ORIGINAL

No. 20-6219

In the Supreme Court of the United States

SASCHA LYNCH,

Petitioner / Plaintiff,

v.

ALLEN Y. CHAO, ET AL.

Respondents / Defendants.

On Petition for Writ Of Certiorari to the California Court Of Appeal, Second Appellate District, Division 3

After California Supreme Court Denied Petition for Review

PETITION FOR A WRIT OF CERTIORARI

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In Pro Per

October 29, 2020

QUESTION PRESENTED

The United States District Court, Central District of California decided two suits between petitioner and one respondent, Pfizer, Inc. The first suit an alleged infertility injury was dismissed in 2006 and the second, a latent toxic exposure cancer injury was dismissed by the district court on ***inquiry notice*** on behalf of a law firm and its clients the court favored in violation of 28 U.S.C. § 455(a). Petitioner re-filed the cancer injury in state court against multiple defendants, one of which creates an **equitable estoppel** bar to all respondents' defenses. The estoppel issue was not raised in the trial court; however, in California whether causes of action are time-barred is a question of law based on undisputed facts and a change in theory is permitted to be raised for the first time on appeal. The California Court of Appeal affirmed the lower court's ruling on statute of limitations with emphasis on the district court's **bias** inquiry notice decision without addressing, hearing or ruling on petitioner's estoppel defense. The district court's decision relied on by the state trial court and court of appeal is a substantial element in petitioner's state court action.

The question presented is:

1) Whether the California Court of Appeal erred by affirming judgment based on the federal district court's inquiry notice in favor of the defendants without addressing, hearing or ruling on plaintiff's equitable estoppel defense and disregarded it?
2) Did the district judge's **bias** toward and/or collusion with defense counsel and its client in federal court unfairly impact petitioner's rights in state court under 28 U.S.C. § 455(a) when it ruled on inquiry notice to plaintiff's claim?
3) Whether based on question one and two (1) and (2) plaintiff's due process clause was prejudiced thereby?

LIST OF PARTIES AND RELATED CASES

Respondents, and defendants below are Allen Y. Chao, PhD., Searle Pharmaceuticals, Inc., Searle Laboratories, G.D. Searle LLC, G.D. Searle & Co., Pfizer, Inc., Pharmacia Corporation, McKesson Corporation, Monsanto Company, and AmerisourceBergen Corporation.

Petitioner, and plaintiff below, is Sascha Lynch.

2005 Action *Lynch I*

- *Sascha Henderson v. Pfizer, Inc.*, No. 05CV0489, U.S. District Court for the Southern District of New York. Transferred **November 1, 2005**

- *Sascha Henderson v. Pfizer, Inc.*, No. CV05-08344, U.S. District Court for the Central District of California. Judgment entered **August 28, 2006**

2015 Action *Lynch II*

- *Sascha Lynch v. Pfizer, Inc.*, No. CV15-09518-R, U.S. District Court for the Central District of California. Judgment entered **March 28, 2016**

- *Sascha Lynch v. Pfizer, Inc.*, No. 16-55494, U.S. Court of Appeals, Ninth Circuit. Judgment entered **April 21, 2017**. Mandate issued August 1, 2018

- *Sascha Lynch v. Pfizer, Inc.*, No. 17-7870, Supreme Court of the United States, Cert. Denied **March 26, 2018**

State Court

- *Sascha Lynch v. Allen Y. Chao, PhD, et al.*, No. BC703496, Superior Court of California, County of Los Angeles. Judgment entered **March 1, 2019**

- *Sascha Lynch v. Allen Y. Chao, PhD., et al.*, No. B296755, California Court of Appeal, Second Appellate District. Judgment entered **June 8, 2020**

- *Sascha Lynch v. Allen Y. Chao, PhD., et al.*, No. S263246, Supreme Court California, Petition for Review Denied **August 12, 2020**

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Sascha Lynch respectfully petition for a writ of certiorari to review and consider the novel legal issue presented of a state court action.

