No. 20-

IN THE

Supreme Court of the United States

ANGELICA LIMCACO,

Petitioner,

v.

WYNN LAS VEGAS, LLC AND STEVE WYNN,

Respondents.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

In 1974, Congress amended the Judicial Code "to broaden and clarify the grounds for judicial disqualification." 88 Stat. 1609. The first sentence of the amendment provides: "Any justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned." 28 U.S.C. § 455(a), as amended. In *Liljeberg*, this Court cited the Fifth Circuit's analysis and expressed, "the Court of Appeals for the Fifth Circuit concluded that a violation of § 455(a) is established when a reasonable person, knowing the relevant facts, would expect that the justice…knew of circumstances creating an appearance of partiality, notwithstanding a finding that the judge was not actually conscious of those circumstances. *Liljeberg v. Health Services Acquisition Corp.*, 108 S.Ct. 2197. In 1994, this Court incorporated the "extrajudicial source" doctrine in analyzing violations of Section § 455. *Liteky v. U.S.*, 114 S.Ct. 1147, 1149 (1994).

In this case, Petitioner discovered (after filing her reply brief in the court below), that Respondent WLV's lead counsel, Elayna Youchah ("Youchah") was elevated to fill the vacancy of the magistrate judge in Petitioner's case in district court, while Petitioner's case was pending. Youchah's motion to dismiss was granted (dismissing Petitioner's case without leave to amend). Petitioner then discovered payment arrangements between Respondents and agents of the district court. Petitioner raised these issues in supplemental briefing with the court below. Nonetheless, the court below narrowed the standard for a violation of Section 455(a) and held that Petitioner's "'newly discovered' evidence [did] not reveal any error in

judgment made by the district court." See App. A, *infra*, 4a.

The first question presented is whether the language "might reasonably be questioned" under 28 U.S.C. § 455(a) can be judicially restricted to require that a petitioner establish an actual error in judgment, when this contradicts binding Supreme Court precedent, holdings on the same issue in various circuit courts and longstanding canons of statutory construction.

The second question presented is whether outside payment arrangements between a party to litigation and an agent of the court sufficiently satisfy the "outside proceedings" requirement of the "extrajudicial source" rule.

PARTIES TO THE PROCEEDING

The Petitioner is Angelica Limcaco. Respondents are Wynn Las Vegas, LLC, a Nevada limited liability company, and Steve Wynn.

RELATED PROCEEDINGS

Unites States District Court (Nev.):

Limcaco v. Wynn Resorts Ltd., No. 2:18-cv-01685 (April 18, 2019)

United States Court of Appeals (9th Cir.):

Angelica Limcaco v. Steve Wynn, et al., No. 19-15949 (July 28, 2020)

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Angelica Limcaco respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in this case.

OPINIONS BELOW

The Ninth Circuit's opinion denying Petitioner relief under 28 U.S.C. § 455(a) is unreported and attached as Appendix A. *See* App. A, *infra*, 1a-4a. The district court's order dismissing Petitioner's case without addressing the issue of leave to amend is unreported, and attached as Appendix B. *See* App. B, infra, 5a-17a.

JURISDICTION

The United States Court of Appeals for the Ninth Circuit issued its decision on June 22, 2020. *See* App A. The Ninth Circuit issued an order denying Petitioner's petition for rehearing *en banc* on July 28, 2020. *See* Appendix C. This Petition is timely, as this Court entered an order on March 19, 2020, extending the deadline to file a petition for writ of certiorari from 90 days to 150 days from the date of an order denying a timely petition for rehearing. *See* S. Ct. Rule 13.1 and 13.3; *see also* Order List: 589 U.S. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

28 U.S.C. § 455(a) provides:

Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

STATEMENT

This is the most important case to come before this Court regarding a corporation's ability to use financial arrangements to influence public office since *Citizens United v. Federal Election Com'n.*, 130 S.Ct. 876 (2010). In *Citizens United*, Justice Kennedy, opined that "political speech does not lose First Amendment protection simply because its source is a corporation." *Id.*, at 900 (citing *First Nat. Bank of Boston v. Belotti*, 98 S.Ct. 1407 (1978)). The practical implications of this decision have changed elections by designating corporate spending on elections as free speech. Corporations can spend unlimited funds on campaign advertising, if they are not formally "coordinating" with a candidate or political party. However, while this may be sustainable in the electoral process, there are troubling consequences if corporations are similarly permitted to engage in unfettered financial arrangements within the actual judicial system (specifically, when there is no disclosure of such a practice) and when such arrangements are almost certainly used as an attempt to curry favor with a court. If a corporation (or other resourceful party) is able to effectively game the judicial process through financial arrangements (whether they are successful or not), then this Court should clarify

that such arrangements run counter to the legislative intent of 28 U.S.C. § 455(a), as it impairs the public's confidence in an impartial judicial process.

Petitioner Angelica Limcaco, a former manager at the salon of WLV, was the initial whistle-blower on Respondents Steve Wynn and WLV. Limcaco reported to human resources in 2005 that Andrea (one of Limcaco's employees) had been raped and impregnated by disgraced casino mogul, Steve Wynn. Limcaco was then castigated into silence by her superior, Doreen Whennen. Steve Wynn and WLV orchestrated Andrea's abrupt removal without explanation and Andrea was never heard from again. As instructed, Limcaco subsequently brought multiple allegations of sexual assault regarding Steve Wynn to the attention of Ms. Whennen, who did nothing.

Limcaco was told that Steve Wynn was more powerful than the police and that he had bodies buried in the desert. She was told that Steve Wynn bought a publication and killed a story about a girl who disappeared on a boat with him. Various co-workers were abruptly removed by Respondents and never heard from again after making allegations of sexual assault.

After meeting with then-president of WLV, Andrew Pascal, and addressing her concerns, Limcaco was abruptly terminated, blacklisted and forced to declare bankruptcy. Limcaco was concerned for her personal safety because Respondents took affirmative steps to remove Andrea after Andrea informed Limcaco that Steve Wynn raped her. Limcaco alleged that these acts were intended to (in part) make her fear for her life and induce her silence.

After years of oppression and silence, the Wall Street journal ("WSJ") uncovered these events in a report in January 2018, which lead to extensive investigations by the Nevada Gaming Control Board (the "NGCB") and the Massachusetts Gaming Commission the "MGC"). Steve Wynn was seemingly removed from power and Limcaco believed at the time that he was no longer a threat to her safety. Limcaco promptly filed suit in the United States District Court, District of Nevada in September 2018 against WLV (improperly named initially as Wynn Resorts). Limcaco filed a First Amended Complaint as a matter of course and added claims against Steve Wynn (as she was unable to informally resolve her dispute with him). Respondents filed motions to dismiss the First Amended Complaint and argued that Limcaco's claims were time barred. Limcaco alleged that Respondents were equitably estopped from asserting the statute of limitations as a defense based on their affirmative steps to silence her.

After briefing on the WLV and Steve Wynn motions to dismiss closed in December 2018, the NGCB and the MGC released extensive public reports, which substantiated Limcaco's claims (specifically, as they related to the issue of equitable estoppel). The reports addressed a disparity in power between Respondents and WLV employees; evidenced Respondents' efforts to intimidate; and, specifically, addressed Respondents' efforts to immediately cover-up Andrea's rape allegations. As soon as each document became available, Limcaco promptly filed requests for judicial notice.

