

FILED

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JUL 13 2022

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

JEREMY LAFITTE, In Rem: Secured
property rights and interest in all assets
owned or possessed by DoorDash Inc. and
the proceeds of sale and transfer of all assets
as surety for breach of obligations in the
amount of \$200,000.00,

Petitioner-Appellant.

No. 22-15015

D.C. No. 3:21-mc-80266-RS
Northern District of California,
San Francisco

ORDER

Before: SILVERMAN, CALLAHAN, and COLLINS, Circuit Judges.

On February 10, 2022, the court ordered appellant to explain in writing why this appeal should not be dismissed as frivolous. *See* 28 U.S.C. § 1915(e)(2) (court shall dismiss case at any time, if court determines it is frivolous or malicious).

Upon a review of the record and the response to the court's February 10, 2022 order, we conclude this appeal is frivolous. We therefore deny appellant's motion to proceed in forma pauperis (Docket Entry No. 3) and dismiss this appeal as frivolous, pursuant to 28 U.S.C. § 1915(e)(2).

All other pending motions are denied as moot.

No further filings will be entertained in this closed case.

DISMISSED.

Appendix A

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Jeremy Laffite
Appellant(s),

9th Cir. Case No. 22-15015

v.

In Rem
Appellee(s).

STATEMENT THAT APPEAL SHOULD GO FORWARD
(attach additional sheets as necessary)

1. Date(s) of entry of judgment or order(s) you are challenging in this appeal:

12-16-2021, 01-17-2022 (see attached)

2. What claims did you raise to the court below?

① In accordance with FRCP 9(h), Federal subject matter jurisdiction in regard to a claim pleaded in exclusive admiralty is not dependent upon Diversity nor Federal question for the court to have subject matter jurisdiction of it as its "needed in a non maritime claims". A claim grounded on the general maritime law can invoke the subject matter jurisdiction of the court without invoking Diversity or any other grounds for subject matter jurisdiction. 28 USC sec 1333
Admiralty suits are not federal question cases

② In accordance with Rule 8(a) of the FRCP, The Rules do not require a claimant to set out in detail the facts upon which a claimant bases a claim, all that is required is a "short and plain statement of the claim" that would give a defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests. FRCP Rule 9(b) states only circumstances constituting fraud or mistake shall be stated with particularity.

3. What do you think the court below did wrong? (You may, but need not, refer to cases and statutes.)

The court erred by sustaining an order of dismissal for failure to state a claim upon which relief can be granted (FRCP Rule 12(b)(6) for failure to plead facts to establish a maritime claim, and for failure to invoke the courts subject matter jurisdiction only through either diversity of citizenship or Federal question, in direct contradiction to FRCP Rule 8(a)(2) and 9(b) and also Rule 9(h).

A rule 12(b)(6) motion should not apply unless it appears beyond doubt that a plaintiff can prove no set of facts upon which he basis his claim and while that is a high standard for a pleader who chooses to alledge specific facts to state a cause of action, The Rules specifically Rule 8(a)2 does not require a pleader to set out in detail the fact upon which he basis his claim, all that is required is a short and plain statement of the claim and the grounds upon which it rest. Therefore no facts are required for a pleading that satisfies Rule 8(a)2, and since no specific facts were alledged, a rule 12(b)(6) motion to dismiss is improper. In accord with FRCP Rule 9(b) only a claim affecting fraud or mistake must be pleaded with particularity. The court erred in requiring a heightened pleading standard from the common law and code pleading regimes and not by the notice standard which is all that is required under the Federal Rules of Civil Procedure.

2. Contradiction to FRCP Rule 9(h), The court erred in its misapplication of federal subject matter jurisdiction in regards to suits in admiralty and civil actions. A claim "recognizable only in the admiralty or maritime law" actions. If a claim "recognizable only in the admiralty or maritime law" does not invoke jurisdiction by way of locality of an injury in tort cases, object matter jurisdiction by way of locality of an injury in tort cases, or the subject matter of a contract and its maritime character by way of the system of law by which its governed. If other grounds of federal jurisdiction exist such as Diversity or federal question, then the pleading must specifically designate it as a civil action. The court ruled Appellant did not specifically designate it as a civil action because Appellant had no non-maritime claim to establish subject matter because Appellant had no non-maritime claim designated and without invoking Diversity or Federal question a claim designated as an exclusive admiralty claim must not have jurisdiction to hear Appellant's claim. Appellant's claim must not have jurisdiction to hear Appellant's claim because Appellant's claim is not an exclusive designated claim in the Civil jurisdiction.

