No. _____

In the

Supreme Court of the United States

KIMBERLY COX

Petitioner,

v.

LAW OFICES OF LES ZIEVE, A PROFESSIONAL CORPORATION, *et al.*,

Respondents.

APPLICATION FOR AN EXTENSION OF TIME TO FILE PETITION FOR A WRIT OF CERTIORARI

To the Honorable Elena Kagan
Associate Justice of the United States Supreme Court
and Circuit Justice for the Ninth Circuit

Kimberly Cox
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Petitioner, *in propria persona*

INTRODUCTION

TO THE HONORABLE ELENA KAGAN, ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES AND CIRCUIT JUSTICE FOR THE NINTH CIRCUIT

Pursuant to Supreme Court Rules 13.5, 22, and 30, applicant Kimberly Cox ("Ms. Cox") respectfully requests a 60-day extension of time to file her petition for a writ of *certiorari*. This is her first request.

For good cause set forth herein, Ms. Cox requests that the current deadline be extended from the current date her petition is due pursuant to Sup. Ct. R. 13.2 of June 1, 2022 (the date rehearing was denied), to July 31, 2022.

JURISDICTION

This Court has jurisdiction under 28 U.S.C. § 1254(1) and this application is timely because it has been filed more than ten days prior to the date on which the time for filing the petition will expire.

The Honorable Elena Kagan is the Associate Justice of the Supreme Court of the United States ("SCOTUS") and Circuit Justice for the Ninth Circuit.

PURPOSE, REASON AND GOOD CAUSE FOR AN EXTENSION

More Time is Needed to Substitute and Retain Counsel Admitted in SCOTUS

Ms. Cox is still seeking, but has been unable thus far, to secure new counsel admitted in this Honorable Court. Her current counsel has not been, nor intends to be, admitted in this jurisdiction due to impending retirement.

Medical Issues

The counsel Ms. Cox intended to use, withdrew from representing her due to medical issues. In addition, there has been insufficient time

for Ms. Cox to attend to her petition due to her husband and current counsel's paralegal, being told, among other issues, he needs surgery on both of his eyes; and scheduling of the procedures, resulting follow-up appointments, recovery and potential side effects.

INTRODUCTION, BACKGROUND AND RELEVANT FACTS RELATED TO THE ACTION ON WHICH THIS APPLICATION IS BASED

Introduction and Background

The *certiorari* petition Ms. Cox intends to file, will present important questions which were filed with the App. Ct. in Ms. Cox's petition for rehearing *en banc* or panel rehearing, filed 01/18/2022.[1] The rehearing petition was denied on 03/03/2022.[2]

The rehearing petition presented questions regarding its memorandum decision, DktEntry: 39-1 filed 11/17/2021 ("Memorandum"), merely rubber-stamped the Dist. Ct.'s decisions which were in conflict with other previous decisions the App. Ct. itself made on the same issues and were also in conflict with other appellate courts and decisions by the SCOTUS exhibiting bias and a double-standard on the relevant issues and questions presented which were determined adversely by the court below.

In Ms. Cox's counsel's judgment, sufficient grounds for rehearing existed because the App. Ct.'s Memorandum was premised on erroneous assumptions; overlooked and failed to set forth the facts upon which the decision(s) was/were based; misapprehended the authorities that were cited without analysis which were not relevant to

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[1] App. Ct. DktEntry: 45.

[2] App. Ct. DktEntry: 47.

the facts of this case and overlooked other precedential authorities a number of which were provided in Ms. Cox's request for judicial notice in support of her petition.[3] The authorities the courts misapprehended and overlooked showed contrary to particularly the Memorandum, that this action ***was not*** "properly," but was improvidently removed from state court;[4] and the district court failed to have "original," "removal," "subject matter," "federal question" or any other jurisdiction.