On April 18, 2019, the Nevada District Court granted the WLV motion to dismiss and effectively sided with WLV on all issues (and failed to even address the issue

of leave to amend). App. B., *infra*, 5a-17a. The District Court refused to consider the evidence submitted from the NGCB and the MGC. *Id.*, *infra*, 14a-15a. Limcaco promptly filed a notice of appeal with the United States Court of Appeals for the Ninth Circuit on May 3, 2019 and briefing concluded in December 2019.

However, while preparing for oral argument (which was originally scheduled for March 2020), Limcaco's counsel uncovered clear conflicts of interest surrounding Respondents' relationship with the Nevada District Court, which warranted disclosure and recusal. Limcaco promptly filed a motion for leave to file a supplemental brief and request for judicial notice on March 10, 2020, which the Ninth Circuit granted on March 11, 2020. Limcaco specifically addressed certain underlying facts in connection with the matter in the Nevada District court, which evidenced an appearance of partiality pursuant to 28 U.S.C.§ 455(a).

A. Limcaco's motion for leave to file a supplemental brief in the court below established an appearance of partiality.

Petitioner filed a motion for leave to file a supplemental brief and request for judicial notice in the court below on March 10, 2020 based on then newly determined facts evidencing that Youchah, lead counsel for Wynn Las Vegas ("WLV") in the District Court Matter,[1] was actively under consideration by the Nevada District Court (during the pendency of the District Court Matter) to fill

1. *Limcaco v. Wynn Resorts Ltd.*, Case No. 2:18-cv-01685 (the "District Court Matter").

the vacancy of Magistrate Foley, the magistrate assigned to the District Court Matter. Petitioner determined that Youchah (who filed multiple motions on behalf of WLV during this time period) was then apparently selected by the District Court to fill Magistrate Foley's vacancy in late March/early April 2019, while still ostensibly serving as lead counsel for WLV. The District Court then promptly granted the WLV motion to dismiss on April 18, 2019. These pertinent facts were never disclosed to Petitioner. In connection with the Petitioner's first motion in the court below, she prepared a timeline of the proceedings in the Nevada District Court.

The District Court Matter was filed in **September 2018**. Youchah, of Jackson Lewis in Las Vegas, served as lead counsel for WLV in the Nevada District Court Matter.[2] Honorable Miranda Du served as the district judge and Honorable George W. Foley served as the magistrate judge in the Nevada District Court Matter.

On or about **October 19, 2018**, the Clark County Bar Association announced that, in connection with Honorable Foley's retirement, the application deadline to fill his vacancy with the Nevada District Court was **November 30, 2018**. Youchah filed the WLV motion to dismiss the First Amended Complaint on **November 8, 2018** and the reply in support of the WLV motion to dismiss on **November**

2. Youchah was lead counsel for WLV throughout the entirety of the proceedings in the District Court Matter (noting that Deverie Christensen, one of Youchah's colleagues at Jackson Lewis in Las Vegas, filed a notice of appearance on behalf of WLV with the Nevada District Court on April 2, 2019, sixteen (16) days before the Nevada District Court granted the WLV motion to dismiss (effectively, in the entirety)).

28, 2018. On **December 3, 2018**, the Nevada District Court appointed a merit selection panel regarding the vacancies of Honorable George W. Foley and Honorable Carl Hoffman.

Simultaneously, the final reply brief regarding the Steve Wynn motion to dismiss, which was filed in connection with the WLV motion to dismiss, was filed on **December 26, 2018**. A decision on the WLV motion to dismiss was not rendered until approximately **four (4)-months later on April 18, 2019**.

On **February 4, 2019**, Youchah, as lead counsel for WLV, filed a motion to strike Plaintiff's request for judicial notice. On **February 19, 2019**, Youchah filed a reply brief regarding Plaintiff's response to WLV's motion to strike. On **March 12, 2019**, Youchah filed a motion to strike Plaintiff's second request for judicial notice.

On **April 2, 2019**, Christensen, who was Youchah's colleague at Jackson Lewis in Las Vegas, filed a notice of appearance as counsel for WLV. Youchah was still listed as lead counsel for WLV at that time and had not withdrawn from the Nevada District Court Matter. Christensen also filed a reply brief to Plaintiff's response to WLV's motion to strike Plaintiff's second request for judicial notice on the same date (noting that all prior filings in the Nevada District Court Matter were filed by Youchah).

The Nevada District Court filed an order granting the WLV motion to dismiss sixteen (16) days later on **April 18, 2019**. The Nevada District Court denied Plaintiff's requests for judicial notice, and failed to even address the issue of leave to amend.

Then, on **May 17, 2019**, the Nevada District court issued a press release announcing that Youchah was actually selected to fill the vacancy of Magistrate George Foley, the Magistrate in the Nevada District Court Matter. The Nevada District Court posted a similar announcement on **May 20, 2019**. On **May 28, 2019**, Youchah's representation with WLV ended. Judge Du, who granted the WLV motion to dismiss in the entirety, was subsequently elevated to the position of Chief Judge of the Nevada District Court, which was announced in or around **September 2019**. Judge Du is now Youchah's colleague and superior.

B. Limcaco's motion for leave to file an amended supplemental brief and coinciding reply brief in the court below further established an appearance of partiality.

After further investigation, Limcaco filed a motion for leave to file an amended supplemental brief on **April 14, 2020**, which the Ninth Circuit ultimately denied and refused to consider (the "Amended Ninth Circuit Motion"). However, the Amended Ninth Circuit Motion established additional compelling facts regarding Respondents' relationship with the Nevada District Court, which were further clarified by Limcaco's coinciding reply brief filed on **April 24, 2020**. Buckley, the former Speaker of the Nevada State Assembly and the Executive Director of the Legal Aid Center of Southern Nevada (the "Legal Aid Center"), was placed on the merit selection panel that ultimately selected Youchah. The merit selection panel selected Youchah, prior to the Nevada District Court's ruling on the WLV motion to dismiss. Ms. Kim Sinatra ("Sinatra"), the former general counsel for Wynn Resorts (the parent company of WLV) is on the board of directors

of the Legal Aid Center. Although Sinatra separated from Wynn Resorts around July/August of 2018, she was contractually obligated to remain available to Wynn Resorts through December 2018 (which coincides with Buckley's appointment to the merit selection panel on December 3, 2018).

Of even greater significance, during the entire pendency of the Nevada District Court Matter, Wynn Resorts/WLV were in a conditional/revocable financial relationship with the Legal Aid Center (whereby Wynn Resorts/WLV "donated" about $100,000 per year to the Legal Aid Center). Wynn Resorts' fourth "donation" was due in April 2019 (the month the Nevada District Court Matter was dismissed). This arrangement was set forth in a Memorandum of Understanding between Wynn Resorts/WLV and the Legal Aid Center (the "MOU"). The MOU was signed by Sinatra (on behalf of Wynn Resorts) and Buckley (on behalf of the Legal Aid Center). Paragraph 5 of the MOU states that the "donations" could be revoked by Wynn Resorts in its sole discretion.