4. Why are these errors serious enough that this appeal should go forward?

To sustain the court's opinion that a pleading has to allege facts to establish a claim is to bypass, overrule, and change the meaning and reason for Rule 8(a) of the FRCP which only requires a short and plain statement as to require that a claim based in exclusive admiralty jurisdiction has to invoke Diversity or Federal question so admiralty jurisdiction has to invoke Diversity or Federal question, is that the court has jurisdiction by way of only civil actions, is in contradiction to FRCP Rule 9(h) and its Supplemental Rules for Admiralty claims, by judicial fiat and not the rulemaking process.

There are existing reversible errors that would determine the rights and liabilities of the future of the original claim.

No errors have been made contrary to law and a clear need for appeal is eminent.

5. Additional Information: 28 USC 1293(c)(3) guarantees of appeal is a matter of right.

Fee's in exclusive admiralty suit should be waived.

Appellant has no other adequate remedy at law left.

The court gave Appellant leave to amend but only to Amend as a civil action.

The court didn't dismiss Appellant's original Pleading because of frivolity.

The issues presented, the weight of the issues are clearly not frivolous.

Dated: 2-24-2022

Jeremy Latiff

Print Name(s)

By Jeremy Latiff

Signature(s)

Appellant(s) in Pro Se

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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LAFITTE,

Plaintiff,

Case No. 21-mc-80266-RS

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**ORDER ADOPTING REPORT AND
RECOMMENDATION**

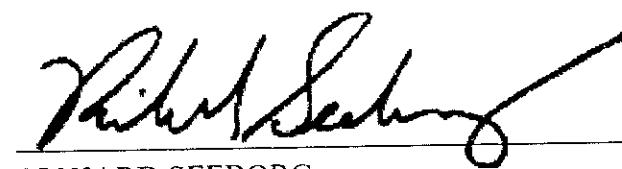
On November 12, 2021, Jeremy Lafitte filed a “Petition in Rem” in this miscellaneous matter. Dkt. 1. On November 16, 2021, Lafitte filed an “Emergency Motion for Issuance of a Warrant in Rem” in association with his initial petition. Dkt. 2. Both documents state that the petition “is brought under the general maritime law.” The magistrate judge reviewing the filings construed them as a pro se civil complaint, and in a screening order pursuant to 28 U.S.C. § 1915(e) determined that Lafitte failed to state a claim upon which relief can be granted because he had not shown that this Court has subject matter jurisdiction. Dkt. 3. The magistrate judge also wrote that neither document filed by Lafitte described any facts placing maritime law at issue in the case. *Id.* Although the magistrate judge allowed Lafitte to file an amended complaint, Lafitte failed to do so, and instead filed a list of objections to the screening order, but these objections did not provide any facts or legal arguments supporting a basis for federal subject matter jurisdiction. Dkt. 5. Following receipt of these objections, the magistrate judge issued a Report and Recommendation that the case be dismissed with prejudice pursuant to 28 U.S.C. § 1915(e), as

1 Lafitte had failed to establish federal subject matter jurisdiction. Dkt. 6.

2 Lafitte filed a reply objecting to the Report and Recommendation, Dkt. 8, but did not
3 include in this reply any facts that would establish federal subject matter jurisdiction, nor facts to
4 establish that this case arises under maritime law. The recommendation to dismiss with prejudice
5 is adopted. For the reasons set out in the report, Plaintiff has failed to state a claim upon which
6 relief can be granted. This action is hereby dismissed with prejudice.

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8 **IT IS SO ORDERED.**

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10 Dated: December 16, 2021



11 RICHARD SEEBORG
12 Chief United States District Judge

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7 UNITED STATES DISTRICT COURT
8 NORTHERN DISTRICT OF CALIFORNIA

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LAFITTE,

Plaintiff,

Case No. 21-mc-80266-RS

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**ORDER DENYING MOTION TO
PROCEED IN FORMA PAUPERIS**

On January 12, 2022, Plaintiff Jeremy Lafitte filed a motion for leave to proceed in forma pauperis in his appeal before the U.S. Court of Appeals for the Ninth Circuit. Dkt. 14. This Court previously adopted the magistrate judge's Report and Recommendation to dismiss this action with prejudice. Dkt. 9. Pursuant to Federal Rule of Appellate Procedure 24, the motion is denied. Plaintiff's appeal is frivolous. As described in the order adopting the Report and Recommendation, Lafitte has failed to establish that federal subject matter jurisdiction exists in this action. Further, although Lafitte states the suit "is brought under the general maritime law" in his "Petition in Rem," Dkt. 1, which he filed to commence this action, he has failed to plead any facts placing maritime law at issue in the case.

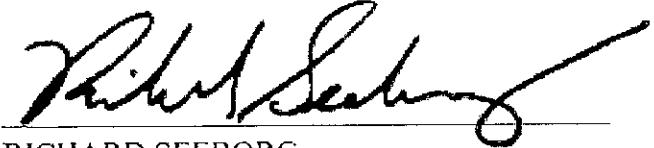
IT IS SO ORDERED.