Ms. Cox contends the Courts' decision(s) exhibited bias; a double-standard; and were made without regard to the doctrine of *stare decisis* or precedence. Accordingly, Ms. Cox will urge that this Honorable Court invoke its supervisory power over the Dist. and App. Ct.'s actions.

Relevant Facts

This action was originally filed in State Court, not Federal Court.

Unanimous consent was admittedly not obtained by removing counsel from all defendants before removal, even though all were served the summons and complaint and proofs of service were accepted by the State Court and published on its docket before removal.[5]

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3 App. Ct. DktEntry: 46 ("RJN") which was filed pursuant to the mandatory provisions of Fed. R. Evid. 201(c)(2) but was denied anyway, once again, without explanation.

4 As shown in the opening brief App. Ct. DktEntry: 9-1 ("OB") §§ 1, 3.2.3, 5.2, 6.1.2 and 8.3; Ms. Cox's reply brief, App. Ct. DktEntry: 31 ("RB") ¶¶ 2(b), 29(b), 50 and 56; and in her further excerpts of record, App. Ct. DktEntry: 34-2 ("FER"), pgs. 1-FER-021-032.

5 OB § 1(b), 3.2.2, 5.2, 6.1.2, 7, 8.3; App. Ct. DktEntry: 10-2 to 10-4 ("ER") 2-ER-18:1-19:28, 66:23-67:3, 70:9-11, 75:4-15, 156:18-22, 165 through 170, 242:6-11, 251:10-253:12, 262:7-17, 268:8-9, 272 through 278, 283:15-16, 285:7-9 and 16-20, 286:6-20, 287:1-8; 3-ER-296:7-8, 303 through 309, 316 through 318, 323 through 325 and 329 fn. 6 therein. Also see, *e.g.*, Calif. Code of Civ. Proc. §§ 415.40 and 417.20; Fed. R. Civ. P. 4(e)(1) and R. 4(l)(3); RJN # 3; and 2-FER-101-106 and 122-133.

It is an absolute and undeniable fact that no federal cause of action was stated in the complaint.[6] It is also a fact that Ms. Cox's right to relief did not depend on the resolution of any federal question, "substantial," "disputed" or otherwise.[7] Every cause of action stated in the operative complaint sought relief ***ONLY***, for defendants' admitted acts that Ms. Cox alleged and showed, violated California Law; because the 2004 instrument from which they (defendants) claim (falsely) to have: 1. derived their authority was shown to have named a party that did not exist; and 2. said wrongfully recorded false instrument was forged which rendered it invalid *ab initio* under California Law, which was independent of, and irrelevant to, any "federal question."[8]

The facts and authorities overlooked in the Memorandum also showed the decision erroneously stated that Ms. Cox's R. 59(e) motion "failed to demonstrate any basis for relief" when it actually did; while "reject[ing] as meritless" Ms. "Cox's contention that the district court lacked jurisdiction to rule on the motion to dismiss because it did not first explicitly deny the motion to remand."[9] The problem is however, the Memorandum misapprehended[10] Ms. Cox's ***actual*** "contention" and

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6 OB pgs. 22-23, fn. 31 and 32 therein; RB ¶¶ 7(a), 33(b), 36; and RJN # 13, 15, 25-27, 40, 41, 44, 48, 52-54 and 60.

7 OB pgs. 20-23; RB ¶¶ 34-36; and RJN # 15, 24-26, 34, 37, 38, 40, 41, 44, 54 and 60.

8 OB §§ 3.2.1.1, 6.1, pgs. 17, 20, 22-26, 29 and 31-32; RB ¶¶ 32(b), 34, 37 and 38(a); and RJN # 14, 15, 24-27, 33, 38, 52, 53, 57 and 60.