Buckley (who was placed on the merit selection panel), while Sinatra was still in a contractual relationship with Wynn Resorts (and while Sinatra was simultaneously serving on the Legal Aid Center's board of directors), knew when she was placed on the merit selection panel on December 3, 2018, that her foundation was anticipating a conditional/revocable "donation" of $100,000 from Wynn Resorts in April 2019.

If the decision below is allowed to stand, it will have devastating practical consequences on the court system. The decision below effectively strips plaintiffs of any

assurance that they can expect a fair and impartial judicial system free from outside influence, despite the express intent of Congress pursuant to Section 455(a). If the holding in the case below stands, it will have enduring systemic effects on our judicial system, as corporate parties (with vast resources), in particular, will have a virtually unchecked ability to engage in financial dealings with the court in connection with proceedings where they are named parties. This is the converse intention of 28 U.S.C. § 455(a) and can perhaps best be viewed as an unintended consequence of the practical implications of *Citizens United*.

Because the questions presented are of enormous legal and practical importance and this case is an optimal vehicle for addressing them, the petition for a writ of certiorari should be granted.

REASONS FOR GRANTING THE WRIT

A. The decision below perpetrates a conflict among the courts of appeals.

The Ninth Circuit's decision, which re-writes the standard for recusal, unambiguously conflicts with holdings from various other circuit courts, warranting this Court's supervisory review. S. Ct. Rule 10(a). The court below held, "[Petitioner's] 'newly discovered' evidence **does not reveal any error in judgment made by the district court** 'in the conclusion it reached upon weighing the relevant factors'" (emphasis added). *S.E.C. v. Coldicutt*, 258 F.3d 939, 941 (9th Cir. 2001); *see also* App. 4a. This onerous standard is troubling, as it not only eradicates the objective standard applied to a recusal

analysis under 28 U.S.C. § 455(a) (as further discussed *infra* in Section B), but it conflicts with multiple other circuits' analyses regarding the issue of recusal. The Ninth Circuit's holding in the case below supplants that "**appearance**" of partiality standard with the inference that a petitioner must establish "**actual**" partiality.

In *Scott v. U.S.*, the District of Columbia Court of Appeals held, **"[n]either bias in fact nor actual impropriety is required** to violate Canon providing that judge should disqualify himself in proceeding in which his impartiality might reasonably be questioned. *Scott*, at 748-49 (D.C. Cir. 1989) (citing ABA Code of Jud. Conduct, Canon 3, subd. C(1)). There, Chief Judge Roberts opined:

> [t]he necessity for recusal in a case is **premised on an objective standard**. Because Canon 3(C) is incorporated into the federal judicial qualification statute, 28 U.S.C. § 455... federal decisions interpreting the statute are instructive. Thus, even before the recent decision of the Supreme Court in [*Liljeberg*, at 2194], it was clear from the federal circuit court opinions that a judge must recuse from any case in which there is "an appearance of bias or prejudice sufficient to permit the average citizen to question [the] judge's impartiality" (emphasis added)

Scott, at 749 (*citing U.S. v. Heldt.*, 668 F.2d 1238, 1271 (D.C. Cir. 1981).

In *Union Planters Bank v. L & J Development Co., Inc.*, the Sixth Circuit similarly held (in interpreting

28 U.S.C. § 455(a)), "[p]ursuant to § 455, a judge must recuse himself or herself 'where a reasonable person with knowledge of all the facts would conclude that the judge's impartiality might reasonably be questioned.'" *Union Planters Bank v. L& J Development Co., Inc.*, 115 F.3d 378, 383 (6th Cir. 1997). "This statute is designed 'to promote confidence in the judiciary by avoiding **even the appearance of impropriety whenever possible**" (emphasis added). *Id.* (*citing Liljeberg*, at 2194). "Where the question is close, the judge must recuse himself." *Union Planters Bank*, at 383 (*citing U.S. v. Dandy*, 998 F.2d 1344, 1349 (6th Cir. 1993).

Of perhaps even greater significance, Circuit Judge Moore opinioned, "[n]othwithstanding **the statute's broad reach**, disqualification under § 455(a) may be waived following full disclosure. *Union Planters Bank*, at 383; *see also* 28 U.S.C. § 455(e). In the case below, there simply was no disclosure regarding the conflicts of interest surrounding the proceedings. Moreover, the narrow holding of the court below, which demands that a petitioner actually establish an "error in judgment" (App. 4a) in order to substantiate a recusal, conflicts with the "broad reach" of the statute announced by the Sixth Circuit. *Union Planters Bank*, at 383.

In *Pepsico, Inc. v. McMillen*, a case with facts that are instructive to the highly unusual circumstances in the case below, Circuit Judge Posner opined, "[t]he test for an appearance of partiality is, as the language from [*SCA Services, Inc. v. Morgan*, 557 F.2d 110 (7th Cir. 1977)] indicates, whether an objective, disinterested observer fully informed of the facts underlying the grounds on which recusal was sought would entertain a

significant doubt that justice would be done in the case." *Pepsico v. McMillen*, 764 F.2d 458, 460 (7th Cir. 1985). The circumstances in *Pepsico*, although not symmetrical, have comparable relevance. There, the court held:

> Judge was required to recuse himself from an action where person working on judge's behalf mistakenly contacted law firms representing opposing parties in pending antitrust action concerning possible employment of judge after his retirement from bench; **although there was no actual impropriety, recusal was required to avoid appearance of partiality**, inasmuch as objective observer might wonder whether judge might not, at some unconscious level, favor firm that had not as definitively rejected his employment (emphasis added).

Id., at 460. In the case below, Respondent's counsel was in direct contact with the district court (during the entire pendency of the same matter) **regarding employment as a magistrate judge** presiding over the very case she was litigating. She was then selected by the same court within weeks of a ruling on a dispositive motion (that she authored and submitted to the district court), where the ruling was entirely in her favor (dismissing Petitioner's case without leave to amend). *DCD Programs, Ltd. v. Leighton*, 833 F. 2d 183 (9th Cir. 1987) ("[p]rocedural rule's policy of favoring amendment to pleading should be applied with **extreme liberality**" (emphasis added)); see also *Forman v. Davis*, 371 U.S. 178, 182 (1962) ("[t]he United States Supreme Court has stated that **this mandate is to be heeded**") (emphasis added).

At the time the district court ruled on her motion, Youchah had apparently been selected to fill the vacancy of a Judge in Petitioner's case, but was still ostensibly listed as lead counsel. Buckley, who was appointed by the Nevada District Court to the merit selection panel that elevated Youchah (and who's foundation, the Legal Aid Center) is referred a substantial number of pro bono cases from the Nevada District Court, was also receiving conditional "donations" from Wynn Resorts. Indeed, Wynn Resorts (Respondent WLV's parent company) was effectively employing both Youchah (WLV's counsel) and Buckley. Judge Du, who presided over the district court matter, then assumed the role of Chief Judge of the Nevada District Court within months of both Youchah's appointment and her dismissal of Petitioner's case without leave to amend. Judge Du also collaborates with Youchah on multiple cases currently. *Id.* (the relationship…familial and financial (as in *Potashnick v. Port City Construction Co.*, 609 F.2d 1101 (5th Cir. 1980)) between a judge and lawyer in a case before him is of course a familiar basis for recusal). The "**appearance**" of partiality in the case below (whether or not there was any actual impropriety) warranted disclosure and recusal. 28 U.S.C. § 455(a).

