No. 21-1211

In the Supreme Court of the United States

CONSTANCE GEORGE,
Petitioner,

v.

HOUSE OF HOPE RECOVERY; BRIDGES TO CHANGE, INC.; WASHINGTON COUNTY DEPARTMENT OF HOUSING SERVICES; AND PATRICIA BARCROFT,
Respondents.

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

BRIEF IN OPPOSITION

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CORPORATE DISCLOSURE STATEMENT

Bridges to Change, Inc. has no parent corporation and no publicly held corporation owns 10% or more of its stock.

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STATEMENT OF THE CASE

A. Introduction

Petitioner Constance George ("Petitioner" or George") seeks to reinstate an appeal to reverse uncontested motions for summary judgment filed by Bridges to Change ("Bridges") and Washington County Department of Housing Services ("Washington County"). In opposition to these motions, Petitioner responded in writing that "Plaintiff has no admissible evidence to submit that would create genuine issues of material fact" and then at oral argument, Petitioner "conceded Bridges to Change's and the County's motions." *George v. House of Hope Recovery*, No. 3:15-cv-1277-SI, 2017 U.S. Dist. LEXIS 17760, at *1 (D. Or. Feb. 8, 2017); 1-SER-27, 1-SER-31. Petitioner does not seek to continue her appeal against the primary actors in this matter: House of Hope Recovery ("House") and Patricia Barcroft ("Barcroft"). After two trials and exhausting her appeal of right, Petitioner's claims against the primary actors in this matter have been fully and finally resolved.

The petition argues that the Ninth Circuit concluded that Petitioner's failure to serve her notice of appeal resulted in the dismissal. Pet. i. In fact, in its unpublished decision, the Ninth Circuit held Petitioner "did not provide adequate notice" without reference to her failure to serve her notice of appeal. *George v. Barcroft*, No. 18-35551, 2022 U.S. App. LEXIS 256, at *3 (9th Cir. Jan. 5, 2022), App. 13. The Ninth Circuit's dismissal did not amount to legal error in light of the totality of the circumstances that the Petition fails to address.

B. Factual Background

Bridges was founded in 2004 as an Oregon non-profit organization whose mission is to strengthen individuals and families affected by addiction, poverty, and homelessness, and assist individuals on re-entry into the community after serving time in prison or jail or following a period of homelessness. 1-SER-195. Bridges in partnership with and with the funding of Washington County, manages a program called "Homeless to Work." 2-SER-282-83. During the relevant period, Bridges did not manage or administer housing for clients who participated in the Homeless to Work Program, and relies on independent organizations to provide services, such as, transitional housing. ER-41-42; 1-SER-195. Washington County subsidized the rent of program participants. 1-SER-195.

Petitioner discussed her eligibility for the Homeless to Work Program with Bridges in October 2012. 1-SER-225. That same day, Bridges determined George was eligible and placed George on a waiting list to participate in the Homeless to Work Program, and while on the waitlist, George agreed to pursue the opportunity to reside at House. 1-SER-196, 2-SER-294.

House is an independent non-profit organization that operates a Christian-based residential recovery home and provides transitional housing. ER-47; 1-SER-196, 1-SER-211-12, 1-SER-216, 1-SER-218, 1-SER-226-27, 1-SER-230. House has no affiliation with either Bridges or Washington County. 1-SER-196, 2-SER-315. Rather, House is affiliated with Living Hope Fellowship Church. 1-SER-227. If accepted by House,

female clients in the Homeless to Work Program would pay $35 directly to House for rent, and Washington County would pay the rest of the rent directly to House. Bridges did not have a contract with House or pay rent to House. Since 2015, no Homeless to Work participant has resided at House. 1-SER-196-98, 1-SER-216.

On March 5, 2013, George interviewed with Barcroft for a housing placement. George admitted that Barcroft was not an employee of Bridges. 1-SER-196-97. George alleges, during her interview, Barcroft asked her how she felt about white people, but admits that she did not tell anyone at either Bridges or Washington County. 1-SER-216, 1-SER-228-29, 1-SER-232. At the end of the interview, Barcroft placed George in House's residency program. 2-SER-299.

Upon her arrival, George was provided paperwork outlining rules and expectations that were set by House. 2-SER-301-02; *see* 1-SER-240-52. House required residents to attend a series of meetings, including a religiously based 12-step program. 1-SER-250. House's rules provide in no uncertain terms the consequences George would face if she missed a mandatory meeting: "Expulsions: …. B. A resident not attending meetings including House of Hope house meetings." 1-SER-249.

