

No. \_\_\_\_\_

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In The  
**Supreme Court of the United States**

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Patricia Fox,

Applicant, Petitioner

v.

Gardner Forster III,

Respondent.

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**Application for Extension of Time to File  
a Petition for Writ of Certiorari**

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Directed to The Honorable Elena Kagan  
Circuit Justice for the United States Ninth Circuit

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Attorneys for Applicant, Petitioner Patricia Fox

## **I. Application for a 60 Day Extension of Time to File a Petition for Writ of Certiorari**

Pursuant to 28 U.S.C. § 2101(c) and Rule 13.5 of the Rules of this Court, applicant Patricia Fox respectfully requests a 60-day extension of time, from the current deadline of 6/7/22, up to and including to 8/8/22, within which to file a Petition for a Writ of Certiorari, to review the judgment of the California Supreme Court and the California Court of Appeal for the First District, regarding the issues that are described herein, below, and in the attached Exhibits.

## **II. The Judgment for Which Review Is Sought**

The judgment for which review is sought is the decision of the California Supreme Court dated 3/9/22 that denied the applicant's Petition for Review, which is attached hereto as Exhibit 1. The decision of the California Court of Appeal dated 12/23/21 is attached hereto as Exhibit 2.

## **III. Jurisdiction**

The Supreme Court of the United States has jurisdiction over any timely filed petition for a writ of certiorari in this case pursuant to 28 U.S. Code Section 1257 including Section 1257(a).

Pursuant to Rules 13.1, 13.3, and 30.1 of the Rules of the Supreme Court of the United States, a petition for writ of certiorari is due to be filed within 90 days of the entry of the judgment from the highest court from a state. The applicable judgment from the California Supreme Court was entered on 3/9/22. The 90th day after that date of entry of judgment is 6/7/22.

This Application for a 60 Day Extension of Time to File a Petition for Writ of Certiorari is filed more than 10 days before the 6/7/22 deadline to file a Petition for Writ of Certiorari.

As a result, this Application for a 60 Day Extension of Time to File a Petition for Writ of Certiorari is therefore timely pursuant to Rule 13.5.

#### **IV. Nature of the Case**

##### **A. Summary of Applicable Statutes and Rules**

The underlying case involves the very important public policy of protecting the rights of victims of drunk drivers and victims of drunk driving. That public policy is set forth in various places, including specifically in 11 U.S. Code Section 523(a)(9).

In 11 U.S.C. Section 523(a)(9) it is provided that this public policy and these rules are to apply in circumstances such as exist here, saying that it makes nondischargeable all judgments that are:

(9) for death or personal injury caused by the debtor's operation of a motor vehicle, vessel, or aircraft if such operation was unlawful because the debtor was intoxicated from using alcohol, a drug, or another substance;

Drunk driving obligations and restitution orders are nondischargeable. They should never expire. They should never need renewal.

The Supreme Court of the United States should eventually accept review and should issue a decision making it clear to the state courts that drunk driving

judgments are nondischargeable, never expire, and never need renewal.

## **B. Overview of the Pertinent Facts and Pertinent Law**

On 3/1/83, Patricia Fox was severely injured by Gardner Forster III, who was a drunk driver at the time and was criminally charged for drunk driving.

Forster was arrested and charged with driving while intoxicated. However, Forster fled Alaska with criminal charges pending. Forster never returned to Alaska. Forster hid his location for decades. Forster never disclosed or revealed his location to Fox. Fox has remained a resident of Alaska to the present.

On 9/9/87, Fox obtained a civil default judgment in Alaska against Forster for Fox's damages that resulted from Forster's drunk driving that caused the subject car accident.

From 3/1/83 until very recently, there were no resources available to someone like Fox to locate someone like Forster who was actively concealing his location.

Around 2015, after the development of the internet and social media, Fox located Forster in Contra Costa County, California based on information that Forster had posted to his Facebook social media account page.

After discovery of Forster's location in Contra Costa County, California, Fox took steps to use the default judgment against Forster from the Alaska courts to enforce the judgment against Forster in California.

After initiating that process, Fox's undersigned counsel discovered by investigation that Forster had declared bankruptcy two times in the preceding several years, without giving notice to Fox, and without having the drunk driving judgment enforced as part of the bankruptcy case.