9 Memorandum, bottom of pg. 2 through top of pg. 3.

10 OB §§ 8.4 and 8.5; 2-ER-6-29; and RJN # 5-12, 19, 20, 22, 23, 47 and 48.

overlooked the applicable supporting authorities which demonstrated that:

> " ***...notwithstanding its lack of jurisdiction, pursuant to the...referenced controlling authorities***...the District Court erred in failing to hold the remand hearing before ruling on the MTD which required, as shown in the R. 59 Motion, reversal of the MTD Order and vacating the resulting void Judgment[;]" (emphasis added)
>
> " Since the Motion to Remand present[ed] 'a threshold jurisdictional question,' the Court must 'decide it first,' before addressing the Motion to Dismiss[;]"
>
> " A district court has an independent obligation to examine whether removal jurisdiction exists before deciding any issue on the merits[;]"

And:

> " ***The District Court failed to comply with any of these obligations*** (emphasis added) 'Because federal courts are courts of limited jurisdiction and because of federalism concerns, there is a presumption against removal jurisdiction. [holding that presumption against jurisdiction exists because federal courts are courts of limited jurisdiction]' '[indicating federalism concerns and Congressional intent mandate strict construction of removal statutes].'" [11] (internal citations omitted)

The Memorandum also failed to set forth any facts, analysis or supporting authority as a basis, when it summarily denied:

1. Ms. Cox's DktEntry: 32 motion to strike which notably, was unopposed; and
2. her request for judicial notice (DktEntry: 33) which was required pursuant to Fed. R. Evid. 201(c)(2).

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[11] See *e.g.*, OB §§ 1(a)-(d), 3.2 *et seq.*, 5 *et seq.*, 7, 8.1 and 8.2 *et seq.*; RB ¶¶ 7, 18, 24, 33, 39 and 56; and RJN # 2, 5, 6, 9, 10, 13-15, 19, 21-26, 30-38 and 47-48.

Re FRAP 35 Rehearing *En Banc*

The Memorandum was in conflict with decisions of the App. Ct. itself, other courts of appeals and the SCOTUS, which addressed the issues presented for review. Therefore, Ms. Cox claimed consideration by the full court was necessary to secure and maintain uniformity of the Court's decisions in the judgment of the *entire* Circuit.[12]

Re FRAP 40 Panel Rehearing

Material points of fact and law were misapprehended and overlooked in the Memorandum, *Id.* The authorities therein cited and relied upon were not analyzed nor was any explanation provided how the quoted sections thereof applied to the facts of this case which they did not. The decision relied exclusively on incorrect assumptions and inferences while overlooking other, ***applicable*** portions of the same authorities quoted which Ms. Cox contended, if applied to the facts of this case, the decision should have resulted in reversal of the Dist. Court's orders.

Ms. Cox's petition for panel rehearing and petition for rehearing en banc were denied.

CURRENT DECISIONS AT ISSUE AND ARGUMENT

The following was presented pursuant to the App. Ct. FRAP 35(a)(1), (b)(1)(A) and (B); Cir. R. 35-1; and FRAP 40(a)(2).

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[12] See, FRAP and Cir. R. 35(b)(1)(A) and 35-1; the authorities cited in the RJN and elsewhere herein.

Note: Because the number of words is limited, conflicting and overlooked decisions in the Memorandum from the 9th Cir. and Supreme Court will be primarily referenced herein; however, notwithstanding the foregoing, see e.g., RJN # 46-59.

Re the App. Ct. Memorandum

The Memorandum's opening paragraph stated that, "[w]e review de novo issues of subject matter jurisdiction and denials of motions to remand." However, there was no review-related analysis' in the Memorandum on the issues presented for review; the authorities cited; nor were facts set forth upon which the decision was based. Moreover, there were other issues presented for review which the Memorandum overlooked, including the district court's:

(a) want of original jurisdiction;[13]

(b) lack of federal question jurisdiction;[14]

(c) lack of removal jurisdiction (which there is supposedly a "strong Presumption against..."),[15] the related improvident removal of this action;[16] and

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[13] OB §§ 1(a), 3.2.1.1, 5.1, 8.2; RB ¶¶ 33 *et seq.*, and 56; and RJN # 15 and 52.