Dated: January 19, 2022

Appendix D

United States District Court
Northern District of California

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RICHARD SEEBORG
Chief United States District Judge

<< SHORT ORDER TITLE >>
CASE NO. 21-mc-80266-RS

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JEREMY LAFITTE,
Petitioner.

Case No. 21-mc-80266-SK

**ORDER REASSIGNING CASE AND
REPORT AND RECOMMENDATION
FOR DISMISSAL**

Regarding Docket No. 5

On November 12, 2021, Petitioner Jeremy Lafitte (“Petitioner”) filed a “Petition in Rem” in this miscellaneous matter. (Dkt. 1.) On November 16, 2021, Petitioner filed an “Emergency Motion for Issuance of a Warrant in Rem” in association with his initial petition. (Dkt. 2.) Both documents reference maritime law as the basis for a seizure of property. (Dkts. 1, 2.) However, neither document describes any facts that would place maritime law at issue; the only property described is a sum of money Petitioner alleges he is owed. (*Id.*) On November 17, 2021, the Court issued a Screening Order pursuant to 28 U.S.C. § 1915(e) construing Plaintiff’s filings as a civil complaint and allowing Plaintiff to file an amended complaint addressing deficiencies in the filings, including providing a basis for the Court’s jurisdiction. (Dkt. 3.) The Court also ordered that the case be reclassified as a civil action and explained that maritime law was inapposite. (*Id.*)

On December 2, 2021, rather than filing an amended complaint, Petitioner filed what he styles an objection to the Screening Order, wherein he disagrees that the matter should be classified as a civil case, disagrees that the matter does not fall under principles of maritime law, states that he believes no evidence of either diversity or federal question jurisdiction exists, and states that he should not be required to state any further facts in support of the applicability of maritime law. (Dkt. 5.) As discussed in the Court’s Screening Order, none of Petitioner’s filings contain any facts supporting the applicability of maritime law, and Petitioner has failed to otherwise demonstrate the existence of federal question or diversity jurisdiction. Accordingly, the

1 Court finds that Petitioner has failed to demonstrate that the Court has jurisdiction over this action.
2 The Court HEREBY ORDERS that this matter be reassigned to a District Judge and
3 RECOMMENDS that the case be dismissed with prejudice pursuant to 28 U.S.C. § 1915(e).

4 **IT IS SO ORDERED.**

5 Dated: December 3, 2021

Sallie Kim

6 SALLIE KIM
7 United States Magistrate Judge

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United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

LAFITTE,
Petitioner.

Case No. 21-mc-80266-SK

SCREENING ORDER

Regarding Docket Nos. 1, 2

On November 12, 2021, Petitioner Jeremy Lafitte (“Petitioner”) filed a “Petition in Rem” in this miscellaneous matter. (Dkt. 1.) On November 16, 2021, Petitioner filed an “Emergency Motion for Issuance of a Warrant in Rem” in association with his initial petition. (Dkt. 2.) Both documents reference maritime law as the basis for a seizure of property. (Dkts. 1, 2.) However, neither document describes any facts that would place maritime law at issue. (*Id.*) Rather, the Petition describes a dispute with Doordash, Inc. (“Doordash”), alleging that Petitioner and his girlfriend Jakia Lane (“Lane”) participated in a promotion offered by Doordash wherein one person could invite another to complete 150 rides within 60 days. (Dkt. 1.) The inviter was to receive \$1000.00 if the rides were completed, and the invitee was to receive \$100.00. (*Id.*) Petitioner alleges that Lane invited him to participate, that he completed the rides within the time period, but that neither of them received the promised compensation. (*Id.*) Petitioner explains that they did not receive the money because he initially created an account with Doordash using a fake social security number, which caused a corporate mix up. (*Id.*) Petitioner now demands payment of the sum of \$1100.00. (*Id.*) Elsewhere in his Petition, Petitioner claims that he has a lien on all assets of Doordash and that Doordash owes him a debt of \$200,000.00. (*Id.*) Petitioner includes his bank account number and routing number in his Petition.

The Court construes Petitioner’s filings as a pro se civil complaint. “Courts have a duty to

Appendix F

1 consider pro se pleadings liberally, including pro se motions as well as complaints.” *Bernhardt v.*
2 *Los Angeles Cty.*, 339 F.3d 920, 925 (9th Cir. 2003). Because the Court construes the Petitioner’s
3 filings as a pro se complaint, the Court issues this Screening Order pursuant to 28 U.S.C. §
4 1915(e). Under 28 U.S.C. § 1915(e), the Court finds that Petitioner was failed to state a claim
5 upon which relief can be granted because he has not shown that the Court has jurisdiction over this
6 action. Federal courts are courts of limited jurisdiction, and a “federal court is presumed to lack
7 jurisdiction in a particular case unless the contrary affirmatively appears.” *Stock W., Inc. v.*
8 *Confederated Tribes*, 873 F.2d 1221, 1225 (9th Cir. 1989) (citations omitted). Generally, original
9 federal jurisdiction is premised on federal question jurisdiction or diversity jurisdiction. Here,
10 Petitioner does not sufficiently assert a violation of federal law or diversity jurisdiction.