Forster's first bankruptcy was a personal Chapter 7 (straight bankruptcy or liquidation bankruptcy) bankruptcy case. It was filed on 8/30/11 and it was concluded on 11/30/11. Forster did not give notice to Fox of the 2011 bankruptcy. The lack of notice by Forster to Fox is an additional basis for the default judgment being nondischargeable. A debt that is owed to a creditor who is not listed in a bankruptcy and not given notice of the bankruptcy becomes a nondischargeable debt by virtue of failing to give notice. See 11 U.S. Code Section 523(a)(3).

Forster's second bankruptcy was a personal Chapter 13 (wage earner plan bankruptcy) bankruptcy case. It was filed on 4/3/13. With this bankruptcy also, Forster again failed to give notice to Fox and failed to list Fox as a creditor. Here again, that illegal conduct by Forster resulted in the judgment becoming a nondischargeable debt by virtue of failing to give notice. See 11 U.S. Code Section 523(a)(3).

Fox's Alaska state court judgment against Forster is nondischargeable both based on 11 U.S. Code Section 523(a)(3) [for debts that were not listed or scheduled, and where notice was not provided to the creditor] and also based on 11 U.S. Code Section 523(a)(9) [for debts incurred as a result of drunk driving].

Fox has not received any compensation from Forster from the life-threatening injuries that Forster caused to Fox in the motor vehicle collision where Forster was determined to be a drunk driver.

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**C. The circumstances establish multiple, independent reasons for the Supreme Court of the United States to eventually grant a Petition for Writ of Certiorari pursuant to Rule 10 of the Rules of the Supreme Court of the United States**

Rule 10 of the Rules of the Supreme Court of the United States provides in pertinent part as follows:

The following, although neither controlling nor fully measuring the Court's discretion, indicate the character of the reasons the Court considers:

(b) a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals;

(c) a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

(Emphasis added).

As the earlier discussion herein shows, the California state courts are deciding important federal questions on the subject involved in this case (i.e., the perpetual nature and enforceability of judgments for injuries caused by drunk driving), and are doing so incorrectly and in conflict with federal public policy and federal statutory law that is binding on all of the states.

The circumstances here are "compelling reasons" under Rule 10 for the Supreme Court of the United States to grant an eventual Petition for Writ of

Certiorari in this case. The state courts need clear guidance. State courts are, by nature and generally, not well-versed in federal bankruptcy law and in the federal rules of civil procedure and bankruptcy procedure, and this is understandable. Although it is understandable, it also provides a "compelling reason" for the Supreme Court of the United States to grant review and to provide guidance.

## **V. Reasons Justifying the Requested Extension**

The 60 day extension of time to file a Petition for Writ of Certiorari is respectfully requested, and needed, for several reasons.

Prior to this week, Applicant's counsel has never filed an Application or any other document with the Supreme Court of the United States. As a result, Applicant's counsel requires a considerable amount of extra time going through the process of learning and becoming familiar with the procedural and substantive requirements of filing something with Supreme Court of the United States.

This takes a substantial amount of extra time compared with someone who regularly practices before the Supreme Court of the United States and who regularly prepares paperwork to file with the Supreme Court of the United States.

The Applicant's counsel's time leading up to the current deadline has been filled with the full time practice of law involving other cases and matters.

The Applicant does not have enough time before the statutory deadline to learn, and do, what is needed to prepare and file a Petition for Writ of Certiorari.

Up until 30 days ago, Applicant's counsel was pursuing settlement attempts, but those attempts failed to result in any resolution. That contributed to the urgency and the need for this request for a 60 day extension of time.

## **VI. Prayer**

For the foregoing reasons, facts, circumstances, and law, and based on the good cause shown, Applicant respectfully prays that this Court grant this application for a 60 day extension of time to file a petition for writ of certiorari.

Dated: May 15, 2022

LAW OFFICES OF  
STEPHEN G. OPPERWALL

/s/ Stephen G. Opperwall

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STEPHEN G. OPPERWALL  
Attorneys for Applicant, Petitioner  
Patricia Fox

Application for Extension of Time to File Petition.doc.wpd

SUPREME COURT  
FILED

Court of Appeal, First Appellate District, Division Three - No. A158103

MAR - 9 2022

Jorge Navarrete Clerk

S272983

**IN THE SUPREME COURT OF CALIFORNIA**

Deputy

**En Banc**

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PATRICIA FOX, Plaintiff and Appellant,

v.