Nonetheless, the holding in *Pepsico* (not dissimilar from the opinions from the D.C. Circuit Court and the Sixth Circuit addressed above) is that the standard for recusal is whether there is an "**appearance**" of partiality, not whether "the evidence reveals an error in judgment," as narrowly articulated by the court below. App.4a.

This Court should grant the petition for writ of certiorari to ensure uniformity among the circuit courts on this important issue.

B. The decision below is contrary to the plain language of 28 U.S.C. § 455(a) and conflicts with binding Supreme Court precedent.

The decision from the court below explicitly conflicts with this Court's express holding in in *Liljeberg* regarding the interpretation of 28 U.S.C. § 455(a). S. Ct. R. 10(c). In *Liljeberg*, Justice Stevens, who acted in accord with Chief Judge Clark of the 5th Circuit, established that the appropriate inquiry is whether there is an **appearance** of partiality, which is assessed under an objective standard. *Liljeberg*, at 2202 (*citing Health Services Acquisition Corp. v. Liljeberg*, 796 F.2d 796, 802 (1986)) ("[t]he goal of section 455(a) **is to avoid even the appearance of partiality**…[whether or not] the judge is pure of heart and incorruptible") (emphasis added).

The holding in the court below contravenes the express intent of Congress' amendment to Section 455(a), as the holding transposes the word "**appearance**" (as established by this Court in *Liljeberg*) with the inference that the violation must be "**actual**." App. 4a. Indeed, the court below held, "[Petitioner's] 'newly discovered' evidence **does not reveal any error in judgment made by the district court** 'in the conclusion it reached upon weighing the relevant factors'" (emphasis added) *S.E.C. v. Coldicutt*, 258 F.3d 939, 941 (9th Cir. 2001); *see also* App. 4a. While Petitioner contends otherwise for her purposes, the greater concern is the far-reaching effects this newly determined onerous standard has on future cases (in the Ninth Circuit and otherwise) that interpret Section 455(a).

The Ninth Circuit's new standard requires a showing of "**actual**" partiality, as opposed to an "**appearance**" of partiality, which is at odds with this Court's precedent and

related authority. *Health Services Acquisition Corp.*, at 801 (*citing* 13A C. Wright & A. Miller, Federal Practice and Procedure § 3553 ("[t]here should be no room in [the recusal] context for the concept of harmless error to apply, **nor for arguments to be made that in fact the judge acted in an impartial manner**") (emphasis added). The holding in the court below contravenes Supreme Court precedent. *Citizens United*, at 912 (Supreme Court precedent is to be respected by the Court unless the most convincing of reasons demonstrates that adherence to it puts the Court on a course that is sure error).

The court below neglected the express language of Section 455, which unambiguously provides, "[a]ny justice, judge, or magistrate judge of the United States shall disqualify [herself] in any proceeding in which [her] **impartiality might reasonably be questioned** (emphasis added). 28 U.S.C. § 455(a). This Court has interpreted Section 455(a) to require recusal if there is an objective appearance of partiality, even if the conduct was not actually partial.

Petitioner only needed to show that **a reasonable person under the circumstances would find an appearance of partiality, and she was not even required to establish scienter** (emphasis added). *Liljeberg*, at 2202 ("[v]iolation of statute which requires judge to disqualify [herself] in any proceeding in which [her] impartiality might reasonably be questioned is **established when a reasonable person, knowing the relevant facts, would expect the judge knew of circumstances creating an appearance of partiality, notwithstanding finding that the judge was not actually conscious of the circumstances**[3] (emphasis added)).

3. This Court distinguished that there is an express distinction, for instance, between Section 455(a) and Section

To address this point, Limcaco alleged (and substantiated with supporting declarations and unambiguous exhibits) among other points, that WLV's lead counsel (who filed virtually every brief on behalf of Respondent WLV, while she was simultaneously under consideration by the Nevada District Court to fill a vacancy of a judge in the same matter), was selected by the same court to fill the vacancy just prior to a ruling granting her client's motion to dismiss. The Nevada District Court sided with Respondent WLV (and its counsel, who was the Nevada District Court's new colleague) on every issue and disposed of Limcaco's case without even considering the issue of leave to amend. Limcaco also established an ongoing conditional financial relationship between WLV and a member of the merit selection panel (here, Buckley) that was appointed by the Nevada District Court, which the court below refused to consider. Petitioner established that Wynn Resorts was set to pay Buckley's foundation $100,000 in April 2019, which coincided with Youchah's appointment as a Judge in Petitioner's case, and a subsequent ruling on April 18, 2019, dismissing Petitioner's case without leave to amend (and without any disclosure of this actual conflict of interest).

Justice Stevens was clear in this Court's opinion in *Liljeberg* and established that the purpose of § 455(a) is to promote confidence in the integrity of the judicial

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455(b)(4). This Court held, "[t]o read § 455(a) to provide that the judge must know of the disqualifying facts, requires not simply ignoring the language of the provision—**which makes no mention of knowledge**—but further requires concluding that the language in subsection (b)(4)—which expressly provides that the judge **must know** of his or her interest—is extraneous" (emphasis added). *Liljeberg*, at 2202.

process. *Liljeberg*, at 2202-03 ("…advancement of the purpose of [§ 455(a)]—to **promote public confidence in the integrity of the judicial process…does not depend upon whether or not the judge actually knew of facts creating an appearance of impropriety, so long as the public might reasonably believe that he or she knew**" (emphasis added).

This Court's holding in *Liljeberg* is intended to preserve the public's trust in the judiciary and to guard the integrity and nobility of the office. *Id.*, at 2204 ("[i] n determining whether judgment should be vacated for violation of statute requiring judge to disqualify [herself] in any proceeding in which [her] impartiality might reasonably be questioned, it is appropriate to consider risk of injustice to parties in particular case, risk that denial of relief will produce injustice in other cases, and risk of undermining public's confidence in judicial process"); *see also* Fed. R. Civ. Proc. 60(b).

Although the facts strongly evidence certain improprieties, Limcaco (a member of the public) was only required to establish an **appearance** of partiality, as Congress articulated in the drafting of Section 455(a) and, as this Court held in *Liljeberg*. Justice Kennedy confirmed this notion, when he filed an opinion concurring in the judgment *in Liteky v. U.S.*, 114 S.Ct. 1147 (1994). There, Justice Kennedy opined, "the relevant consideration under § 455(a) is the **appearance** of partiality" (emphasis added). *Id.* at 1158-59 (*citing Liljeberg*, at 2202-03). Limcaco was not required to "evidence and error in judgment," and to hold her to such a standard clearly conflicts with precedent set forth by this Court.

In *Liteky*, this Court held that recusal under Section 455(a) is subject to the limitation of the "extrajudicial source" doctrine. *Liteky*, at 1149. The premise of the "extrajudicial source" doctrine is that "judicial rulings almost never constitute a valid basis for a bias or partiality recusal motion." *Id.*, at 1150 (*citing U.S. v. Grinnell*, 86 S.Ct. 1698, 1710 (1966). It would be difficult to surmise, however, that Respondent WLV's financial arrangements with an agent of the court (which was directly tied to elevating its counsel to the position of a Judge in Petitioner's case just prior to a ruling dismissing her case without leave to amend) would qualify as prejudice arising out of the proceedings.