On March 19, 2013, Barcroft, George, and a representative of Bridges met and the issue of required meetings to discuss a book called *The Purpose Driven Life* by Rick Warren as a condition of her residency came up. 1-SER-197; 2-SER-307-08. Barcroft discussed whether the meetings should be mandatory, and ultimately Barcroft concluded that George would not be

required to attend them. 1-SER-197, 1-SER-217-18. George agreed, however, to attend mandatory 12-step meetings, one of which was scheduled for that evening. 1-SER-49, 1-SER-105, 1-SER-197, 1-SER-217, 2-SER-289, 2-SER-308-09.

Later that afternoon, George attempted to excuse her absence for this mandatory 12-step meeting, but House did not accept her excuse and reaffirmed that her attendance was required. 1-SER-49, 2-SER-335. After George did not attend the meeting, Barcroft determined that George's unexcused absence would result in the termination of her residency. 1-SER-198, 1-SER-217, 1-SER-230, 1-SER-238. No representatives from Bridges or Washington County were present when Barcroft terminated George's residency and no representatives took part in the decision. While, as a courtesy, Barcroft informed Bridges of her decision, Bridges could not appeal to Barcroft, as this decision was firmly committed to Barcroft's discretion, and neither Bridges nor Washington County could change the result of House's decision to terminate George's residency. 1-SER-217, 2-SER-312.

The day after House terminated George's residency, on March 20, 2013, Bridges reached out to George to help her find an alternative transitional housing arrangement. 1-SER-198, 1-SER-201, 1-SER-218. George neglected Bridges' repeated offers of assistance. 1-SER-198. Instead, George moved in with her son and did not continue to seek assistance through the Homeless to Work Program or Washington County's housing services. 1-SER-197-98, 1-SER-230.

C. Procedural Posture

George filed this action on July 10, 2015. ER-62; 2-SER-330-40. As to Bridges and Washington County, George asserted a claim under the Title VIII of the Civil Rights Act alleging vicarious liability for the actions of House and Barcroft. 2-SER-338. Additionally, as to Bridges, George also asserted a claim under 42 U.S.C. § 1981 because it allegedly deprived George of her rights to enjoy and enforce a lease for real property, and a claim under 42 U.S.C. § 1982 for allegedly depriving George of her rights to lease and hold real property. 2-SER-338-39.

After Bridges and Washington County's uncontested motions for summary judgment were granted, the District Court terminated Bridges and Washington County from receiving further docket notifications from CM/ECF as of February 8, 2017, and thereafter Bridges and Washington County did not receive any further notifications from the District Court. App. 66, ER-29, 1-SER-272, 2-SER-317.

After Petitioner concluded her second trial against the other parties, the District Court entered judgment against Petitioner on April 20, 2018. On April 20, 2018, the District Court also specifically informed George of the deadline to file any appeal as May 21, 2018. ER-74.

On May 21, 2018, George did not file a notice of appeal. ER-75. She filed a motion for appointment of pro bono counsel. George's motion was denied on May 25, 2018. ER-75. On June 29, 2018, seventy (70) days after entry of judgment, George filed a document denominated as a notice of appeal. ER-75. Only on July

3, 2018, the District Court created an entry confirming that an appeal had been docketed. DCDkt 159-160, ER-77. The only respondents docketed in the appeal were House and Barcroft.

George was represented by counsel for the vast majority of the time this matter was on appeal. Two years after Petitioner filed her notice of appeal, on July 28, 2020, George sought to amend the District Court's judgment to remove any doubt that judgment was a final and not a limited judgment and did not prevent George from pursuing an appeal against Bridges or Washington County. On the following day, an amended judgment was entered. 1-SER-4-6. On August 7, 2020, Petitioner filed a second notice of appeal in an attempt to include Bridges and Washington County in the appeal before the Ninth Circuit. 1-SER-3, CADkt. 33.

Critically, Petitioner filed her opening brief on September 24, 2020, and failed to address the merits of any claims against Bridges and Washington County. Petitioner urged the Ninth Circuit to conclude she did not waive her right to pursue her appeal against Bridges and Washington County and, on October 13, 2020, the Ninth Circuit ordered George to "address whether failure to previously seek to add defendants Bridges and Washington County DHS to this court's docket or raise the merits of the claims against them in the initial opening brief resulted in a waiver of the claims against defendants-appellees Bridges and Washington County DHS on appeal, and the effect, if any, of the district court's entry of an amended judgment." CADkt. 41.