11 The Court lacks diversity jurisdiction over this action. Diversity jurisdiction exists where
12 the two parties to the lawsuit are residents of different states and the amount in controversy is over
13 \$75,000. 28 U.S.C. § 1332. “When federal subject matter jurisdiction is predicated on diversity
14 of citizenship, complete diversity must exist between opposing parties.” *Equity Growth Asset v.*
15 *Holden*, No. C 19-01505 JSW, 2019 WL 2180202, at *2 (N.D. Cal. Apr. 16, 2019) (citing *Iowen*
16 *Equip. & Erection Co. v. Kroger*, 437 U.S. 365, 373-74 (1978)). This means that no defendant
17 may be a resident of the same state as any plaintiff for diversity to exist. Here, Petitioner does not
18 identify a Defendant as such. However, liberally construing the filings, Doordash would be the
19 putative Defendant here. Doordash is a corporation with its primary place of business in
20 California, and Petitioner has alleged he is a California resident. Because both Plaintiff and
21 Defendant are residents of California, complete diversity does not exist between the parties.
22 Diversity jurisdiction therefore does not lie over this action.

23 The Court also lacks federal question jurisdiction over this matter. “The presence or
24 absence of federal question jurisdiction is governed by the ‘well-pleaded complaint rule.’”
25 *Caterpillar Inc. v. Williams*, 482 U.S. 382, 392 (1987). Under the well-pleaded complaint rule,
26 federal question jurisdiction arises where the “complaint establishes either that federal law creates
27 the cause of action or that the plaintiff’s right to relief necessarily depends on resolution of a
28 substantial question of federal law.” *Franchise Tax Bd. of State of Cal. v. Constr. Laborers*

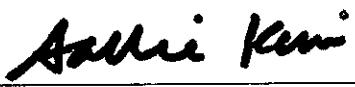
1 *Vacation Tr. for S. California*, 463 U.S. 1, 27-28 (1983). Here, federal question jurisdiction does
2 not exist because Petitioner's filings do not adequately state a federal claim. The facts Petitioner
3 articulates do not demonstrate a question of federal law. Generously construing the filings,
4 Petitioner gestures toward a state law fraud claim for \$100.00. In any event, Petitioner has not
5 shown that any question of federal law is at issue here.

6 Petitioner may file an amended complaint addressing the issues described in this Order no
7 later than **December 13, 2021**. The Court further ORDERS that Petitioner's initial filings be
8 placed under seal because they contain confidential information. Finally, the Court ORDERS that
9 the Clerk reclassify this matter as a civil action.

10 The Court ADVISES Plaintiff that the district court has produced a guide for *pro se*
11 litigants called *Representing Yourself in Federal Court: A Handbook for Pro Se Litigants*, which
12 provides instructions on how to proceed at every stage of your case, including discovery, motions,
13 and trial. It is available electronically online (<http://cand.uscourts.gov/prosehandbook>) or in hard
14 copy free of charge from the Clerk's Office. The Court further advises Plaintiff that he also may
15 wish to seek assistance from the Legal Help Center. Plaintiff may call the Legal Help Center at
16 415-782-8982 for a free telephonic appointment with an attorney who may be able to provide
17 basic legal help, but not legal representation.

18 **IT IS SO ORDERED.**

19 Dated: November 17, 2021

20 
21 SALLIE KIM
22 United States Magistrate Judge

RECEIVED

APR 12 2021

1 Jeremy Lafitte
2 1426 Linden Street
3 Oakland, California
4 Macjerm23@icloud.com

CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

3 UNITED STATES DISTRICT COURT NORTHERN DISTRICT ALAMEDA COUNTY CALIFORNIA
4

5 THIS PETITION IS BROUGHT UNDER THE GENERAL MARITIME LAW
6

7 In Rem: Secured Property rights and interest in all assets
8 owned or possessed by DoorDash inc. and the proceeds of
9 sale and transfer of all assets as surety for breach of
10 obligations in the amount of \$200,000.00

11 PETITION IN REM, PRE-JUDGEMENT INTEREST,
12 AND DECLARATION OF PRIORITY LIEN RIGHT
13 ON PROCEEDS OF SALE:

SK

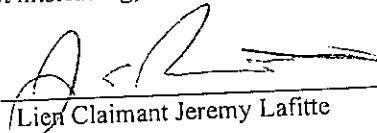
14 CV-21 80266-MISC.