This Court has squarely addressed that **bias does not need to actually exist, nor does it need to be proven**, in order to substantiate a violation of Section 455(a). *Caperton v. A.T. Massey Coal Co., Inc.*, 129 S.Ct. 2252, 2265 (2009) (objective standards may also require recusal whether or not actual bias exists or can be proved); *see also Id.* (*citing In re Murchison*, 75 S.Ct. 623 (1955) ("Due process 'may sometimes bar trial by judges who have no actual bias and who would do their very best to weigh the scales of justice equally between contending parties.").

This Court should grant the petition for writ of certiorari to mitigate against future decisions that attempt to narrow the statutory language of Section 455(a) by requiring a showing of "**actual**" partiality.

C. The question presented is an issue of national importance.

This watershed case presents this Court with issues of exceptional importance, as the circumstances here effectively serve as an unintended consequence of practical implications of the holding in *Citizen's United*, which justifies this Court's exercise of its supervisory powers. S. Ct. R. 10(a). The factual underpinnings of this case establish a virtually unchecked abuse of power by WLV and Steve Wynn against Petitioner. The facts (which are substantiated by third-party investigative agencies) establish that WLV and Steve Wynn threatened Limcaco's personal safety. Even more astounding is that when Limcaco again courageously came forward in 2018, Respondents assisted or attempted to directly or indirectly influence the judicial process in their favor (in another attempt to trample on Limcaco's rights).

California Assembly Bill No. 218 ("Assembly Bill 218") is instructive on the issue Limcaco presented to the court below in her appeal. Indeed, in accordance with our society's important efforts to protect the interests of victims of abuse, California Governor Gavin Newsom approved Assembly Bill 218 on October 13, 2019. While Assembly Bill 218 directly addresses the statute of limitation regarding victims of childhood sexual assault, the factual underpinnings of this case (which address years of abuse by WLV and Steve Wynn) saliently warrant protection. For purposes of clarity, Assembly Bill 218 increases the time limit for commencing an action for recovery of damages suffered as a result of childhood sexual assault to 22 years from the date plaintiff attains the age of majority…" California Assembly Bill No. 218,

Chapter 861. Similarly, Limcaco argued that WLV and Steve Wynn were estopped from asserting the statute of limitations as a defense due to their overt steps to abuse her and impede her from coming forward.

However, when Limcaco did again come forward, WLV and Steve Wynn took steps to endanger the integrity of the judiciary, through direct or indirect influence over the Nevada District Court Matter. Canon 1 of the Judicial Code of Conduct provides that a judge should uphold the integrity and independence of the judiciary. Guide to Judiciary Policy, Vol. 2, Pt. A, Canon 1. Canon 2 provides that a judge should avoid impropriety and the appearance of impropriety in all activities. *Id.*, Canon 2. Specifically, Canon 2 delineates, "[a] judge should [not] convey or permit others to convey the impression that they are in a special position to influence the judge" (*Id*). Nonetheless, WLV apparently arranged or assisted its lead counsel in taking over the position of a vacancy in Petitioner's case in the Nevada District Court and covertly withheld this information. There was undoubtedly an impression that WLV was in a special position to influence the Nevada District Court because the same court appointed Buckley to the merit selection panel that selected Youchah and Wynn Resorts was in an ongoing conditional/revocable financial relationship with her foundation.

The issues presented in this case affect the rights of victims of significant abuse during a crucial time in our nation's history. Powerful defendants should not be absolved of their wrongdoing when they directly or indirectly attempt to influence a judicial decision (effectively stampeding the rights of a courageous victim). Most significantly, the implications of *Citizens United*,

where 2 U.S.C. § 441(b) was struck down as unconstitutional and this Court removed significant restrictions on political spending by corporations, has now crept into the judiciary and must be curtailed. *Citizens United*, at 917 (reversing the district court with respect to the constitutionality of 2 U.S.C. § 441(b)'s restrictions on corporate independent expenditures).

D. This case is a superior vehicle for addressing the questions presented.

This case is a clean vehicle for resolving the question presented. It cleanly presents two legal questions concerning the standard for recusal under 28 U.S.C. § 455(a) and a favorable decision is outcome determinative. The stakes in this case are extraordinary. The issue is not merely whether this Court should intervene to curtail the extraordinary abuses of power of resourceful parties such as WLV and Steve Wynn. If the holding in the court below stands, then it will have enormous legal and practical consequences, particularly given the errant nature of holdings from the Ninth Circuit. Put simply, the holding in the court below is perhaps best viewed as an unintended consequence of the practical implications of *Citizens United* and litigants cannot afford to wait. This Court should intervene and correct the Ninth Circuit's clearly erroneous decision before it becomes the de facto law of the Nation (resulting in unchecked corporate spending in the realm of the judiciary).

CONCLUSION

The petition for writ of certiorari should be granted.

Dated: December 28, 2020 Respectfully submitted,

/s/ Jordan Matthews

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APPENDIX

APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, FILED JUNE 22, 2020

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 19-15949

ANGELICA CHRISTINA LIMCACO,

Plaintiff-Appellant,

v.

STEVE WYNN; WYNN LAS VEGAS, LLC, FAC 13,

Defendants-Appellees,

and

WYNN RESORTS LTD.,

Defendant.

May 29, 2020, Argued and Submitted
San Francisco, California
June 22, 2020, Filed

Appeal from the United States District Court
for the District of Nevada
D.C. No. 2:18-cv-01685-MMD-GWF
Miranda M. Du, Chief District Judge, Presiding

Appendix A

Before: W. FLETCHER, BYBEE, and WATFORD, Circuit Judges.

MEMORANDUM*

In 2006 plaintiff-appellant Angelica Limcaco was a salon manager at defendant-appellee Wynn Las Vegas, LLC's (WLV) resort on the Las Vegas Strip. After one of her subordinates reported that defendant-appellee Steve Wynn raped her, Limcaco reported the alleged rape to her superiors. Shortly thereafter, Limcaco and her subordinate were dismissed. Limcaco alleges that she was "blacklisted" and could not find a job in Las Vegas. Nearly twelve years later, after an exposé about Wynn's pattern of sexual misconduct made national headlines, Limcaco filed this lawsuit under Title VII of the Civil Rights Act, alleging sexual harassment, retaliation, and wrongful termination against WLV, as well as several corresponding state-law claims against both WLV and Wynn. Limcaco contends that WLV and Wynn should be equitably estopped from asserting a statute-of-limitations defense. The district court did not apply the equitable estoppel doctrine, dismissed Limcaco's federal claims as untimely, and decided not to exercise supplemental jurisdiction over her state-law claims.[1] We affirm.

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* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

1. Limcaco does not challenge the supplemental-jurisdiction ruling on appeal.

1. We review application of the equitable estoppel doctrine for an abuse of discretion.[2] *Santa Maria v. Pac. Bell*, 202 F.3d 1170, 1176 (9th Cir. 2000), *overruled on other grounds by Socop-Gonzalez v. INS*, 272 F.3d 1176, 1194-96 (9th Cir. 2001) (*en banc*). Limcaco failed to allege that she reasonably relied on any fraudulent concealment on WLV's part. *See Coppinger-Martin v. Solis*, 627 F.3d 745, 751 (9th Cir. 2010). Even if she perceived certain conduct by the defendants as threatening, she failed to allege any affirmative threat to her personally that prevented her from pursuing her claims. Under these circumstances, it was not an abuse of discretion to find that equitable estoppel should not apply.