In her brief, Petitioner argued procedural obstacles that did not exist prevented her from submitting briefing. COADkt.43 & 61, pp. 14-19. Primarily, George argued that the judgment entered by the District Court was ambiguous, did not amount to a final determination on the merits as to her claims against Bridges and Washington County, and prevented George from initiating an appeal against them. George also neglected that the District Court entered an amended judgment and an amended notice of appeal six weeks before her opening brief was due. There is no justifiable reason for George's failure to address the merits of the claims against Bridges and Washington County after George filed her second notice of appeal. George's failure to prosecute can only result in claim abandonment. *Arpin v. Santa Clara Valley Transp. Agency*, 261 F.3d 912, 919 (9th Cir. 2001) ("[I]ssues which are not specifically and distinctly argued and raised in a party's opening brief are waived.").

George also never addressed the legal effect of the District Court's entry of an amended judgment or the effect of George's failure to previously seek to add Bridges and Washington County to the Ninth Circuit's docket, as directed by the Ninth Circuit's October 13, 2020, order.

On November 9, 2021, the Ninth Circuit concluded without oral argument that Petitioner failed to provide sufficient notice to Bridges, Washington County, and the courts for her to proceed against them. App. 1. It nonetheless considered the merits of the appeal against House and Barcroft and affirmed the District Court's judgment in their favor. App. 12.

On December 2, 2021, Petitioner filed a petition for panel rehearing for a decision on the merits of her appeal. App. 52. Petitioner primarily argued that the Ninth Circuit had jurisdiction over the appeal but neglected to address her filing errors, waiver, the jurisdictional deficiencies of her filings, or her extraordinary two-year-long delay in seeking to include Bridges and Washington County in her appeal. In her petition, George raised for the first time any argument that dismissing her appeal against Bridges and Washington County would contravene Rule 3(d)(3).

On January 5, 2022, the Ninth Circuit denied Petitioner's petition for panel rehearing. App. 9. However, it did make some revisions to its ruling. App. 12.

REASONS FOR DENYING THE PETITION

A. The Ninth Circuit Was Well Within Its Authority to Dismiss Petitioner's Appeal against Bridges and Washington County

George's petition is premised on a fundamental misunderstanding. The Ninth Circuit did not rule that its dismissal was premised on George's failure to serve her notice of appeal on Bridges and Washington County. App.13-14. It ruled George failed to provide "adequate notice." App.13.

George also misses the point. While it is true that Federal Rules of Appellate Procedure provide a District Court clerk, not an appellant, ordinarily serves the notice of appeal on other parties, there is a separate rule of construction at issue.

Consistent with the decision in *Smith v. Barry*, the Ninth Circuit provides appellants leeway to substantially comply with the notice requirements contained in Rule 3. Documents not denominated as a notice of appeal can be construed as a notice of appeal. *Rabin v. Cohen*, 570 F.2d 864, 866 (9th Cir. 1978) (explaining courts have "discretion, when the interests of substantive justice require it, to disregard irregularities in the form or procedure for filing a notice of appeal".). Any document can serve as the functional equivalent of a notice of appeal if it serves the same essential purpose by "clearly evinc[ing] the party's intent to appeal and provid[ing] notice to both the opposing party and the court. *Cel-A-Pak v. Cal. Agric. Labor Relations Bd.*, 680 F.2d 664, 667 (9th Cir. 1982); *see Smith v. Barry*, 502 U.S. 244, 248, 112 S. Ct. 678, 682 (1992) (concluding an opening brief filed while a judgment notwithstanding the verdict was pending "was the 'functional equivalent' of the formal notice of appeal demanded."). Courts retain discretion in concluding whether the appellant's conduct provided sufficient notice in light of all of the circumstances. *See Torres v. Oakland Scavenger Co.*, 487 U.S. 312, 316, (1988) ("[A] court **may** … find that the litigant has complied with the rule if the litigant's action is the functional equivalent of what the rule requires," when a notice of appeal is not denominated as such) (Emphasis added).

Contrary to Petitioner's suggestion, this rule of construction is intended to benefit pro se appellants and empower courts not to dismiss an appeal for informality of form or title of the notice of appeal. *See Brannan v. United States*, 993 F.2d 709, 710 (9th Cir.

1993) (construing a letter from an incarcerated pro se defendant as a notice of appeal). Nor does this rule stand in conflict with Rule 3(d).