15 Comes Now Lien Claimant giving Notice of a Foreign Judgment by Operation of the general maritime law
16 Certifying to default of obligations and a transfer of a legal title and possessory rights in collateral (see exhibits)
17 ON May 10th, 2019 a Legal title right against the property rights of DoorDash inc, which is the subject to this action,
18 was transferred to Lien Claimant by operation of the general maritime law as surety for debt obligations in the
19 amount of \$200,000.00 which has been defaulted on or about August 14th, 2019. Lien Claimants lawful Right and
20 interest to property rights is being withheld and Lien Claimant has a right to have said property seized, disposed of
21 and a declaration of priority over the disposition of proceeds and prejudgment interest on Lien Claimants Property
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Rights being unlawfully withheld.

BOND

19 This is the solemn promise of Jeremy Lafitte to indemnify any and all actors in this matter and effect payment for
20 any and all valid claims of injury caused by the actions of Jeremy Lafitte in this taxpayer supported court. Jeremy
21 Lafitte believes that remedies and judgements afforded to him will cause no harm to the public
22 I, Jeremy Lafitte on my own unlimited commercial liability do state that I have read the above Pleadings and do
23 know the contents to be true, correct, and complete and not misleading, the truth, the whole truth, and nothing but
24 the truth


Lien Claimant Jeremy Lafitte

26 Date 11/10/21
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PLEADING TITLE - 1

Appendix G

Jeremy Lafitte
9101426 Linden St
Oakland, California 99607
jaymoore2300@gmail.com
(510) 975-5390

SUPREME COURT FOR THE UNITED STATES OF AMERICA

In Re; Jeremy Lafitte,

Petitioner,

The Court of Appeal for the Ninth Circuit

Respondent

Case No.

EMERGENCY PETITION FOR A WRIT OF REVIEW
FOR ERROR
OF AN ORDER OF DISMISSAL BY THE
APPELLATE COURT FOR THE NINTH CIRCUIT
DOC. NO. 22-15015

Statement of Case

Petitioner, Jeremy Lafitte petitions the Supreme Court for a writ of certiorari or review of error, to review an order by the Court of Appeals for the Ninth Circuit 15-15015 dismissing petitioners IFP application on appeal, for reason that the issues raised on appeal are frivolous. The 2 issues raised on appeal stem from The District Court for Northern District California dismissing petitioners' case, 21-80266, which was filed as exclusive admiralty suit for enforcement of a maritime lien, for lack of subject matter jurisdiction because the pleading filed by petitioner did not invoke diversity of citizenship under 28USC1332, nor invoked a federal question under 28 USC 1331. Also, petitioners pleading, which complied with Federal Rule of Civil Procedure Rule 8(a)(2) by giving a short and plain statement of claim and the ground upon which it rests and not pleading specific facts to constitute a cause of action, was a reason by the district court for dismissal because specific facts establishing a cause of action weren't alleged or pleaded by petitioner thereby failing to state a claim upon which relief can be granted. The District Court then issued and order denying IFP status for reason that the appeal wasn't taken in good faith for the reasons mentioned above .The issues presented in this appeal is of importance for the Supreme Court because it deals with subject matter jurisdiction pertaining to admiralty claims, the weight of issues raised on appeal to determine if an IFP application and appeal is taken in good faith, and the trivial question of the requirements of pleading Rule 8(a)(2) of the Federal Rules of Civil Procedure, Notice vs Fact pleading.

Questions on Appeal

1. Does a pleading need to state a specific set of facts that constitute a cause of action if it

EMERGENCY PETITION FOR A WRIT OF REVIEW FOR ERROR OF AN ORDER OF DISMISSAL BY THE
APPELLATE COURT FOR THE NINTH CIRCUIT DOC.NO. 22-15015 - 1

satisfies the simple pleading requirements of Rule 8(a)(2) of the FRCP of giving a short plan statement of claim?

2. Was the right standard applied of giving weight to the issues raised on appeal used by the Court to determine if the appeal was frivolous or in good faith? Did the court dismiss the appeal as being frivolous in error?
3. Does subject matter jurisdiction over an exclusive admiralty suit based on the general maritime law need to be supplemental to or invoke 28 USC 1331 Or 1332 or can subject matter jurisdiction over exclusive admiralty suits based on the general maritime law be invoked even in the absence of 28USC 1331 and/or 1332 according to FRCP Rule 9(h)?

Jurisdiction

Jurisdiction of this action is invoked by Article 3 sec 2 of the Constitution ‘The judicial power shall extend to all cases of admiralty and maritime jurisdiction “and by 28 USC 1292(a)(3) as the original action to which this writ petition arose from is an admiralty suit under Supp. Admiralty Rule C.