2. After WLV filed its reply in support of its motion to dismiss, Limcaco filed three motions for judicial notice. The district court granted WLV's motions to strike the requests because the motions included substantive discussion of her claims, rendering them improper surreplies in violation of District of Nevada Local Rule 7-2(b), which requires parties to seek permission from the court before filing a surreply. It was not an abuse of discretion to grant the motion to strike. *See Prof'l Programs Grp. v. Dep't of Commerce*, 29 F.3d 1349, 1353 (9th Cir. 1994). Limcaco's argument that the district court was required to take judicial notice of the documents presupposes that those requests were properly before the court. Because her requests were not properly before

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2. Limcaco incorrectly argues that, because the underlying facts are undisputed, we should review the application of equitable estoppel de novo. But that standard applies only to review of equitable *tolling* decisions. *See Santa Maria*, 202 F.3d at 1175-76.

the court, it was not an abuse of discretion not to consider the documents.

3. Nor was it an abuse of discretion for the district court to deny Limcaco leave to amend her complaint because amendment is futile. *See Miller v. Rykoff-Sexton, Inc.*, 845 F.2d 209, 214 (9th Cir. 1988) (holding that amendment is futile if no set of facts can be proven under the amendment that would constitute a valid claim). The facts Limcaco proposed adding in her amended complaint do not reveal any fraudulent concealment or threats by Wynn or WLV that would support her equitable-estoppel argument.

4. Finally, the arguments raised in Limcaco's supplemental brief lack merit. Her "newly discovered" evidence does not reveal any error in judgment made by the district court "in the conclusion it reached upon weighing the relevant factors." *S.E.C. v. Coldicutt*, 258 F.3d 939, 941 (9th Cir. 2001). Moreover, Limcaco cites no authority requiring a district judge to recuse in similar circumstances.

AFFIRMED.

APPENDIX B — ORDER OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEVADA, FILED APRIL 18, 2019

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Case No. 2:18-cv-01685-MMD-GWF

ANGELICA CHRISTINA LIMCACO,

Plaintiff,

v.

WYNN LAS VEGAS, LLC., A NEVADA LIMITED LIABILITY COMPANY, STEVE WYNN, AN INDIVIDUAL, DOES 1 THROUGH 10, INCLUSIVE AND ROE CORPORATIONS 1 THROUGH 10, INCLUSIVE,

Defendants.

April 18, 2019, Decided;
April 18, 2019, Filed

ORDER

I. SUMMARY

This is an employment discrimination case. Before the Court are two motions to dismiss filed by Defendant Steve Wynn and Defendant Wynn Las Vegas, LLC ("WLV"),

respectively.[1] (ECF Nos. 23, 34.) Additionally before the Court are Plaintiff Angelica Christina Limcaco's requests for judicial notice. (ECF Nos. 39, 47, 54.)[2]

The Court grants WLV's motion to dismiss in part and dismisses Plaintiff's federal claims as time-barred. The Court declines to exercise supplemental jurisdiction over the remaining state law claims and will dismiss them without prejudice. The Court denies Mr. Wynn's motion to dismiss as moot, given that Plaintiff advances only state law claims against him. The Court denies Plaintiff's requests for judicial notice as improper surreplies and denies WLV's motions to strike as moot.

II. BACKGROUND

The following facts are taken from the First Amended Complaint ("FAC") (ECF No. 13) unless otherwise indicated.

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1. The Court has reviewed the responses and replies to these motions. (ECF Nos. 28, 29 (notice of corrected image), 31, 37, 38.) WLV filed an earlier motion to dismiss (ECF No. 11) that became moot when Plaintiff filed her First Amended Complaint (ECF No. 13). Accordingly, the Court will deny WLV's first motion to dismiss as moot.

2. The Court has reviewed WLV's motions to strike the first two of those requests (ECF Nos. 40, 48), Plaintiff's responses to those motions (ECF Nos. 42, 50), and WLV's replies (ECF Nos. 43, 53). The Court also has reviewed Mr. Wynn's responses to the first two of Plaintiff's requests (ECF Nos. 41, 49) and Plaintiff's replies (ECF Nos. 44, 51).

Appendix B

Plaintiff worked as a salon manager at WLV from June 13, 2005, until about June 2006. (*Id.* at 7, 10.) During that time, numerous co-workers reported to Plaintiff that Mr. Wynn sexually assaulted them. (*See id.* at 8-10.) Plaintiff reported these incidents to her supervisor, Doreen Whennen, but Whennen failed to take action. (*Id.* at 2, 10.) Plaintiff took her concerns to the president of WLV, Andrew Pascal, and was terminated shortly thereafter, ostensibly because other employees complained about her. (*Id.* at 10.) Plaintiff was unable to find work in Las Vegas and alleges that she was blacklisted. (*Id.* at 10, 23.) As a result, Plaintiff moved to Los Angeles. (*Id.* at 10.)

Plaintiff was traumatized by these events and kept them to herself for roughly twelve years, until Mr. Wynn resigned from WLV's parent company. (*Id.* at 11-12.) Plaintiff was concerned that she would face violence if she spoke out because she heard, among other things, that taking action against WLV would result in being terminated and blacklisted in the gaming industry and elsewhere; that Mr. Wynn bought a media publication in order to kill a story about himself and a woman who disappeared on a boat; and that Mr. Wynn "was more powerful than the police and that there may be people buried in the desert because of Mr. Wynn." (*Id.* at 3, 9.) Plaintiff was also concerned because a former employee—Andrea—was terminated and seemingly disappeared after alleging sexual assault by Mr. Wynn. (*Id.* at 2-3.)

About three months after Mr. Wynn resigned, Plaintiff filed a charge of discrimination with the Nevada Equal Rights Commission ("NERC"). (*Id.* at 4 (alleging that Mr.

Wynn resigned on February 7, 2018), *id.* at 7 (alleging that NERC charge was filed on May 16, 2018).) A charge was then filed with the Equal Employment Opportunity Commission ("EEOC") on May 23, 2018. (*Id.* at 7.) The EEOC issued a right-to-sue letter on June 11, 2018. (*Id.*)

Plaintiff asserts four claims under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000 *et. seq.* (first through fourth claim) for retaliation and hostile work environment against WLV, and the following state law claims: retaliation in violation of NRS § 613.340 against WLV, wrongful termination in violation of public policy against WLV, intentional infliction of emotional distress ("IIED") against WLV, civil conspiracy against all Defendants, interference with contractual relations against Mr. Wynn, and interference with economic advantage against Mr. Wynn. (ECF No. 13 at 13-23.)