OPINIONS BELOW

The California Supreme Court's en banc denial of petition for review is unpublished but reproduced at App.1. The California Court of Appeal order denying the petition for rehearing is unpublished but reproduced at App.2-3. The California Court of Appeal's opinion granting respondents' motion to dismiss is unpublished but reproduced at App.4-16. The district court's earlier order granting respondent Pfizer, Inc.'s motion to dismiss relied on by the state trial court and second appellate court is unpublished but reproduced at App.17-19. The opinion of the Superior Court of California, County of Los Angeles is unreported and is reprinted at App.20-23.

JURISDICTION

The California Court of Appeal, Second Appellate District Court issued its opinion June 8, 2020, and denied rehearing June 24, 2020. On August 12, 2020, the California Supreme Court denied petition for review. This Court has jurisdiction under 28 U.S.C. §§ 1254 and 1257.

STATUTORY PROVISIONS INVOLVED

28 U.S.C. § 455(a);

Due Process Clause of the Fourteenth Amendment

STATEMENT OF THE CASE

A. The 2005 Action and the Resulting Final Order and Judgment (*Lynch I*)

Sometime in or around 1984 or 1985, plaintiff began using the Cu-7 as an intrauterine birth control method; when the prescription drug was implanted petitioner was told the absence of the string would indicate it had

dislodged; sometime before 1986 she believed it had fallen out; in April 2000 plaintiff married and sought treatment for vaginal pain; she and her husband were trying to conceive; in January 2002 her family physician performed an ultrasound which revealed the Cu-7 was still inside her – almost 18 years after implantation; on January 14, 2002, plaintiff wrote to Searle seeking information as to possible health effects of the Cu-7's long-term presence in her body, Searle never responded; the Cu-7 was surgically removed March 20, 2002, and the OB/GYN and general infertility surgeon who performed the surgery advised her and her husband to "go make babies"; because petitioner continued experiencing vaginal pain, on June 2, 2003, she was told erosion caused by the Cu-7 had made her infertile. App.39-40.

On May 8, 2004, petitioner reached out to Monsanto Company; Monsanto's in-house counsel, John B. Winski, Esq. responded May 11, 2004, and stated, "I believe you should contact Pfizer Corporation, rather than Monsanto Company" as it "had nothing to do with the manufacture or sale of the Cooper [sic] 7 product." App.34. (These statements, which were later contradicted, are the basis upon which petitioner's equitable estoppel bar against all respondents' defenses are based.)

Petitioner did not sue Monsanto when filing the infertility personal injury cause of action on January 14, 2005 and filed an Amended Complaint for Damages and Demand for Jury Trial against one defendant, Pfizer, Inc. May 3, 2005 in the United States District Court for the Southern District of New York with attachments A (the Searle January 14, 2002 letter) and (B) (Winski email). App.31-34.

Before granting petitioner's motion to transfer her case from the Southern District of New York to the Central District of California on November 1, 2005, the Southern District found the case was not subject to a statute of limitations dismissal. App.44. On August 28, 2006, the Central District Court of California granted summary judgment on statute of limitation grounds based on the Searle letter appended as Exhibit A to the Amended Complaint. App.43 fn. The Ninth Circuit Court affirmed the

district court's dismissal on statute of limitation grounds. *Henderson v. Pfizer, Inc.* 285 Fed.Appx. 370 (9th Cir. 2008).

B. The 2015 Action and the Resulting Final Order and Judgment (*Lynch II*)

On December 9, 2015, petitioner timely brought a second action against the same defendant Pfizer, Inc. in federal court alleging: as of 1972 the manufacturer knew through laboratory testing by Litton Bionetics their prescription drug product the Cu-7 was known to cause cancer. App.47. (The manufacturer's fraudulent concealment left out this material fact of cancer withholding it from learned intermediaries and the public). Petitioner diagnosed with endometrial cancer January 6, 2014 argued this cancer diagnosis is a separate, distinct and qualitatively different injury than the injury alleged in the 2005 Action. (*Pooshs v. Philip Morris USA, Inc.*, 51 Cal. 4th 788, 792 (2011).) This latent disease from the toxic exposure of the Cu-7 is governed by California Code of Civil Procedure § 340.8.