Parties

Petitioner, Jeremy Lafitte is the Petitioner, Real Party in Interest, and Lien Claimant of the original action

Respondent, is the Court of Appeals for the Ninth Circuit Case No. 22-15015

Facts

1. On or about 11/12/21 a Petition was filed in the district court as a suit in admiralty, given the case number 21-mc-80266, seeking enforcement of a lien right by way of FRCP Supp. Rule C. The petition seemed to comply with the pleading standards set out in Rule 8(a)(2) of the FRCP along with pleading the general maritime law as the substantive law

EMERGENCY PETITION FOR A WRIT OF REVIEW FOR ERROR OF AN ORDER OF DISMISSAL BY THE
APPELLATE COURT FOR THE NINTH CIRCUIT DOC. NO. 22-15015 - 2

1 to be weighed against the claims made in the petition.

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3 2. On or about 11/17/21 the then assigned magistrate to the case mentioned in (1), issued a

4 screening order denying relief and closing the case for reasons that the district court

5 lacked subject matter jurisdiction because the petition submitted didn't invoke diversity

6 or a federal question 28USC 1331&1332 and for reason that the petition did not set forth

7 any facts to state a cause of action and thus the pleading failed to state a claim upon

8 which relief can be granted under rule 12(b)(6)

9

10 3. On or about 12/2/21 Petitioner filed an object to the screening order mentioned in (2) for

11 specific reasons that the order did not bring forth any evidence that the pleading

12 submitted did not comply with FRCP rule 8(a)2) nor did it set fourth evidence that a

13 claim pleaded in exclusive admiralty jurisdiction does not give the court subject matter

jurisdiction even in the absence of diversity or a federal question 28USC 1331&1332

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15 4. On 12/3/21 The case was then reassigned to a district judge and the magistrate put in a

16 report and recommendation stating the case should be dismissed with prejudice for

17 reasons mentioned in (2)

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19 5. On or about 12/15/21 Petitioner filed a reply to the report and recommendations of the

20 magistrate mentioned in (4), claiming that a pleading that satisfied the requirements of

21 Rule 8(a)(2) does not need to plead facts that set out a cause of action , and that the rule

22 itself does not require a pleader to state specific facts constituting a cause of action, and

23 because of the fact that specific facts weren't pleaded, the magistrates 12(b)(6) dismissal

24 for failure to state a claim was improper. The reply also stated that a claim grounded on

25 the general maritime law can invoke the courts subject matter jurisdiction even in the

26 absence of 28 USC 1331 or 1332

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28 6. On or about 12/16/21 the district judge adopted the magistrates report and

recommendation and dismissed case 21-mc-80266 with prejudice for specific reasons

EMERGENCY PETITION FOR A WRIT OF REVIEW FOR ERROR OF AN ORDER OF DISMISSAL BY THE
APPELLATE COURT FOR THE NINTH CIRCUIT DOC.NO. 22-15015 - 3

1 mentioned in (2) (4)

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3 7. On or about 1/5/22 Petitioner filed an appeal in the ninth circuit, case 22-15015 and
4 shortly thereafter applied for an IFP waiver under FRAP 24, in the district court

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6 8. On 1/19/22 the district court denied Petitioner application for IFP status as frivolous for
7 reason mentioned in (2)

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9 9. On 2/10/22 the ninth circuit issued an order for Petitioner to show cause in 30days why
10 the appeal should go forward and not be dismissed as being frivolous for reasons
11 mentioned by the district court in (2) and (8)

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13 10. On 2/24/22 Petitioner caused to be submitted a self-help form statement provided by the
14 ninth circuit showing cause why Petitioner believes the appeal should go forward and not
15 be dismissed as frivolous

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17 11. On or about 6/17/22 Petitioner caused to be filed a motion for summary reversal

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19 12. On 7/13/22 the original appeal 22-15015 based on district court case 21-mc-80266 was
20 dismissed by the ninth circuit as being frivolous

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Point Authorities:

22

23 12. Subject matter jurisdiction when it comes to a claim pleaded in exclusive admiralty
24 jurisdiction depends on the locality of an injury when it comes to torts and when it comes
25 to contracts it depends on the law if the law of the contract arises out of maritime
26 principles, customs, and usages. The general maritime is substantive international law
27 and is upheld through judge made law only and not the laws of the United States under
28 28USC 1331 nor State law or cause by way of Diversity of citizenship 28 USC 1332. The
court erred dismissing the complaint for failure to state a claim for not invoking subject

EMERGENCY PETITION FOR A WRIT OF REVIEW FOR ERROR OF AN ORDER OF DISMISSAL BY THE
APPELLATE COURT FOR THE NINTH CIRCUIT DOC.NO. 22-15015 - 4

1 matter jurisdiction through 28USC1331 or 1332 by not applying the right standard for
2 subject matter jurisdiction with respect to exclusive admiralty suits. The law of the
3 contract/lien subject to the petition is the general maritime law and the case was brought
4 as an indebtedness assumptis case / breach of obligation

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- Rule 9(h) of the FRCP states “a claim cognizable only in admiralty or maritime jurisdiction is an admiralty or maritime claim, whether or not so designated.” Also, in the Notes of advisory Committee on Rules 1966 Amendment it states verbatim: “Some claims for relief can only be suits in admiralty either because the admiralty jurisdiction is exclusive, or because no non maritime ground of federal jurisdiction exists. Many Claims, however, are cognizable by the district courts whether asserted in admiralty or a civil action, assuming the existence of a non-maritime ground jurisdiction. The pleader has power to determine procedural consequences.....”