III. LEGAL STANDARD

A court may dismiss a plaintiff's complaint for "failure to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). A properly pled complaint must provide "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007). While Rule 8 does not require detailed factual allegations, it demands more than "labels and conclusions" or a "formulaic recitation of the elements of a cause of action." *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009) (*citing Papasan v. Allain*, 478 U.S. 265, 286, 106 S. Ct. 2932, 92 L. Ed. 2d

209 (1986)). "Factual allegations must be enough to rise above the speculative level." *Twombly*, 550 U.S. at 555. Thus, to survive a motion to dismiss, a complaint must contain sufficient factual matter to "state a claim to relief that is plausible on its face." *Iqbal*, 556 U.S. at 678 (internal citation omitted).

In *Iqbal*, the Supreme Court clarified the two-step approach district courts are to apply when considering motions to dismiss. First, a district court must accept as true all well-pled factual allegations in the complaint; however, legal conclusions are not entitled to the assumption of truth. *Iqbal*, 556 U.S. at 679. Mere recitals of the elements of a cause of action, supported only by conclusory statements, do not suffice. *Id.* at 678. Second, a district court must consider whether the factual allegations in the complaint allege a plausible claim for relief. *Id.* at 679. A claim is facially plausible when the plaintiff's complaint alleges facts that allow a court to draw a reasonable inference that the defendant is liable for the alleged misconduct. *Id.* at 678. Where the complaint does not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged—but not shown—that the pleader is entitled to relief. *Id.* at 679. When the claims in a complaint have not crossed the line from conceivable to plausible, the complaint must be dismissed. *Twombly*, 550 U.S. at 570.

A complaint must contain either direct or inferential allegations concerning "all the material elements necessary to sustain recovery under *some* viable legal theory." *Twombly*, 550 U.S. at 562 (quoting *Car Carriers, Inc. v. Ford Motor Co.*, 745 F.2d 1101, 1106 (7th Cir. 1989)).

Appendix B

IV. WLV'S MOTION TO DISMISS (ECF NO. 23)

WLV argues, *inter alia*, that all claims asserted against it are time-barred. (ECF No. 23 at 4.) Because the Court agrees that the federal claims are time-barred, the Court declines to address WLV's arguments relating to the state law claims.

It is undisputed that Plaintiff's federal claims—arising out of events taking place more than eleven years ago—are time-barred. Exhaustion of administrative remedies under Title VII requires plaintiffs to file a charge of discrimination "within 180 days from the last act of alleged discrimination" or, in a state like Nevada that has its own local agency, within 300 days of the last discriminatory act. 42 U.S.C. § 2000e-5(e)(1); *Laquaglia v. Rio Hotel & Casino, Inc.*, 186 F.3d 1172, 1175 (9th Cir. 1999). "In a Title VII suit, failure to file an EEOC charge within the prescribed 300-day period is not a jurisdictional bar, but it is treated as a violation of a statute of limitations, complete with whatever defenses are available to such a violation, such as equitable tolling and estoppel." *Santa Maria v. Pac. Bell*, 202 F.3d 1170, 1176 (9th Cir. 2000). Thus, Plaintiff argues that WLV should be equitably estopped from asserting the statute of limitations as a defense because WLV and Mr. Wynn threatened and intimidated her into silence. (*See generally* ECF No. 28.) The Court finds that Plaintiff has failed to allege facts sufficient to justify equitable estoppel and dismisses Plaintiff's federal claims as time-barred.

"Equitable estoppel, sometimes called fraudulent concealment, 'focuses primarily on the actions taken by

the defendant in preventing a plaintiff from filing suit . . . . [including] the plaintiff's actual and reasonable reliance on the defendant's conduct or representations.'" *Huseman v. Icicle Seafoods, Inc.*, 471 F.3d 1116, 1121 (9th Cir. 2006) (alterations in original) (quoting *Santa Maria*, 202 F.3d at 1176). "Equitable estoppel may be invoked 'if the defendant takes active steps to prevent the plaintiff from suing in time,' such as by misrepresenting or concealing facts necessary to the discrimination claim." *Coppinger-Martin v. Solis*, 627 F.3d 745, 751 (9th Cir. 2010) (internal citations omitted) (quoting *Santa Maria*, 202 F.3d at 1176-77). "A finding of equitable estoppel rests on the consideration of a non-exhaustive list of factors, including: (1) the plaintiff's actual and reasonable reliance on the defendant's conduct or representations, (2) evidence of improper purpose on the part of the defendant, or of the defendant's actual or constructive knowledge of the deceptive nature of its conduct, and (3) the extent to which the purposes of the limitations period have been satisfied." *Santa Maria*, 202 F.3d at 1176. "The doctrine of equitable estoppel . . . is based on the principle that a party 'should not be allowed to benefit from its own wrongdoing.'" *Estate of Amaro v. City of Oakland*, 653 F.3d 808, 813 (9th Cir. 2011) (quoting *Collins v. Gee West Seattle LLC*, 631 F.3d 1001, 1004 (9th Cir. 2011)).

Plaintiff bases her argument for equitable estoppel partly on the same events that give rise to her retaliation claims—her termination and blacklisting. (ECF No. 28 at 18.) But a plaintiff asserting equitable estoppel "must point to some fraudulent concealment, some active conduct by the defendant *above and beyond* the wrongdoing upon which the plaintiff's claim is filed, to prevent the plaintiff

from suing in time." *Coppinger-Martin*, 627 F.3d at 751 (quoting *Lukovsky v. City & County of San Francisco*, 535 F.3d 1044, 1052 (9th Cir. 2008)). Thus, the Court must reject Plaintiff's argument to the extent that the "alleged basis for equitable estoppel is the same as [her] cause of action." *Id.* (alteration in original) (quoting *Lukovsky*, 535 F.3d at 1052).

The remainder of Plaintiff's argument for equitable estoppel is based on the following: (1) Plaintiff heard that Mr. Wynn was more powerful than the police and that people were buried in the desert because of him; (2) Plaintiff heard that a woman disappeared on a boat with Mr. Wynn; (3) Plaintiff's employee—Andrea—was terminated and seemingly disappeared after alleging sexual assault by Mr. Wynn; (4) Plaintiff was aware of other employees who seemingly disappeared; (5) Plaintiff's supervisor threatened Plaintiff by telling Plaintiff never to speak about Andrea's alleged sexual assault; and (6) Plaintiff perceived Mr. Wynn to wield "immense power" and an "ability to operate outside the law." (ECF No. 28 at 13-15, 18.) Plaintiff alleges that Defendants' conduct caused her to fear that she would be blacklisted in the Los Angeles spa industry, kidnapped, or murdered if she pursued her legal claims. (*Id.* at 9, 17.)

But Plaintiff has failed to allege any actual threat.[3] Plaintiff does not allege that Mr. Wynn or any employee of

3. WLV argues that threats of violence alone are insufficient to trigger equitable estoppel because a threat does not conceal information or mislead the plaintiff. (ECF No. 31 at 4-5.) The Court need not decide this issue because Plaintiff has not alleged a threat of violence.

WLV actually threatened to blacklist, kidnap, or murder her if she spoke out. Rather, Plaintiff alleges that her supervisor instructed her to refrain from speaking about Andrea's alleged sexual assault. Viewed in isolation, that instruction does not constitute a threat.