The district court determined petitioner was on **inquiry notice** based on a negative **2008** HPV cancer pathology report[1] App.37, barring her claims on statute of limitations grounds based on *Norgart v. Upjohn Co.*, 21 Cal. 4th 383, 398 n.3 (1999). App.37. Petitioner argued a negative cancer report is not a trigger of a duty to investigate. Lynch also brought to the court's attention she compiled her medical history sometime **after** her March 2014 surgery and outlined this history in the 2015 Action complaint. App.46.

The federal court took this action to demonstrate foreknowledge of related medical injuries and on March 28, 2016, in an unpublished decision dismissed petitioner's case. Section 340.8 was never applied to 2015 Action as a latent toxic exposure cause of action and had it been, the cause of action would have survived a motion to dismiss. App.17-19. *Sascha Lynch v. Pfizer,* Inc., No. 2:15-cv-09518 (C.D. Cal. March 28, 2016).

An appeal was timely filed and request was made in the event the case was returned to the district court that a different judge be selected. The 2015

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[1] The above-referenced 2008 pathology report was provided to this Court as Exhibit F in Case No. 17-7870 and is appended hereto.

complaint and Appellant Informal Brief before the Ninth Circuit requested the grant of legal representation pursuant to 28 U.S.C. § 1915(e)(1). The Ninth Circuit affirmed dismissal on inquiry notice April 27, 2017 citing *Fox v. Ethicon Endo-Surgery, Inc.*, 35 Cal. 4th 787, 808 (2005) and denied a request for rehearing and rehearing en banc December 11, 2017. *Lynch v. Pfizer, Inc.* (9th Cir. 2017) 689 Fed.Appx. 541, cert. denied (2018). App.24-25.

On February 14, 2018, Lynch filed a writ of certiorari on an as-applied challenge to the general personal injury statute California Code of Civil Procedure § 335.1 the district court erroneously applied to the case, instead of Section 340.8 applicable to petitioner's 17+years toxic exposure and resulting cancer injury due to the Cu-7. This Court did not take up the matter. *Lynch v. Pfizer* (2018) 138 S.Ct. 1340.

C. The Current Action, Part One

1. On April 24, 2018, petitioner filed a second action in state court against nine defendants, including Monsanto Company, the entity for which equitable estoppel applies to all respondents' defenses. Petitioner amended her complaint July 30, 2018 and Pfizer filed its demurrer on behalf of multiple respondents' September 4, 2018.[2] Respondents' demurrers relies on the Ninth Circuit's reference to *Norgart v. Upjohn, supra*, 21 Cal. 4th at 397 on inquiry notice where "knowledge of the harm is not required for the claim to accrue." App.25.

In response petitioner asserted the case at bar is distinguishable in that neither *Fox* or *Norgart* contain any reference to exposure from a toxic substance leading to a latent manifestation and that the Legislature codified in Section 340.8, the delayed discovery rule as to <u>any</u> toxic exposure cases (which should have been applied in the 2015 Action under state law). *Rosas v. BASF Corp.* (2015) 236 Cal.App 4th 1378, 1390. She further alleged, the cause of action did not accrue until the endometrial cancer diagnosis on January 6, 2014 when petitioner became aware of her injury.

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[2] On September 18, 2018, Shook Hardy Bacon filed a demurrer on behalf of AmerisourceBergen, and Morrison & Forester filed its separate demurrer on behalf of McKesson Corporation September 4, 2018.