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- “Whether or not a case comes within the admiralty jurisdiction has important consequences for litigants. If the case is within admiralty jurisdiction, federal courts have subject matter jurisdiction without regard to diversity of citizenship and the amount in controversy or any other basis of subject matter jurisdiction. In the vast majority of contract and tort cases, the claim may be the basis of a maritime lien “— **Admiralty and Maritime law 5th edition Practitioner Treatise Series Vol. 1 Thomas J. Schoenbaum pg. 118 The Significance and Consequences of Admiralty Jurisdiction**

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- “a claim grounded on the general maritime law may be asserted in a federal district court even in the absence of diversity or other grounds of federal jurisdiction. Such a claim may be asserted in the diversity forum or in state court under the savings to suitors only if a pleader has multiple basis of jurisdiction and no non-maritime ground exists. In all cases, regardless of the forum, the applicable substantive law is the general maritime law— **Admiralty and Maritime law 5th edition Practitioner Treatise Series Vol. 1 Thomas J. Schoenbaum pg. 221-222 The Sources of substantive admiralty law**

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- 2 • (12 **Chelentis v. Luckenbach S. S Co** 247 US 372 38 S.Ct 501, 62 L.Ed. 1171 (1918).
3 But see **Fedorczyk v. Caribbean Cruise Lines. Ltd.** 82 f.3d 69, 1996 AMC 1604 (3d
4 Cir. 1996), Stating that a diversity case, where plaintiff does not make admiralty
5 jurisdiction, state law applies)

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- 7 • “The modern statutory formulation of admiralty jurisdiction Title 28 USC 1333, which is
8 based upon the grant of admiralty jurisdiction in the Constitution, confers subject matter
9 jurisdiction on the federal district courts and The Supreme court has held that admiralty
10 cases as such do not arise under the laws of the United States within the meaning of Title
11 28USC 1331, and thus are not federal question cases “ - **Admiralty and Maritime law**
12 **5th edition Practitioner Treatise Series Vol. 1 Thomas J. Schoenbaum pg. 115**

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14 **Subject Matter Jurisdiction**

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- 16 • **(Romero v. International Terminal Operating Co.** 358 U.S. 354 79 S.Ct 468 3 L.Ed.
17 368 (1959). *Rehearing denied* 359 U.S. 962, 79 S.Ct 795 , 3 L.Ed. 2d. 769 (1959)

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19 13. In accordance with Rule 8(a)(2) of the FRCP only a short and plain statement of a claim
20 must be asserted in order to state a claim for relief. the rule doesn't require a pleader
21 to allege specific facts stating a cause of action although if a pleader does choose to allege
22 facts he will be held to the standard of plausibility and elements of causes of action under
23 State law of Federal Statute. The drafters intended to take the heavy burden of proof and
24 heightened pleaded standards off the shoulders of pleadings and said that if pleadings
25 lack merit, then only a summary judgment motion is proper not a 12(b)(6) motion. If
26 more facts or information about the facts of a claim are needed or desired, then the
27 discovery process is the proper procedure to seek and develop facts. A rule 12(b)(6)
28 motion is only proper if the pleading alleges facts and those facts aren't sufficient to state
of cause of action but if the pleading complies with rule 8(a)(2) by not alleging facts but
only giving a short and plain statement of claim and the ground upon which it rest and
there aren't “no set of facts” alleged then a 12(b)(6) motion is improper and the court

erred in applying the correct governing standard to Appellants petition by demanding facts be alleged when the pleading meet the requirements of rule8(a)(2)

Points and Authorities:

In *Dioguardi v. Durning* (2d Cir. 1994) the Court of Appeals reversed the trial courts dismissal for reason that the court demanded to exact of a standard and state the pleading requirements under Rule 8(a)(2) does not demand facts sufficient to state a cause of action, The author of this opinion was the chief drafter of the Federal Rules of Civil Procedure itself Judge Charles E. Clark