[14] See, *e.g.*, OB §§ 1(a), 3.2.1.1, 5.1, 6.1, 8.2 and fn. 10, 17, 27, 29, 30 and 31 therein; 2-ER-7, 17-20, 25-26, 48, 67, 70-73, 76, 70, 206-207, 217-218, 226, 236, 242, 248-250, 258, 261, 263-264, 266, 281; 3-ER-290 and 328-329; and the following cited authorities in the record that were overlooked in the Memorandum: *Vaden v. Discover Bank*, 556 U.S. 49, 60 (2009); *Cal. Shock Trauma Air Rescue v. State Comp. Ins. Fund*, 636 F.3d 538, 541-42 (9th Cir. 2011); *Holmes Grp., Inc. v. Vornado Air Circulation Sys., Inc.*, 535 U.S. 826, 830-31 (2002); *Merrell Dow Pharms. Inc. v. Thompson*, 478 U.S. 804, 813 (1986); *Grable & Sons Metal Products, Inc. v. Darue Engineering & Mfg.*, 545 U.S. 308, 313 (2005); *Wayne v. DHL Worldwide Express*, 294 F.3d 1179, 1183 (9th Cir. 2002); *Gully v. First Nat'l Bank in Meridian*, 299 U.S. 109 (1936); *Franchise Tax Bd. of State of Cal. v. Construction Laborers Vacation Trust for Southern California*, 463 U.S. 1 (1983); *Easton v. Crossland Mortgage Corp.*, 114 F.3d 979, 982 (9th Cir. 1997); and *Rains v. Criterion Sys., Inc.*, 80 F.3d 339, 344 (9th Cir. 1996). Also see, RJN # 2, 13, 14, 26, 33, 40, 41, 44 and 52-60.

[15] See *e.g.*, OB §§ 3.2.1.1, 3.2.1.2, 3.2.3, 5.2 and 8.4; RB ¶¶ 2, 7 and 56; the following cited authorities also overlooked in the Memorandum:

(d) the district court's failure to hold the remand hearing; determine its jurisdiction in the first instance as required;[17] or hold the R. 59 hearing which was also required.[18]

The Memorandum further stated, without analysis or reason, that the district court purportedly "properly denied" Ms. Cox's remand motion. However, the Memorandum overlooked the facts and that Ms. Cox showed with supporting authority, that the district court failed to have subject matter jurisdiction under 28 U.S.C. § 1331, and this action ***was not*** "properly removed" under § 1441, *Id.* The Memorandum cited *Rivet v. Regions Bank of La.*, 522 U.S. 470, 475 (1998) apparently in support of the decision which stated that to establish jurisdiction under § 1331, "...a federal question must be 'presented on the face of the plaintiff's properly pleaded complaint." However, *Rivet,* (which was notably reversed and remanded) was misquoted and was further citing *Caterpillar Inc., v. Williams*, 482 U.S. 386, 392 (1987) which stated in *relevant* part:

> " We have long held that '[t]he presence or absence of federal-question jurisdiction is governed by the 'well-pleaded complaint rule,' which provides that federal jurisdiction exists ***ONLY*** when a federal question is presented on the face of the plaintiff's properly pleaded complaint.' A defense

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Gaus v. Miles, Inc., 980 F.2d 564 at 566 and 567 (9th Cir. 1992); *Hamilton Materials v. Dow Chem.*, 494 F.3d 1203 at 1206 (9th Cir. 2007); *Hunter v. Philip Morris USA*, 582 F.3d 1039, 1046 (9th Cir. 2009); *Takeda v. Northwestern Nat'l Life Ins. Co.*, 765 F.2d 815, 818 (9th Cir. 1985); *Valdez v. Allstate Ins. Co.*, 372 F.3d 1115, 1116 (9th Cir. 2004); *Kokkonen v. Guardian Life Ins. Co. of America*, 511 U.S. 375, 377 (1994); and *Shamrock Oil & Gas Corp. v. Sheets* 313 U.S. 100, 108-09 (1941); and RJN # 1, 3, 5, 6, 20-23, 25, 35 and 58.