Plaintiff may have understood her supervisor's instruction as a threat based on the rumors she heard about Mr. Wynn. (*See id.* at 17.) But Plaintiff has not alleged that the conduct at the heart of those rumors was designed to prevent Plaintiff from pursuing her legal claims. For example, Plaintiff does not allege that Mr. Wynn killed a woman on a boat for the purpose of discouraging Plaintiff from pursuing her legal claims. And a consideration in determining whether to apply equitable estoppel is whether a defendant acted with an "improper purpose" to prevent a plaintiff from filing suit. *See Santa Maria*, 202 F.3d at 1176.

To the extent that Defendants' alleged conduct might have dissuaded Plaintiff from pursuing her claims initially, more than eleven years elapsed before Plaintiff finally took action. Plaintiff does not allege that she had any contact with Defendants during that time, or that she continued to hear rumors about Defendants' mafia-like conduct. While Plaintiff's subsequent supervisor in Los Angeles—Jose Eber—had close ties to Mr. Wynn and his wife (ECF No. 28 at 20), Plaintiff does not allege that Eber threatened her or that he was susceptible to intimidation or coercion by Defendants.

Plaintiff's allegations are troubling if true, and it is clear that Plaintiff may have found her work environment

intimidating, oppressive, and frightening, but Plaintiff has not alleged facts to show that Defendants would "benefit from [their] own wrongdoing" by asserting a statute of limitations defense. *See Estate of Amaro*, 653 F.3d at 813. Plaintiff's allegations show that sexual assaults were concealed but not that Defendants attempted to silence her or induce her to forgo her legal claims.

The cases Plaintiff relies upon do not persuade the Court otherwise. The bulk of these cases involve children who allegedly were sexually assaulted and then threatened or intimidated into silence. *See Nolde v. Frankie*, 192 Ariz. 276, 964 P.2d 477, 479 (Ariz. 1998); *John R. v. Oakland Unified Sch. Dist.*, 48 Cal. 3d 438, 256 Cal. Rptr. 766, 769 P.2d 948, 949 (Cal. 1989); *Doe v. Bakersfield*, 136 Cal. App. 4th 556, 39 Cal. Rptr. 3d 79, 80 (Cal. Ct. App. 2006); *Christopher P. v. Mojave Unified Sch. Dist.*, 19 Cal. App. 4th 165, 23 Cal. Rptr. 2d 353, 355 (Cal. Ct. App. 1993). Plaintiff does not allege that she was sexually assaulted herself, and Plaintiff has not plausibly alleged that she was threatened.

Accordingly, the Court will grant WLV's motion to dismiss in part and dismiss Plaintiff's federal claims as time-barred.

V. REQUESTS FOR JUDICIAL NOTICE

Plaintiff requested judicial notice of the following: (1) a complaint against WLV and its parent company filed by the Nevada Gaming Control Board (ECF No. 39 at 2; ECF No. 39-1 (complaint)); (2) the stipulation for settlement and

order among those entities (ECF No. 39 at 2; ECF No. 39-2 (stipulation); ECF No. 47 at 2, 86-93 (fully executed stipulation)); (3) the addendum to the stipulation (ECF No. 47 at 2, 95-96); (4) the transcript from the hearing in that case (ECF No. 47 at 2, 7-84); and (5) the existence of an investigative report by the Massachusetts Gaming Commission and certain facts it contains (ECF No. 54 at 2; ECF No. 54-1).

Mr. Wynn opposed Plaintiff's first two requests (ECF Nos. 41, 49), and WLV moved to strike them (ECF No. 40, 48). WLV contends that the requests constitute improper surreplies in violation of LR 7-2(b).[4] (ECF No. 40 at 2; ECF No. 48 at 3.) The Court agrees with WLV—the requests contain substantive discussion of the merits of Plaintiff's claims and equitable estoppel argument. (*See* ECF No. 39 at 3-5; ECF No. 47 at 4.) Accordingly, the Court will grant WLV's motions to strike Plaintiff's first two requests for judicial notice. By the same logic, the Court will strike Plaintiff's third request for judicial notice as an improper surreply. (*See* ECF No. 54 at 2 n.1 (discussing how the attached documents support Plaintiff's hostile work environment claims).)

VI. REMAINING CLAIMS

"If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action." Fed. R. Civ. P. 12(h)(3). Plaintiff's FAC contains

4. Local Rule 7-2(b) prohibits parties from filing surreplies without leave of court.

four claims that raise federal questions. (ECF No. 13 at 13-17.) Having resolved the federal claims in this case, the Court declines to exercise supplemental jurisdiction over the remaining state law claims.[5] *See* 28 U.S.C. § 1367(c)(3) ("The district courts may decline to exercise supplemental jurisdiction over a claim under subsection (a) if the district court has dismissed all claims over which it has original jurisdiction."). Accordingly, the Court will dismiss the state law claims without prejudice. Given that the only claims against Mr. Wynn are dismissed for lack of subject matter jurisdiction, the Court will deny Mr. Wynn's motion to dismiss as moot.

VII. CONCLUSION

The Court notes that the parties made several arguments and cited to several cases not discussed above. The Court has reviewed these arguments and cases and determines that they do not warrant discussion as they do not affect the outcome of the motions before the Court.

It is therefore ordered that Defendant WLV's motion to dismiss (ECF No. 23) is granted as to Plaintiff's federal claims. The Court dismisses Plaintiff's federal claims and declines to exercise supplemental jurisdiction over the remaining state law claims. Thus, the Court dismisses Plaintiff's First Amended Complaint (ECF No. 13) in its entirety. Plaintiff's state law claims are dismissed without prejudice.

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5. The Court also lacks independent diversity jurisdiction under 28 U.S.C. § 1332 over the remaining state law claims because Plaintiff has not alleged that the amount in controversy exceeds $75,000. (ECF No. 13 at 24-26.)

It is further ordered that Plaintiff's requests for judicial notice (ECF Nos. 39, 47, 54) are denied.

It is further ordered that Defendant WLV's motions to strike (ECF Nos. 40, 48) are denied as moot.

It is further ordered that Defendant Steve Wynn's motion to dismiss (ECF No. 34) is denied as moot.

It is further ordered that Plaintiff's first motion to dismiss (ECF No. 11) is denied as moot.

The Clerk of Court is directed to enter judgment in accordance with this order and close this case.

DATED THIS 18th day of April 2019.

/s/ Miranda M. Du
MIRANDA M. DU
UNITED STATES
DISTRICT JUDGE

APPENDIX C — ORDER DENYING REHEARING OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, FILED JULY 28, 2020

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

ANGELICA CHRISTINA LIMCACO,

Plaintiff-Appellant,

v.

STEVE WYNN; WYNN LAS VEGAS, LLC, FAC 13,

Defendants-Appellees,

and

WYNN RESORTS LTD.,

Defendant.

JULY 28, 2020, Filed
MOLLY C. DWYER, Clerk

U.S. COURT OF APPEALS

No. 19-15949

D.C. No. 2:18-cv-01685-MMD-GWF
District of Nevada, Las Vegas

Appendix C

ORDER

Before: W. FLETCHER, BYBEE, and WATFORD, Circuit Judges.

The panel judges have voted to deny appellant's petition for rehearing en banc. Judges W. Fletcher and Watford voted to deny the petition for rehearing en banc, and Judge Bybee recommended denying the petition for rehearing en banc.

The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35.

Appellant's petition for rehearing en banc, filed July 6, 2020, is DENIED.