When an appellant, however, files a document not denominated as a notice of appeal and that document does not provide actual notice to the other parties and the court of appellant's intent to appeal, the document cannot fairly serve as the functional equivalent of a notice of appeal. *Smith v. Barry*, 502 U.S. 244, 248, 112 S. Ct. 678, 682 (1992) ("While a notice of appeal must specifically indicate the litigant's intent to seek appellate review, the purpose of this requirement is to ensure that the filing provides sufficient notice to other parties and the courts.") (citations removed).

In this case, the Ninth Circuit construed Petitioner's motion for pro bono counsel as a notice of appeal for House and Barcroft, as it was filed within the time limit prescribed by Rule 3. House and Barcroft continued to receive notifications from CM-ECF and were included in the Ninth Circuit's docket. App. 14, COA.Dkt.1. However, Bridges and Washington County received no notice from the District Court and Petitioner took no other step to apprise Bridges or Washington County that she intended to initiate an appeal against them for more than two years. App. 49.

Petitioner speculates that Bridges and Washington County received notice of her motion for pro bono counsel in May 2018. Pet. 7. The bald assertion is not supported by the record and the docket plainly indicates Bridges and Washington County were terminated from the case on February 8, 2017. ER-29, 1-SER-272, 2-SER-317.

As a matter of fact, the first notice Bridges and Washington County received that George was proceeding with an appeal against either Bridges or Washington County was when counsel for George identified himself on July 10, 2020—781 days after George's deadline to file a timely notice of appeal. App. 49. Petitioner's delay is more than four times the length of time in which a District Court could reopen the time to file a notice of appeal when there is excusable neglect. *See* 27 U.S.C. § 2107 (limiting time to reopen time to file a timely notice of appeal to 180 days "upon a showing of excusable neglect or good cause.").

To avoid these specific instances where a party is wholly unaware that an appellant wishes to initiate an appeal against them for years, the Ninth Circuit promulgated Ninth Circuit Rule 3-2(b), which puts appellant on clear notice that they have a responsibility to identify "all parties to the action along with the names, addresses and telephone numbers of their respective counsel, if known." Its Advisory Committee Note clearly states "significant problems… can result" by an appellant's neglect:

> When any party or counsel is not accurately listed in the docket, significant problems, such as lack of notice or waiver of arguments, can result. Because the representation statement is filed by appellants (and none is required in pro se or criminal appeals), the Court expects and requires that all parties will carefully review the Court's caption and listing of counsel and parties

> at the outset of every appeal and will notify the Court immediately of any corrections or updates.

Nonetheless, George failed to act for an extraordinary amount of time, even after she obtained representation. Despite Petitioner's obligation to immediately notify the Court of any corrections or updates that may have been needed to the case caption, Petitioner's counsel breached Ninth Circuit Rule 3-2(b).

Because George's motion for pro bono counsel did not provide actual notice of appeal to Bridges and Washington County for more than two years after the deadline to file a notice of appeal, it cannot be fairly said that it was the functional equivalent of a notice of appeal as to Bridges and Washington County. Absent a proper notice of appeal as to Bridges and Washington County, the Ninth Circuit correctly concluded that "she did not comply with the requirements of Rule 3." App. 13.

Even if the Ninth Circuit had required that George serve her motion for pro bono counsel on Bridges and Washington County to provide sufficient notice of her intent to appeal, the Ninth Circuit would not have erred. Such an opinion would not conflict with Rule 3(d)(3), which provides the "district clerk's failure to service does not affect the validity of the appeal," because George's motion for pro bono counsel did not constitute a proper notice of appeal as to Bridges or Washington County. More fundamentally, at issue is George's inexplicable failure to act, not the clerk's. Therefore, the Ninth Circuit did not commit reversible error by dismissing George's appeal to overturn

Bridges' and Washington County's uncontested motions for summary judgment.

B. Petitioner's Purported Notice of Appeal Contains Fatal Jurisdictional Defects

Tellingly, while Petitioner raises many arguments, she does not appear to dispute her motion for pro bono counsel failed to comply with Rule 3(c)'s jurisdictional notice requirements. In it she wrote, "I would like to Appeal the earlier Jury Verdict of first trial and earlier Summary Judgment ruling by Judge Michael H. Simon." App. 32. She did not satisfy the jurisdictional element, as required by Rule 3(c)(1)(C), to name "the court to which the appeal is taken."