[16] See, OB § 5.2; and fn. 5 herein above.

[17] OB § 5.3.

[18] OB § 5.4.

is not part of a plaintiff's properly pleaded statement of his or her claim." *Rivet v. Regions Bank, Id.* at 475 (emphasis added, additional internal citations omitted).

However, problems with the App. Court's decision included the following:

1. ***there was no "federal question" presented in the complaint, on its face or otherwise***,[19] which accordingly, the Memorandum failed to, and could not have identified;[20] and

2. as shown in Ms. Cox's OB, RB and in the papers she filed in the district court, including the R. 59 motion (see, the ER, *passim*); ***the district court did not have subject matter jurisdiction***; and ***this action was improvidently removed from state court.*** The district court simply assumed jurisdiction it failed to have, *sub silentio,*[21] as shown in its decisional documents (Dist. Ct. Documents 50 (1-ER-4), 51 (1-ER-3) and 54 (1-ER-2)), which was also overlooked in the App. Ct.'s Memorandum.

The App. Ct. Memorandum cited and misapprehended *Lippitt v. Raymond James Fin. Servs., Inc.*, 340 F.3d 1033, 1042 (9th Cir. 2003) re the purported "artful pleading doctrine" which was inapposite, had no relevance to the complaint and overlooked what was shown, with supporting authorities by Ms. Cox, that contrary to the assumptions and inferences in the Memorandum re this purported doctrine:

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[19] OB fn. 10; pg. 23 first ¶, §§ 6.1.1 and 8.2; RB ¶¶ 7(a), 34, 35 and 36; and herein, *passim*.

[20] See, ¶¶ 1(b)(3) and (4), 7(b) and fn. 8, 9 and 15 herein above.

[21] See, OB §§ 3.2, 3.2.1.1, 5.1, 7, 9 and fn. 10 therein; RB ¶ 56; and RJN # 46 and 51.

1. there was no jurisdiction to "*retain*" because the district court lacked jurisdiction in the first place;
2. there was no "substantial, disputed federal question" stated in the complaint upon which Ms. Cox's right to relief depended, this is a fact. The only relief Ms. Cox sought, was for defendants' admitted acts, which violated California State Law (see *e.g.*, ¶¶ 1(b)(3) and (4), 7(b) and 9(a); and fn. 7-9, 15 and 20 herein above); and
3. defendants' undenied federal violations were presented only for background and informational purposes as predicate acts to their violations of State Law; and were ***NOT*** "federal question(s)," "claims," nor "causes of action" stated in the complaint.[22] This is another fact obfuscated repeatedly by opposing counsel who manufactured the bogus "artful pleading doctrine" argument, apparently and erroneously assumed without analysis in the Memorandum. This "doctrine" has no relevance to the causes of action stated in the complaint nor to the relief Ms. Cox seeks.[23]

The portions of *Destfino v. Reiswig*, 630 F.3d 952, 957 (9th Cir. 2011) quoted in the Memorandum are not relevant and distinguishable because:

1. *Destfino* was based on the consent to removal not being required from defendants who were not properly served;

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[22] See, ¶¶ 1(b)(3) and (4), 7(b) and 9(a); and fn. 7-9, 15 and 20 herein above; OB §§ 1, 3.2.1.1 (pg. 5), 6.1.1, 8.2 (pg.22), RB ¶ 36; and 2-ER-21:8-18, 209:4-7, 264:12-18; and 3-ER-380-381.