- Federal Rule 8 (a) (2) was adopted as part of Simplified pleading system adopted to focus litigation on the merits (**Sienkiewicz v. Sorema. 534 US 506, 514 (2002)**)
- In **Erickson v. Pardus** the court stated “specific facts are not necessary for a pleading that satisfies Rule 8a2.... The statement need only give the defendant fair notice of what the claim is and the ground upon which it rests (***Id. Quoting Erickson, 127 S.Ct at 2200 (2007) quoting Bell Atl. Corp. v Twombly 127 S.Ct 1955, 1964 (2007)***) (quoting **Conley v. Gibson . 355 U.S. 41 47 (1957)**)
- A motion to dismiss for failure to state a claim under Rule 12 (b) (6) does not provide an avenue for the court to challenge the underlying merits of a case (**see Browning v. Clinton 292 F 3d 235, 242 (D.C. Cir 2002) (Fed. Freeport Transit, INC v. McNulty, 239 F. Supp 2d 102, 108 (D.Me.2002)**)
- The Supreme Court Stressed that the Federal Rules require a complaint to give “fair notice of what the plaintiff claim is and the grounds upon which it rests “(**Conley. 355 U.S. at 47 see also Wright Miller supranote 11, sec 1215) F.R.C.P. 8(a)(2)**)
- The Supreme Court expressly rejected any heightened pleading standard and reaffirmed Rule 8a2s liberal pleading standard (**Erickson v. Pardus, 127 S.ct 2197, 2200 n.4 (2007)**)
- The Second Circuit noted that “it would be cavalier to believe that the Courts rejection of the “no set of facts” language from Conley, which has been cited by federal courts at least 10,000 times in a variety of context, applies only to sec 1 Antitrust claims (**Conley v. Gibson 490 F3d at 155**)

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- In **Leatherman v. Tarrant County Narcotics Intelligence & Coordination Unit** it said that Summary Judgment and control of discovery should be used by courts and litigants “to weed out unmeritorious claims (***Id* at 157 (quoting Leatherman v. Tarrant County Narcotics Intelligence & Coordination Unit, 507 U.S. 163, 168-69 (1993))**
- See **Bender v. Suburban Hosp. Inc** 159 F3d 186 192 (4th Cir. 1998) (explaining that if plaintiff chooses to plead particulars, he is bound by them, and a case can be dismissed if the facts show no claim)
- **Bennett v. Schmidt** 153 F3d 516, 519 (7th. Cir.1998) (Litigants may plead themselves out of court by alleging facts that establish a defendant’s entitlement to prevail)
- **Freeport** 239 F Supp 2d at 108 (stating a 12(b)(6) motion is valid when complaint includes “allegations” that damn the claim)
- According to the Supreme Court, the heightened pleading standard ran afoul of the express language of Rule 8 and Conley, The Supreme court Ruled that if greater factual specificity for certain was desirable at the pleading stage, it must be obtained by the process of amending the FRCP and not by judicial interpretation (**Leatherman, 507 U.S at 168, see Marcus supra note II, at 923 (describing the Courts limitation on judicially imposed heightened pleadings)**)

14. An application for IFP status must be granted if it presents issues on appeal which are clearly not frivolous. It must be determined by the weight of the issues raised and not whether the appeal lacks merit. The issues raised on appeal weren’t frivolous because of well-established rules of law, particularly the federal rules of procedure rule 8 (a)(2), which doesn’t state nor demand that specific facts need to be alleged at the pleading stage, as proof of claim, for a pleading to be accepted by the courts. The court ruled that the appeal is frivolous because it did not allege specific facts constituting a cause of action, but the court did not say that the pleading did not comply with the requirements of rule 8(a)(2) by giving a shot and plan statement. This is a clear error of the standard applied by the court which if correct would allow the pleading to go forward. The issue of subject matter jurisdiction of exclusive admiralty suits was never even brought up by the court when it’s clear that a suit in rem under the substantive international maritime law cannot be pleaded as a state cause of action nor does it arise under any law of the

United States per FRCP rule 9(h). The general maritime law is upheld through judge made law only and In Rem cases are against property or things and not persons. An issue of the courts subject matter jurisdiction is clearly a non-frivolous issue and reversible error that if corrected would cause the original action to go forward. **Ellis v. United States, 356 U.S. 674,675** **Coppedge v. United States 1962 157 U.S. 440-454**

Relief

Petitioner respectfully asks the Supreme Court for the United States of America to grant this petition for Writ of Certiorari / review of error, to reverse or vacate the order of the Court of Appeal for the ninth circuit and the district court for the northern district of California, to remand appeal 15-15015 and or district case 22-80266, and compel either court to rule on the merits of petitioner's lawsuit or appeal

I swear on my unlimited liability that I have read the above of the petition and do know the contents and facts to be true, correct and complete, and not misleading, the truth, the whole truth and nothing but the truth and that this verification was executed on July 18, 2022 word counted at 2940 and 9 pages


Jeremy Latte 7/18/2022
c/o 1426 Linden St Oakland California

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