GARDNER FORSTER III, Defendant and Respondent.

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The petition for review is denied.

CANTIL-SAKAUYE

*Chief Justice*

Filed 12/23/2021

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

PATRICIA FOX,

Plaintiff and Appellant,

v.

GARDNER FORSTER III,

Defendant and Respondent.

A158103

(Contra Costa County  
Super. Ct. No. C19-00105)

In this action, plaintiff Patricia Fox seeks damages for injuries she suffered in an automobile accident in 1983. The trial court sustained defendant Gardner Forster III's demurrer without leave to amend. We conclude the trial court properly ruled the action is barred by res judicata, and we accordingly affirm the judgment.<sup>1</sup>

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<sup>1</sup> The record contains no judgment of dismissal, and plaintiff informs us none was entered. We shall order the trial court to enter, nunc pro tunc as of June 26, 2019, the date of entry of the order sustaining the demurrer, a judgment of dismissal, and we construe the notice of appeal to refer to that judgment. (See *Bartholomew v. YouTube, LLC* (2017) 17 Cal.App.5th 1217, 1226, fn. 4 (*Bartholomew*); *Ulta Salon, Cosmetics & Fragrance, Inc. v. Travelers Property Casualty Co. of America* (2011) 197 Cal.App.4th 424, 426, fn. 1 (*Ulta Salon*)).

## STANDARD OF REVIEW

In reviewing an order on a demurrer, “ “[w]e treat the demurrer as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law. [Citation.] We also consider matters which may be judicially noticed.’ ” ” ( *Bartholomew, supra*, 17 Cal.App.5th at p. 1225.) Our review is de novo. ( *Ulta Salon, supra*, 197 Cal.App.4th at p. 431.)

When a demurrer is sustained without leave to amend, we determine whether there is a reasonable probability the defect can be cured by amendment; if it can be, we reverse for abuse of discretion. The plaintiff bears the burden of proving that probability. ( *Bartholomew, supra*, 17 Cal.App.5th at p. 1225.)

## FACTUAL AND PROCEDURAL BACKGROUND

This case arises out of an automobile accident that took place in the state of Alaska almost 30 years ago, on March 1, 1983. Defendant was driving while intoxicated when he caused the collision, in which plaintiff suffered permanent injuries. Defendant fled Alaska with criminal charges pending and never returned.

### *The Alaska Action*

In 1987, plaintiff obtained a default judgment of \$445,557.49 against defendant in the Alaska superior court. ( *Fox v. Forster* (Alaska Super.Ct., 4th.Jud.Dist., Sept. 9, 1987, No. 4FA-85-0455) (the Alaska action).)<sup>2</sup> She did

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<sup>2</sup> The trial court properly took judicial notice of defendant’s application for entry of a sister-state judgment in a related case ( *Fox v. Forster* (Super. Ct. Contra Costa County, 2018, No. MSN18-0147)), which attached a copy of the default judgment in the Alaska action. (Evid. Code, § 452, subds. (c), (d).) We likewise take judicial notice of the application and attachment. (Evid. Code, § 459, subd. (a).) On our own motion, we also take judicial notice of the files and the opinion issued by this division in plaintiff’s appeal in *Fox v. Forster* (Mar. 26, 2020, A154906) [nonpub. opn.] ( *Fox v. Forster I*).

not discover defendant's whereabouts for approximately 20 years, when she learned he was living in Contra Costa County.

***Fox v. Forster I—Effort to Enforce Alaska Judgment***

In February 2018, plaintiff filed in the Contra Costa County Superior Court an application for entry of a sister-state judgment, to which she attached a copy of the default judgment in the Alaska action. As explained by a different panel of this division in *Fox v. Forster I*, the trial court there initially granted plaintiff's application for entry of the Alaska judgment, but it later vacated its judgment on the ground that the statute of limitations barred plaintiff's application and the limitations period was not delayed or tolled.