This Court has acknowledged a "liberal construction" of Rule 3 "does not… excuse noncompliance," which is "fatal to an appeal." *Smith v. Barry*, 502 U.S. 244, 248, 112 S. Ct. 678, 682 (1992); *Gonzalez v. Thaler*, 565 U.S. 134, 147, 132 S. Ct. 641, 652 (2012) ("We construed the content requirements for notices of appeal as jurisdictional because we were 'convinced that the harshness of our construction [wa]s imposed by the legislature.'") (quoting *Torres* v. *Oakland Scavenger Co.*, 487 U.S. 312, 318, 108 S. Ct. 2405, 101 L. Ed. 2d 285 (1988)). And in *Becker v. Montgomery*, 532 U.S. 757, 767, 121 S. Ct. 1801, 1807 (2001), this Court concluded these jurisdictional rules apply in equal force to notices of appeal filed by pro se litigants.

C. Petitioner Neglects the Plain Language of Rule 3(a)(2) and its Grant of Authority for the Ninth Circuit's Dismissal

Rule 3(a)(2) plainly provides the Court with the authority to exercise its discretion to dismiss an appeal based on George's missteps and provides:

> An appellant's failure to take any step other than the timely filing of a notice of appeal does not affect the validity of the appeal, but is ground only for the court of appeals to act as it considers appropriate, including dismissing the appeal.

(emphasis added). As the United States Supreme Court explained, Rule 3(a)(2) "provides the consequences for litigant errors associated with filing a notice of appeal" and empowers the Ninth Circuit to, "in its discretion, overlook defects in a notice of appeal *other* than the failure to timely file a notice" or decide to dismiss the appeal. *Manrique v. United States*, 137 S. Ct. 1266, 1274 (2017) (emphasis in original).

Compounding George's errors arising out of the filing of her motion for pro bono counsel, George then waited 39 days after she filed a notice of appeal on June 29, 2018. 1-SER-3, F. R. App. P. 4(a)(5)(C) ("No extension under this Rule 4(a)(5) may exceed 30 days after the prescribed time or 14 days after the date when the order granting the motion is entered, whichever is later."). Because the District Court informed George in a minute order in April that her deadline to file an appeal was May 21, 2018, George understood her filing was late. ER-5-10, ER-74, ER-1-4.

George also did not address the confusion created by her filings for a period of longer than two years in contravention of Circuit Rule 3-2 or failure to serve her opening brief on Bridges or Washington County as required by Rule 25(b).

George then waived her claims against Bridges and Washington County. Even after securing counsel on April 15, 2019, and addressing any purported misunderstanding about the scope of her appeal on August 7, 2020, by obtaining an amended judgment and filing another notice of appeal, George nonetheless failed to address the merits of her claims against Bridges and Washington County in her opening brief. COA.Dkt.6, COA.DKT.40, *see Ridgeway v. Walmart Inc.*, 946 F.3d 1066, 1076 (2020) ("When an appellant fails to clearly and distinctly raise an argument in its opening brief, this court considers the argument abandoned."). Failing to prosecute a claim or failing to address the merits of a claim in an opening brief are proper bases for dismissal pursuant to Rule 3(a)(2). *Hawthorne Sav. F.S.B. v. Reliance Ins. Co.*, 421 F.3d 835, 840 n.6 (9th Cir. 2005); *In re Nasdaq Mkt.-Makers Antitrust Litig. v. Herzog, Heine, Geduld, Inc.*, 189 F.3d 461 (2d Cir. 1999). Further, because of George's status as a represented appellant at the time she filed her opening brief, any exceptional circumstances that might justify forgiving George's departures from the Rules are not present.

George's failure to adequately address the Ninth Circuit's October 13, 2020 order, is an additional permissible basis for the Ninth Circuit's dismissal. George addressed only one of the three issues the

Ninth Circuit ordered her to address. CADkt. 41. She entirely neglected to explain the legal effect of her failing to include Bridges and Washington County in her appeal earlier as well as the legal effect of the amended judgment entered on July 29, 2020.

Regardless of how the Ninth Circuit styled its decision to dismiss the appeal against Bridges and Washington County, it was well within its authority due to George's many errors, egregious missteps, waiver, her filings' jurisdictional defects, and her failure to comply with the Ninth Circuit's October 13, 2020, order. In light of the multitude of reasons to properly dismiss her appeal, any error can only be described as harmless. *See Shinseki v. Sanders*, 556 U.S. 396, 410, 129 S. Ct. 1696, 1706 (2009) ("the party seeking reversal normally must explain why the erroneous ruling caused harm.").