[23] See *e.g.*, RB ¶¶ 34 and 38(b); 2-ER-21:8-25, 250:9-12, 263:12-26 and 265:15-266:20.

whereas again, Ms. Cox has shown that ***all defendants were in fact properly served pursuant to California Law***;

2. in *Destfino* it was undisputed there was an original federal "claim" conferring subject matter jurisdiction; whereas here, there was no federal "claim" whatsoever;
3. the *Destfino* basis for federal jurisdiction was under 12 U.S.C. § 1819(b)(2)(B) which has no relevance to this instant action whatsoever;
4. the *Destfino* court allowed removing defendants to cure procedural defects, which did not happen here;
5. defendants in *Destfino* were served at the wrong address which did not comply with Calif. Code of Civ. Proc. § 415.20(b); whereas here, all defendants were served at their places of employment or through counsel;
6. the *Destfino* record contained no evidence of service on all defendants; whereas here, contrary to the assumption eluded to, overlooked in the Memorandum and misrepresented by opposing counsel, Ms. Cox and the State Court record ***showed*** that all defendants in this action ***were*** properly served pursuant to California Law, proofs of service were filed, accepted by the State Court and published on its docket; and
7. when the *Destfino* plaintiff's sought remand on jurisdiction grounds, they failed because the FDIC stepped in subjecting the case to federal jurisdiction. Here, there has never been a federal defendant.

Sch. Dist. No. 1J, Multnomah County, Or. v. ACandS, Inc., 5 F.3d 1255, 1262-63 (9th Cir. 1993), cited in the Memorandum was also misapprehended where it was erroneously purported that Ms. Cox's R. 59(e) motion "...failed to demonstrate any basis for relief." However, the Memorandum also overlooked the facts and supporting authorities cited in the R. 59 motion.

1. the *Sch. Dist.* decision was split and unlike here, primarily related to R. 56(e) issues and a motion for summary judgment;

2 *1263 therein (internal citations omitted) was overlooked in the Memorandum, which stated in relevant part, that the standards for a R. 59(e) motion also include:

   A. when "...the district court...[] committed clear error..." which it did here;[24]

   B. "...or the initial decision was manifestly unjust;" which it was;[25] and that

   C. "[t]here may also be other, highly unusual, circumstances warranting reconsideration."

Again, contrary to the App. Ct. Memorandum, Ms. Cox's "basis for relief" ***was in fact demonstrated***;[26] whereas, applicable supporting authorities she sought judicial notice of in support of her motion, were

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[24] See, 2-ER-7:10-12, 14:19-21, 15:13-14, 16:21-17:10, 22:6-21 and 23:5-23.

[25] See, 2-ER-7:14 and 14:18-21.

[26] See, OB §§ 8.4, 8.5; 2-ER-7:9-14, 14:12-5:14, 16:13-21, 16:25-17:10, 17:14-28 and 18:1-29:5.

not considered, disregarded, and again, no facts were set forth in the Memorandum upon which the decision was made.[27]

As partially addressed in above; contrary to this paragraph of the App. Ct. Memorandum, authorities were overlooked that showed ***the Dist. Ct. was required to have held the remand hearing, determined its jurisdiction as a threshold issue and to have ruled on the remand motion before granting the motion to dismiss, which it failed to do***.[28]

The Memorandum also denied Ms. Cox's motion to strike and motion for judicial notice without providing any reason, facts or authority upon which the decision was based. Although, the judicial notice that was denied was not identified in the Memorandum, assuming it was App. Ct. DktEntry: 33-1 through 33-6; again, Ms. Cox's RJN was submitted pursuant to Fed. R. Evid. 201(c)(2) which states that the court "***must*** take judicial notice if a party requests it and the court is supplied with the necessary information" (emphasis added) which Ms. Cox provided and the App. Ct. ignored.[29]

AUTHORITIES CITED IN THE MEMORANDUM WERE MISAPPREHENDED AND CONFLICTING DECISIONS WERE OVERLOOKED

The portions of authorities (see, RJN # 1-4) quoted in the Memorandum were misapprehended; were not relevant to the facts of

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[27] See *e.g.*, RJN # 4, 7 and 16-23.