Plaintiff appealed the trial court's decision in *Fox v. Forster I*, arguing that the ten-year statute of limitations for actions on the judgment in another state (Code Civ. Proc., § 337.5) did not apply, that the discovery rule delayed the action's accrual, that defendant should be estopped from asserting the statute of limitations, that equity superseded any legal bar to enforcement of the judgment, and that the judgment was enforceable until satisfied despite the statute of limitations. This court rejected all of plaintiff's arguments and affirmed the judgment on March 26, 2020. On July 8, 2020, the California Supreme Court denied plaintiff's petition for review, and the remittitur issued on July 16, 2020. (*Fox v. Forster I*, *supra*, review den. July 8, 2020, S262525.)

***The Present Action—A Second Action for Personal Injury***

Meanwhile, plaintiff brought the present personal injury action on January 14, 2019, alleging that defendant caused the injuries she sustained in the 1983 accident. Defendant demurred on the grounds that the action is barred by res judicata because plaintiff has already obtained a final judgment

in the Alaska action and that the complaint is time-barred under the statute of limitations for personal injury. The trial court sustained the demurrer without leave to amend, concluding that under either California or Alaska law, the judgment in the Alaska action bars plaintiff from pursuing the same claims in a second lawsuit and that no amendment could change that result.

This appeal ensued. In her notice of related cases filed before the appeal in *Fox v. Forster I* was decided, plaintiff acknowledged that both this case and *Fox v. Forster I* arise from injuries caused by the same car accident, that they involve the same parties, that they are based on the same or similar claims, and that they seek the same damages.

### DISCUSSION

On appeal, plaintiff contends her claims against defendant are not dischargeable, do not expire, need not be renewed, and continue until paid in full. Her arguments are largely irrelevant to whether this action is barred by res judicata.

It is well settled that a trial court's judgment is presumed correct and that the appellant has the burden to show error with reasoned argument and citation to authority. (*Jameson v. Desta* (2018) 5 Cal.5th 594, 608–609; *Allen v. City of Sacramento* (2015) 234 Cal.App.4th 41, 52). Plaintiff has not met her burden, and it is evident that she cannot.

Res judicata, or claim preclusion, “ ‘prevents relitigation of the same cause of action in a second suit between the same parties or parties in privity with them.’ [Citation.] Claim preclusion arises if a second suit involves (1) the same cause of action (2) between the same parties (3) after a final judgment on the merits in the first suit. [Citations.] If claim preclusion is established, it operates to bar relitigation of the claim altogether.” (*DKN Holdings LLC v. Faerber* (2015) 61 Cal.4th 813, 824; accord, *Mycogen Corp. v.*

*Monsanto Co.* (2002) 28 Cal.4th 888, 904–905 [earlier successful action had preclusive effect where both suits sought to vindicate same primary right]; see *Pister v. State, Dept. of Revenue* (Alaska 2015) 354 P.3d 357, 362 [res judicata bars subsequent action if prior judgment was final and on the merits, from court of competent jurisdiction, in dispute between same parties about same cause of action].)

That describes this case perfectly. Plaintiff brought an action in Alaska and obtained a judgment awarding damages for the same injuries she asserts now, based on the same accident, against the same defendant. She then brought an unsuccessful action against the same defendant in California seeking to enforce the Alaska judgment on the ground her claim was not time-barred; this division rejected her argument in *Fox v. Forster I*, and that case is now final. She cannot get another bite at the apple by filing a new action against the same defendant for the same damages based on the same accident, once again arguing her claims are not time-barred. The trial court correctly so ruled. Plaintiff's counsel insisted at oral argument that an action to enforce a nondischargeable debt is not subject to the doctrine of res judicata, but he has provided no authority to support that proposition.

Plaintiff also contends the trial court abused its discretion in denying leave to amend her complaint. She has not met her burden to show any amendment that could avoid the bar of res judicata (see *Bartholomew, supra*, 17 Cal.App.5th at p. 1225), and we can discern none.

#### DISPOSITION

The trial court is directed to enter, nunc pro tunc as of June 26, 2019, a judgment of dismissal. That judgment is affirmed. Defendant shall recover his costs on appeal.

TUCHER, P.J.

WE CONCUR:

PETROU, J.  
RODRÍGUEZ, J.