while Instruction Nos. 16, 20 and 21 are correct statements of law, they are misleading in omitting the principle that a combination of unprotected elements can be protected. . . . and if allowed to stand, establish a mistaken view of copyright protection,” thus requiring “[r]eversal for a new trial.” *Id.* at 1085.

As the Second Circuit correctly noted, this sort of filtration rule necessarily results in rulings where most—if not all—works are determined to have no originality. *See, Knitwaves, Inc. v. Lollytags Ltd.*, 71 F.3d 996, 1003 (2d Cir. 1995). The two tests applied in the instant case are fundamentally incompatible. These contradicting analyses result in unpredictable results and contribute to the already-present confusion identified by multiple scholars in this area of the law.<sup>11</sup>

The reasoning of the *en banc* majority creates a world in which a commercially appealing selection and arrangement of notes will almost never be found protectible. The soundtrack from the 1975 film *Jaws*, as well as Queen and David Bowie’s *Under Pressure*,

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<sup>10</sup> 376 F.3d at 843; *see also Williams*, 895 F.3d at 1120.

<sup>11</sup> *See, e.g.*, 4 *Nimmer on Copyright* § 13.03 (2019); Helfing, *supra* note 8, at 3-4

are among some of the most iconic and recognizable songs in music history. However, if a court were to utilize the *en banc* court's logic in its analysis of either, it could easily find that neither of them contains a single separately protectible element. The filtration rule rewards protection based on levels of complexity rather than originality. By embracing the filtration rule, the *en banc* court failed to follow Supreme Court precedent. *Skidmore*, 952 F.3d at 1070 (“To conduct a copyright infringement analysis, the factfinders ask ‘whether the protectible elements, standing alone, are substantially similar’ and ‘disregard the non-protectible elements.’”) (citations omitted) (internal quotations omitted). The filtration rule must be eradicated by this Court.

## **2. The Lack of a Stable Rule in the Ninth Circuit Has Led to Inconsistent Rulings That Prejudice Creators.**

There have been multiple cases in the Ninth Circuit involving musical works that are similar to the facts of this case and that correctly adhered to this Court's precedent in determining substantial similarity. *See, e.g., Three Boys*, 212 F.3d at 485; *Swirsky*, 376 F.3d at 848; *Williams*, 895 F.3d at 1137.

*Williams v. Gaye* is particularly comparable to this case, as the “Copyright Act of 1909 govern[ed] Gayes’ compositional copyright.” 895 F.3d at 1121. There, the court found that the 2013 best-selling single, *Blurred Lines*, which was written and recorded in June 2012, infringed upon Marvin Gaye’s 1976 recorded song, *Got To Give It Up*. The *Williams* court declined to adopt *Cavalier*’s filtration rule, instead opting to follow the reasoning from *Swirsky*, 376 F.3d at 848, *Metcalf v.*

*Bocho*, 294 F.3d 1069, 1074 (9th Cir. 2002), and *Three Boys*, 212 F.3d at 485. *Williams*, 895 F.3d at 1120-21. The *Williams* court quoted from the *Metcalf* decision that “[e]ach note in a scale, for example, is not protectable, but a pattern of notes in a tune may earn copyright protection.” *Id.* at 1119-20 (Citation omitted). These rules adopted by the Ninth Circuit in prior music copyright infringement cases were largely ignored by the *en banc* court, and have now led to confusion within the circuit.<sup>12</sup>

The effects of the *en banc* decision can already be seen at the district court level. For example, the Judge in the recent *Smith v. Weeknd* decision tossed out the case after allowing “prior art” (never before used to defeat a copyright claim to this author’s knowledge) to defeat a claim of originality. *See, Smith v. Weeknd*, No. CV-19-2507 PA (MRWX), 2020 WL 4932074, at \*6 (C.D. Cal. July 22, 2020) (relying upon *Skidmore*). If “prior art” (i.e., a concept from patent law) is now permitted to defeat copyright infringement claims, no Plaintiff will ever be able to win a copyright infringement case; that is because in hundreds and hundreds of years of music and literature, there is truly “nothing new under the sun.” It has been well established for many years that “a new treatment of a common subject may be protected by copyright.” *Universal Pictures Co. v. Harold Lloyd Corp.*, 162 F.2d 354, 360 (9th Cir. 1947). The loss for the Plaintiff in *Smith* was backed by the *en banc* court’s reasoning that copyright protection cannot be extended to “just a few notes,” regardless

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<sup>12</sup> The *en banc* decision does pay lip service to the selection and arrangement test but ultimately finds that the failure to provide said jury instructions was not reversible error. *Skidmore*, 952 F.3d at 1070, 74-75.

of the importance of these notes to the overall work. *See Smith* at \*6. The deconstruction of creative works is already being used adversely to creator plaintiffs' interests.

An even more concerning example can be seen in the recent decision in *Gray v. Perry*, where the judge tossed out a \$2.8 million jury verdict for the plaintiffs after independently determining that the element that Katy Perry allegedly copied was “not a particularly unique or rare combination.” *Gray v. Perry*, No. 2:15-cv-05642-CAS (JCx), 2020 WL 1275221, at \*10 (C.D. Cal. Mar. 16, 2020). In her decision, Judge Snyder relied on the *en banc* decision to reach this heightened novelty standard. *Id.* at \*3. This new standard has never been the law, and further shows how plaintiffs are clearly disadvantaged in the Ninth Circuit, even after a favorable jury verdict as in *Gray*.