[28] Also see, OB §§ 1(c), 3.2, 3.2.1.2, 3.2.2, 5.3, 6.1.3, 6.1.4, 8.1, 8.2 and 8.4; RB ¶¶ 3(a), 9(a), 30(a) and 53; 2-ER-6-29; and RJN # 5-7, 9-12, 36, 46, 47 and 50.

[29] See, DktEntry: 33-1 fn. 2 and supporting authorities cited therein each of which was overlooked in the Memorandum.

this case[30] and overlooked other relevant 9th Cir. appellate courts and SCOTUS decisions which ***were*** relevant. Instead of presuming it lacked jurisdiction and addressing Ms. Cox's challenge thereto as required, the Dist. Ct. simply assumed jurisdiction, which was contrary to the facts and applicable precedential authorities which were overlooked in the App. Ct. Memorandum. See *e.g.*:

> " It is to be presumed that a cause lies outside this limited jurisdiction" *Turner v. Bank of North America,* 4 U.S. (4 Dall.) 8, 11, 1 L.Ed. 718 (1799).
>
> " It is fundamental to our system of government that a court of the United States may not grant relief absent a constitutional or valid statutory grant of jurisdiction." *United States v. Bravo-Diaz,* 312 F.3d 995, 997 (9th Cir. 2002).
>
> " A federal court is presumed to lack jurisdiction in a particular case unless the contrary affirmatively appears." *Stevedoring Servs. of Am., Inc. v. Eggert,* 953 F.2d 552, 554 (9th Cir. 1992) (quoting *Stock West, Inc. v. Confederated Tribes,* 873 F.2d 1221, 1225 (9th Cir. 1989)). See also, *A-z Intl. v. Phillips,* 01-56689oa, at *1 (9th Cir. Mar. 21, 2003)

The district court also failed to presume that all undisputed facts stated in the complaint were true (*which they all were*) as required.

> " ... [I] is well established that, in passing on a motion to dismiss, whether on the ground of lack of jurisdiction over the subject matter or for failure to state a cause of action, the allegations of the complaint should be construed favorably to the pleader.
>
> In appraising the sufficiency of the complaint we follow, of course, the accepted rule that a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Conley* v. *Gibson,* 355 U.S. 41, 45-46 (1957) (footnote omitted)." *Scheuer v. Rhodes,* 416 U.S. 232, 236 (1974) partially abrogated on other grounds by *Harlow v. Fitzgerald,* 457 U.S. 800, 814-15 (1982)

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[30] See *e.g.*, ¶¶ 1, 6, 11, 12-22, fn. 13-18, 24-28 herein; and RJN # 27.

Once jurisdiction was challenged, it was required to be ***proven*** by defendants that the court(s) had jurisdiction which they failed in their burden to do. The Dist. Ct. simply assumed jurisdiction, ignored the facts and opposing counsels' misrepresented authorities which were unrelated to the causes of action stated in the complaint.[31]

> " The party asserting federal subject matter jurisdiction bears the burden of ***proving*** its existence. *See Kokkonen v. Guardian Life Ins. Co.*, 511 U.S. 375, 377 (1994)." *Chandler v. St. Farm Auto. Ins. Co.*, 598 F.3d 1115, 1122 (9th Cir. 2010) (emphasis added)

> "'Once challenged, the party asserting subject matter jurisdiction has the burden of ***proving*** its existence.' *Robinson v. United States,* 586 F.3d 683, 685 (9th Cir.2009) (citation omitted)." *Miller v. Wright*, 705 F.3d 919, 923 (9th Cir. 2013); also see, *Rattlesnake Coal. v. U.S. Envtl. Prot. Agency*, 509 F.3d 1095 (9th Cir. 2007) citing *Trentacosta v. Frontier Pac. Aircraft Indus., Inc.*, 813 F.2d 1553, 1558 (9th Cir. 1987); 2 James Wm. Moore et al., *Moore's Federal Practice* § 12.30[5] (3d ed. 2007); also see, *Main v. Thiboutot*, 100 S. Ct. 2502 (1980).