2. Respondent Pfizer, Inc. et al. filed a demurrer in this action to the First Amended Complaint, which states:

> "[W]hile Monsanto is no longer part of Pfizer, it was the prior parent company of the Pfizer predecessor-in-interest that marketed and developed the Cu-7. Monsanto's human pharmaceutical assets and responsibilities, which previously had responsibility for the Cu-7, remained with Pfizer even after it was spun off in 2016." App.35.

(These statements are in direct contradiction to those made by Monsanto's in-house counsel that mislead petitioner causing her not to sue Monsanto and is the basis upon which the equitable estoppel bar against all respondents' defenses rests.)

3. On March 1, 2019, the trial court's Minute Order emphasizing the district court's decision granted respondents' demurrers without leave to amend writing, "[P]laintiff was aware of her alleged injuries as early as 2008, but, did not file suit until more than four years later, in April 2018." App.22. Although a district court opinion is not binding on state courts the lower court bound itself nonetheless. App.20; see App.22. Finding that two, three and four year state statutes applied to petitioner's claims, filing on April 24, 2018 (based on the 2008 reference) was outside the statute of limitations. The trial court sustained the demurrers ruling petitioner's action was "untimely and barred by res judicata." App.21; see App.19.

D. The Current Action, Part Two

1. The Court of Appeal dismissed the matter on June 8, 2020 as being untimely and that petitioner provided an inadequate record on appeal. App.4-16. In agreeing with the trial court that the 2016 inquiry notice decision by the district court is a significant factor, the appellate court rendered its decision dismissing petitioner's case. App.7-8. Petitioner raised the **equitable estoppel** doctrine in her reply brief and expanded on this issue in her petition for rehearing that Monsanto's initial misrepresentation in 2004 that it was not "responsible," causing petitioner not to sue Monsanto until after the statute of limitation expired and Pfizer's contradictory

statement in its September 4, 2018 demurrer stating Monsanto was "responsible" estops Pfizer, Monsanto and the other named respondents' and Does from relying on their statute of limitation defense. App.29-30; see App.34-35.

2. Based on Mr. Winski's representation to petitioner that Monsanto was not liable and Pfizer was, petitioner did not sue Monsanto until after the statue of limitations for suing Monsanto had expired in 2018. App.34-35. Petitioner argued although the estoppel bar was not raised at the trial level, whether a cause of action is time-barred is a question of law. California Supreme Court permits a change in theory to be raised for the first time on appeal. *Ward v. Taggart*, 51 Cal. 2d 736 (1959) [questions of law on undisputed facts may be raised for the first time on appeal.]

The appellate court affirmed the trial court finding that petitioner's action was "untimely and barred by res judicata." App.5. Lynch argued issue or claim preclusion did not apply in the face of equitable estoppel barring respondents' defenses and that respondents' are precluded from raising privity of parties as California recognizes an exception to the privity requirement pertaining to food or drug products. The Cu-7 is a prescription drug product.

3. Although a question of law regarding the statute of limitations was presented, the petition for rehearing was denied on June 24, 2020. App.3 The legal theory of equitable estoppel presented to the Court of Appeal which "if applied might have materially altered the result." *Hormel v. Helvering*, 312 U.S. 552, 557 (1941) (quoting *Vandenbark v. Owens-Illinois Glass Co.*, 311 U.S. 538 (1941).)

E. Petition for Review

1. Pursuant to California Rules of Court. Rule 8.500, petitioner raised two issues : 1) whether the appellate court erred omitting a material fact and 2) did the lower court misstate petitioner forfeited her appeal due to an inadequate appellate record? The argument put forth in the petition for review on the distinct doctrine of **equitable estoppel** was made citing one of

the State High Court's landmark cases, *Lantzy v. Centex Homes*, (2003) 31 Cal.4th 383-384; "A defendant may be equitably estopped from asserting a statutory or contractual limitations period as a defense if the defendant's act or omissions caused the plaintiff to refrain from filing a timely suit and the plaintiff's reliance on the defendant's conduct was reasonable." This requirement was met when petitioner was mislead into believing Monsanto was not responsible or liable and filed the state action after the statute of limitations expired.