D. George did not Preserve any Error by the Ninth Circuit

George's decision to only raise concerns with Rule 3(d)(3) for the first time in her petition for panel rehearing renders her appeal on that issue improper. Appellate courts routinely conclude "[a]s a general rule, we will not consider issues that a party raises for the first time in a petition for rehearing." *United States v. Mageno*, 786 F.3d 768, 775 (9th Cir. 2015) (quoting *Varney v. Sec'y of Health & Human Servs.*, 859 F.2d 1396, 1397 (9th Cir. 1988)). Absent extraordinary circumstances, George could not proceed with a further appeal of an error that was not properly raised below. *United States v. Mageno*, 786 F.3d 768, 778 (9th Cir. 2015).

E. There is no Circuit Split Warranting Certiorari

George's case law, cited for the proposition that an appellant has no responsibility in ensuring courts and other parties have notice of her appeal, is inapposite. *Pollard v. GEO Grp., Inc.*, 629 F.3d 843 (9th Cir. 2010), involved the appellant's failure to serve a notice of appeal and opening brief on individual respondents. *Id.* at 852. However, critically in *Pollard*, counsel for all the respondents received actual notice of both the notice of appeal and opening brief, as the Ninth Circuit noted, "the same law firm represents GEO and the individually named defendants on appeal" and GEO received proper notice. *Id.* at 853. It should be unsurprising and uncontroversial that service of counsel imputes notice to the individual defendants. Therefore, because the individual defendants had actual notice of the appeal and the opening brief, in its "sound discretion," the Court decided not to dismiss the appeal. *Id. Pollard*, however, does not address the situation at hand, where Bridges and Washington County did not have actual notice of George's appeal. The appellant in *Pollard* also did not appear to take George's other missteps, including failing to comply with Rule 3(c), timely inform the Court of any inaccuracies of its caption, and address the merits of the appeal against the individual defendants in the opening brief.

United States v. Uni Oil, Inc., 710 F.2d 1078, (5th Cir. 1983) ("*Uni I*"), does not address the issues presented in this case. Unlike this case, *Uni I* concerned the requirements for a notice appeal itself,

not when a court may exercise its discretion to treat a document like a notice of appeal. It held that failure to specifically name the respondents in a notice of appeal did not prevent the Court of Appeals from hearing the appeal. It emphasized that "the government's notice of appeal was served on counsel for Ball and Enterprise Marketing and plainly demonstrated an intention to appeal from the entire order of April 21, 1982." *Uni I*, 710 F.2d at 1080, n.1. (emphasis added). Additionally, while an individual defendant, Thomas Hajecate, claims that he was not served with the notice of appeal, in fact, his attorney also represented Uni Oil in the appeal and received a copy of the notice of appeal. *See United States v. Uni Oil, Inc.*, 646 F.2d 946 (5th Cir. 1981).

George's other cases do not deal with a lack of actual notice, failure to comply with Rule 3(c), and similar missteps. *Perington Wholesale, Inc. v. Burger King Corp.*, 631 F.2d 1369, 1379 (10th Cir. 1979), dealt with a case where the notice of appeal and "all motions and briefs thereafter filed in the appeal appear to have been mailed to [the respondent]." *Id.* at 1379. Finally, *Frieder v. Morehead State Univ.*, 770 F.3d 428 (6th Cir. 2014), involved a notice of appeal that identified some but not all of the defendants and the unnamed respondents challenged they did not receive sufficient notice; however, the clerk served the notice of appeal to all parties. *Id.* at 430 ("Even if the clerk fails in this duty (which no one contends happened here), the 'failure to serve notice does not affect the validity of the appeal.'") (emphasis added). Absent any meaningful circuit split, certiorari is not warranted.

F. George Neglects to Address the Futility of her Appeal

George's petition is futile. George's claims against Bridges and Washington County are premised on respondeat superior liability for the conduct of House of Hope and Barcroft. George's claims against the primary actors in this case have been fully heard and a final judgment has been entered in their favor. Therefore, George's claims premised on vicarious liability against Bridges and Washington County fail as a matter of law and granting her petition will not change the outcome of her suit.

CONCLUSION

The Ninth Circuit had the authority to dismiss Petitioner's appeal against Bridges and Washington County and its decision conforms with the *Manrique* and *Smith*. Petitioner has also not identified a circuit split that warrants certiorari.

Respectfully submitted,

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