The *en banc* decision is an unjustifiable “departure from precedent”:

[While] [o]ccasional departures from precedent are justified when they allow judges to alter unsound or unjust legal doctrines that are no longer consistent with prevailing social or economic conditions, even in the absence of legislative intervention. . . . frequent departures from the norm may have detrimental consequences for the judiciary and for the public good.<sup>13</sup>

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<sup>13</sup> Lindquist & Cross, *Stability, Predictability and the Rule of Law: Stare Decisis as Reciprocity Norm* 1, 4 (2010) (citing Benjamin Cardozo, *The Nature of the Judicial Process* (1921); Edward H. Levi, *An Introduction to Legal Reasoning* (1949)).

Without any notice of what the law is or how it will be applied, artists will continue to be unfairly disadvantaged whenever bringing a case for copyright infringement. In fact, this result triggers a “discrete” due process concern in cases in which the law is ambiguous or unsettled because “precision and guidance are necessary so that those enforcing the law do not act in an arbitrary or discriminatory way.” *F.C.C. v. Fox Television Stations, Inc.*, 567 U.S. 239, 253 (2012).

As stated by Judge Fletcher, the Ninth Circuit may be “the most hostile to copyright owners of all the circuits.” *Petrella v. Metro-Goldwyn-Mayer, Inc.*, 695 F.3d 946, 958 (9th Cir. 2012) (J. Fletcher, concurring) (concurring “only because we are compelled to follow” Ninth Circuit precedent and noting “a severe circuit split on the availability of a laches defense in copyright cases”) *rev’d* 572 U.S. 663 (2014).

### **3. This Court Should Address and Clarify the Current Circuit Split on the Issue of Substantial Similarity in Copyright Infringement Cases.**

The law regarding substantial similarity analysis in copyright cases is different in virtually every circuit court.<sup>14</sup> This confusion mostly lies in how to determine and when to consider unprotectible elements.

There are several circuits that have made use of the “ordinary observer” test, which (in the words of Judge Learned Hand) checks whether “the ordinary observer, unless he set out to detect the disparities, would be disposed to overlook them, and regard their

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<sup>14</sup> See Steven T. Lowe, *Death of Copyright 3: The Awakening*, L.A. Lawyer, July 2018, at 28, 31 n.52.

aesthetic appeal as the same.” *Peter Pan Fabrics, Inc. v. Martin Weiner Corp.*, 274 F.2d 487, 489 (2d Cir. 1960).

Besides the Second Circuit, this test has also been used in the First, Third, Fifth, and Seventh Circuits.<sup>15</sup> On the other hand, variations of the far tougher “filtration” test have been used in the Sixth, Tenth, and DC Circuits.<sup>16</sup> A middle-ground has been sought out via the use of the two-pronged “intrinsic/ extrinsic” test in the Eighth Circuit,<sup>17</sup> while the Fourth Circuit uses its own “intended audience” test.<sup>18</sup> With the Eleventh Circuit unsettled on this issue,<sup>19</sup> the overall lay of the land is inconsistent and unpredictable (putting it mildly), leaving creators and copyright-

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<sup>15</sup> See, *Concrete Mach. Co. v. Classic Lawn Ornaments, Inc.*, 843 F.2d. 600, 608 (1st Cir. 1998); *Universal Athletic Sales Co. v. Sal-keld*, 511 F.2d 904, 907 (3d. Cir. 1975); *Peel & Co., Inc. v. Rug Mkt.*, 238 F.3d 391, 398 (5th Cir. 2004); *Atari, Inc. v. N. Am. Phillips Consumer Elecs. Corp.*, 672 F.2d 607, 614-15 (7th Cir. 1982) (super-seded on other grounds).

<sup>16</sup> See, *Kohus v. Mariol*, 328 F.3d 848, 854 (6th Cir. 2004); *Gates Rubber Co. v. Bando Chem. Industries, Ltd.*, 9 F.3d 823, 834 (10th Cir. 1993); *Sturdza v. United Arab Emirates*, 281 F.3d 1287, 1297 (D.C. Cir. 2002).

<sup>17</sup> See, *Hartman v. Hallmark Cards, Inc.*, 833 F.2d 117, 120 (8th Cir. 1987); *Sid & Marty Krofft Television Prods. v. McDonald’s Corp.*, 562 F.2d 1157, 1164 (9th Cir. 1977).

<sup>18</sup> See *Dawson v. Hinshaw Music Inc.*, 905 F.2d 731, 733 (4th Cir. 1990).

<sup>19</sup> See *BUC Int’l Corp. v. Int’l Yacht Council Ltd.*, 489 F.3d 1129, 1148 (11th Cir. 2007)

holders in a state of confusion depending on where they file their cases.<sup>20</sup>

Following the Ninth Circuit's confusing *en banc* decision, the Circuits are ripe for clarification from this Court, which will in turn foster more predictability and consistency. Therefore, this Court should step in to calm the turbid waters of this area of the law.

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<sup>20</sup> This is especially troubling where unsuccessful plaintiffs can be liable for large attorneys' fees awards. *See Gilbert v. New Line Prods., Inc.*, 490 F.App'x 34, 37 (9th Cir. 2012) (Approving \$801,130 in attorney's fees for California-based defense counsel); *Wild v. NBC Universal*, No. 10-cv-03615-GAF-AJW, 2011 WL 12877031, at \*4 (C.D. Cal. July 18, 2011) (\$113,041.85 in attorneys' fees awarded to Defendant).





## CONCLUSION

For the reasons set forth above, *Amicus Curiae* joins Petitioners in requesting that this Court grant the petition for the writ of certiorari.

Respectfully submitted,

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