Petitioner argued the lower court omitted a decision pursuant to Rule 8.500 on equitable estoppel where it was adequately pled as a wholly independent statute of limitations and should have been sufficient to survive demurrer. App.26-30. Evidence Code Section 623. And that in *Lantzy*, the precedent set by the California Supreme Court on estoppel is binding on the appellate court, which did not refute its applicability to this case. App.12-14.

2. In response to the misstatement made by the court regarding an inadequate record, petitioner raised the California Supreme Court's handling of *Bakke v. The Regents of the University of California at Davis*, 18 Cal. 3d 34, 553 Pl.2f 1152, 132 Cal. Rptr. 680 (1976), where it was noted that a "wholly-inadequate and almost non-existent" record on appeal contained declarations and other documents the appellate court deemed were absent in the case at bar and therefore petitioner forfeited her appeal. App.10-11.

Petitioner provided an adequate record granted by the Second Court of Appeal, Division Seven on April 12, 2019 to augment the record on appeal. All the documents filed supporting the demurrers are in the record on appeal. This Court is thus in a position to see that the appellate court's order sustaining demurrers on an inadequate record on appeal was erroneous. The Petition for Review was denied August 12, 2020. App.1. With the exhaustion of the state-court judgments this Court has appellate jurisdiction pursuant to 28 U.S.C. § 1257.

REASONS FOR GRANTING THE PETITION

Litigants are entitled to nothing less than the cold neutrality of an impartial court. That did not happen in the 2015 Action when the district court entered judgment on a statute of limitations inquiry notice. App.17-19; *see* App.24-25. This action greatly impacted petitioner's due process as outlined in the sections above. The court's behavior suggests the judge, in truth and in appearance was biased against petitioner. *Withrow v. Larkin*, 421 U.S. 34, 47 (1975), "a biased decisionmaker [is] constitutionally unacceptable." And now, its impact has carried over in this state court action. App.23. Petitioner respectfully requests this Court reverse the trial court judgment and remand the case to be adjudicated on the equitable estoppel issue, and annul the erroneous **inquiry notice** determination of the district court, which was bound by decisions of the state's highest court on toxic exposure cases. (See *Pooshs, supra*, 51 Cal.4th at p. 802.)

I. The Extrajudicial Source Doctrine

Under 28 U.S.C. § 455(a), a judge's appearance or bias must be "evaluated on an objective basis, so that what matters is not the reality of bias or prejudice, but its appearance." *Liljeberg v. Health Services Acquisition Corp.*, 486 U.S. 847 (1988).

II. Evidence of the District Court's Deep-Seated Favoritism

The Honorable Manuel L. Real rendered decisions in Courtroom 8 in the United States Courthouse, Central District, Los Angeles, California until his passing away June 26, 2019.

In his capacity as a district court judge, he presided over his share of cases where a particular law firm primarily as defense counsel seemingly could not lose in 'his court.' Impartiality was not a strong suit for the Honorable Manuel L. Real.[3] (Code of Conduct for United States Judges,

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[3] On September 21, 2006, the Honorable Manuel L. Real, was impeached appearing before the Subcommittee on Courts, the Internet, and Intellectual Property of the Committee on the Judiciary House of Representatives for High Crimes and Misdemeanors. Judge Real was not indicted or convicted. The proceedings before the Judiciary Committee can be found here.

https://www.c-span.org/video/?194383-1/judge-manuel-real-impeachment-inquiry#

Canon 2A.) In plaintiff's 2015 litigation, defense counsel was Shook Hardy Bacon and its primary client, Pfizer, Inc. Dismissals favoring the law firm appear inevitable in this district court, with fair, impartial and final determinations decided only when cases were adjudicated by jurisdictions outside Courtroom 8. Here are some examples:

In the matter of *Vera Smith v. Sanofi S.A., et al.*, (2:17-cv-00870-R) (collectively known as *In re Taxotere Products Liability Litigation* with McKesson Corporation included as a defendant), was initially filed in state court. Defendant filed for removal. The matter was initially assigned to a different judge until a notice of related case was filed transferring the case to Judge Real on February 6, 2017. Defendants' requested an extension of time to answer on February 24, 2017, and plaintiff filed a motion to remand. Judge Real's court kept finding reasons to strike plaintiff's documents expanding time for defendants. On April 19, 2017, the parties stipulated to continue a motion to dismiss hearing. Two months later on June 19, 2017, plaintiff was fortunate enough to have her case transferred from Judge Real to the Eastern District of Louisiana. A fair and impartial hearing ensued in Louisiana and the case was remanded back to California state court October 12, 2017.

To show the lengths to which Judge Real would go to issue a ruling in favor of Shook Hardy Bacon is demonstrated in *Living Designs v. E.I. Du Pont De Nemours and Company*, Case Nos. 02-16947, 02-16948, 02-16951 and 04-16354. Judge Real brought in as a visiting judge in the District of Hawai'i, invited defendant DuPont to refile its motions for judgment on the pleading and for summary judgment, prompting the Ninth Circuit to write on appeal, "Considering these actions in the aggregate, we conclude that the appearance of justice requires reassignment on remand. We are also mindful of the expense involved in utilizing visiting judges." The matter was reversed and remanded December 5, 2005 to the District of Hawai'i. A writ of certiorari denied by this Court on June 12, 2006 (05-1136).

Michael Preston v. American Honda Motor Company, No. 2:18-cv-0038-R (C.D. Cal. January 10, 2018)), is a diversity class action dismissed by

Judge Real on May 24, 2018 for failure to state a claim. On appeal, the Ninth Circuit affirmed in part, reversed in part and remanded back to the district court on August 29, 2019 where the case was reassigned to Virginia A. Phillips. *Michael Preston v. American Honda Motor Company*, No. 18-56023 (9th Cir. 2019).

On occasion, Shook Hardy Bacon may represent the plaintiff, and did so in *Mya Saray LLC v. Zahrah Corporation et al.*, No. 8:13-cv-01828 (C.D. Cal. January 10, 2018), where the parties agreed to a compromise and settled the action. Judge Real issued a final judgment and on October 30, 2014 dismissed the action with prejudice against the defendant. Favorable judgments follow whatever side this law firm is on.

On February 15, 2011, in *Theodore Cohen v. Guidant Corporation*, et al., No. CV-05-8070-R (C.D. Cal. February 15, 2011), Judge Real dismissed this case using reasoning based on three Stryker Corp. case references (also a Shook Hardy Bacon client). On appeal, in the Ninth Circuit the parties stipulated to an agreement on November 30, 2011. *Theodore Cohen v. Guidant Corporation*, et al., (Case No. 11-55365).

These cases illustrate how Judge Real put his thumb on the scale and displayed partiality for one side over the other -- in violation of petitioner's due process. When it came to Shook Hardy Bacon and its clients, the remedy to Courtroom 8's tilted scale boiled down to three elements: 1) legal representation for the plaintiff, 2) the Ninth Circuit reversal, and / or 3) transfer to another jurisdiction to correct the erroneous and clearly bias decisions in Courtroom 8 – elements which were not afforded this petitioner. *Are there any cases where Judge Real ruled against this law firm and its clients*?