The Dist. Ct. court was required and failed, to strictly construe (or address whatsoever); the applicable removal and subject matter jurisdiction statutes, which the App. Ct. ignored.

> " Removal and subject matter jurisdiction statutes are 'strictly construed....'" *Hawaii ex rel. Louie v. HSBC Bank Nev., N.A.*, 761 F.3d 1027, 1034 (9th Cir. 2014) (quoting *Luther v. Countrywide Home Loans Servicing LP*, 533 F.3d 1031, 1034 (9th Cir. 2008)). *Lake v. Ohana Military Cmtys.*, 19-17340, at *1 (9th Cir. Sep. 27, 2021).

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[31] See *e.g.*, ¶¶ 1(b)(3) and (4) and 10(b) and (c) herein above. Each cause of action stated in the complaint arose exclusively under, and sought relief and damages only for, defendants' undenied and admitted acts that violated California State Law. Also see RJN # 27.

Ms. Cox again, will challenge the district court's "original," "removal," "subject matter," and "federal question" jurisdiction which its decisional documents and the Memorandum erroneously assumed.

> " A jurisdictional challenge may... be raised 'at any time during the proceedings.' *Attorneys Trust v. Videotape Computer Prods., Inc.*, 93 F.3d 593, 595 (9th Cir. 1996) (internal quotations omitted)" *United States v. Bennett*, 147 F.3d 912, 914 (9th Cir. 1998); also see, *Albrecht v. Lund*, 845 F.2d 193, 194 (9th Cir.), as amended, 856 F.2d 111 (9th Cir. 1988) ["A party may raise jurisdictional challenges at any time during the proceedings"].

CONCLUSION

The Memorandum was premised on erroneous assumptions; overlooked and failed to set forth the facts upon which the decision was based. The App. Ct.'s decision misapprehended the few authorities that were cited without analysis; failed to state how any applied to this action; and the partial sections quoted were not relevant to the facts of this case. Other, relevant precedential authorities were provided in Ms. Cox's papers but were also overlooked as were numerous others, some of which were provided in the RJN. In addition to the foregoing, Ms. Cox's petition will show that:

1. the Memorandum erroneously assumed without analysis or discussion, that the district court "properly denied" the motion to remand because it had subject matter jurisdiction (*which failed to have*);
2. this action was never "properly removed" from State Court;
3. the purported "... artful pleading doctrine" referenced without explanation nor analysis in the Memorandum, had no relevance to the causes of action stated in the complaint whatsoever;

4. the Memorandum erroneously stated that Ms. Cox's R. 59(e) motion "failed to demonstrate any basis for relief" (*when in fact it did*);

5. the Memorandum rejected as "meritless" Ms. Cox's "contention" that the district court lacked jurisdiction to rule on the motion to dismiss merely because it did not first explicitly deny the motion to remand (*which was incorrect and misrepresented the facts*); and

6. the App. Ct. Memorandum also summarily denied for no apparent reason:

   A. Ms. Cox's unopposed motion to strike; and

   B. the motion for judicial notice in support thereof (*which was mandatory under Fed. R. Evid. 201(c)(2)*).

There can be no prejudice to any of the defendants because none of them have the authority they claim which as a matter of law, cannot be conveyed through false instruments. Accordingly, for the foregoing reasons and good cause shown, Ms. Cox respectfully requests that an order be granted extending the time to file Ms. Cox's petition for a writ of certiorari for 60 days until July 31, 2022.

Dated: April 20, 2022

/s/Kimberly Cox
Kimberly Cox
in propria persona