III. Judge Real's Deep-Seated Favoritism was Fundamentally Unfair to Petitioner

In *Sascha Lynch v. Pfizer, Inc.*, No. 2:15-cv-09518 (C.D. Cal. March 28, 2016), consistent in its bias methodology, the district court ruled alleging plaintiff was on inquiry notice based on a 2008 EMB pathology report. The lab results were negative. App.37. This is not a trigger of a duty to

investigate, since subsequent doctor visits between 2008 and 2013 did not present a presence or concern of cancer until December 2013. In diversity cases the decision of the highest court of a State is binding on federal courts and the California Supreme Court writes, "[T]he single injury rule creates an injustice in toxic exposure cases where an exposure can lead to two or more separate and distinct injuries or illnesses, one or more of which does not arise for years." (See *Pooshs, supra,* 51 Cal.4th at p. 802.)

The court's decision did not follow the decision of the highest court of the State regarding latent toxic exposure cases, but meant to be nothing more than a judge biased again petitioner and an advocate for opposing counsel and its client – clearly a § 455(a) violation that requires vacatur under Federal Rule of Civil Procedure, Rule 60(b)(6).

The absence of legal representation, which petitioner requested at the district court and Ninth Circuit level pursuant to 28 U.S. Code § 1915(e)(1), was of paramount importance and a determining factor in petitioner's due process rights being violated by the district court. This would not have stopped Judge Real from dismissing the 2015 Action in favor of defendant and its law firm, but the probability of prevailing would be heightened, as in the other plaintiff cases, once removed from his courtroom "an impermissible risk of actual bias." *Liljeberg v. Health Services Acquisition Corp.*, 486 U.S. 847, 862 (1988).

The claims before this Court could not have been raised in earlier litigation as the issue of a continued due process violation of petitioner's right is predicated on the recent decisions by the state trial and appellate courts relying on the district court's 2015 Action decision. App.13; *see* App.21. Finally, if without addressing, hearing or ruling on petitioner's estoppel defense below when all four proven elements are present *Lantzy, supra,* 31 Cal.4th at p. 384, and the district court's showing of actual bias is allowed to stand, will result in grave injustice. A "fair trial in a fair tribunal is a basic requirement of due process." *In re Murchison,* 349 U. S. 133, 136 (1955).

* * * * *

This is not a copyright, criminal or securities case. To be sure, there appears to be no circuit conflicts regarding the violation of 28 U.S.C. § 455(a), or an **equitable estoppel** circuit conflict in this context regarding a plaintiff's product liability defense found in state law, nor is one likely to develop. Language used to describe the crux of equitable estoppel can be found in this Court's copyright case, *Petrella v. Metro-Goldwyn-Mayer, Inc.*, 134 S.Ct. 1962 (2014), where, "[T]he 'gravamen' of estoppel is a misleading representation by the plaintiff that the defendant relies on to his detriment" whereas here – reliance on a misleading representation by the defendant that the plaintiff relies on to her detriment, is presented. And this Court maintained that explicit actions or intentional misrepresentations could trigger equitable estoppel defenses. *Petrella* at 1966.

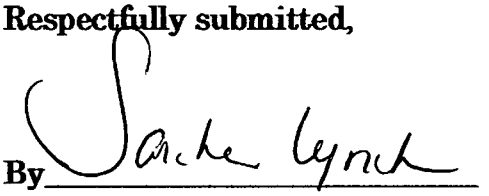
The closet case on an **inquiry notice** trigger element by this Court is securities case, *Merck & Co. v. Reynolds*, 130 S.Ct. 1784 (2010) 599 U.S. 633, where " a cause of action accrues (1) when the plaintiff did in fact discover, or (2) when a reasonably diligent plaintiff would have discovered the facts constituting the violation – whichever comes first." App.46. Judicial bias intermingled with two important issues this Court having ruled on prior in a different context presents a novel legal issue, where the opportunity to correct the grievous errors pursuant to 28 U.S.C. § 2106 are presented here. If review is not granted in this case, the issue is likely to evade the Court's review.

CONCLUSION

For the foregoing reasons, this Court should grant the petition for certiorari.

DATED: October 29, 2020

Respectfully submitted,

By 

Sascha Lynch