

## NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

FEB 18 2022

FOR THE NINTH CIRCUIT

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

CYNTHIA S. WILLS,

No. 19-17001

Plaintiff-Appellant,

D.C. No. 5:19-cv-01819-NC

v.

MEMORANDUM\*

FIRST REPUBLIC BANK,

Defendant-Appellee.

Appeal from the United States District Court  
for the Northern District of California  
Nathanael M. Cousins, Magistrate Judge, Presiding

Submitted February 7, 2022\*\*  
San Francisco, California

Before: HURWITZ and VANDYKE, Circuit Judges, and ERICKSEN,\*\* District Judge.

Cynthia Wills appeals the district court's order dismissing with prejudice the breach-of-contract and negligent infliction of emotional distress (NIED) claims

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

\*\* The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

\*\*\* The Honorable Joan N. Erickson, United States District Judge for the District of Minnesota, sitting by designation.

**"APPENDIX A"**

raised in her first amended complaint against First Republic Bank pursuant to Federal Rule of Civil Procedure 12(b)(6).<sup>1</sup> We have jurisdiction under 28 U.S.C. § 1291. We review de novo the district court's order granting a motion to dismiss under Rule 12(b)(6), *Judd v. Weinstein*, 967 F.3d 952, 955 (9th Cir. 2020), and review for abuse of discretion the court's decision to dismiss Wills's claims with prejudice, *Chappel v. Lab'y Corp. of Am.*, 232 F.3d 719, 725 (9th Cir. 2000). We affirm.

"To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A plausible claim requires "more than an unadorned, the-defendant-unlawfully-harmed-me accusation," and "a formulaic recitation of the elements of a cause of action will not do." *Id.* at 678 (quoting *Twombly*, 550 U.S. at 555). Likewise, conclusory allegations and unreasonable inferences will not defeat a motion to dismiss. *Sanders v. Brown*, 504 F.3d 903, 910 (9th Cir. 2007).

To plead a breach-of-contract claim under California law, Wills was required to allege facts supporting: "(1) the existence of the contract, (2) plaintiff's performance or excuse for nonperformance, (3) defendant's breach, and (4) the

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<sup>1</sup> All parties to this case consented to proceed before a magistrate judge pursuant to 28 U.S.C. § 636(c) and Fed. R. Civ. P. 73.

resulting damages to the plaintiff.” *Oasis W. Realty, LLC v. Goldman*, 250 P.3d 1115, 1121 (Cal. 2011). To plead an NIED claim under California law, Wills must allege facts supporting: (1) a duty of care owed to her by First Republic Bank, (2) a breach of that duty by First Republic Bank, (3) that First Republic Bank’s breach caused her injury, and (4) damages. *Wells Fargo Bank, N.A. v. Renz*, 795 F. Supp. 2d 898, 924–25 (N.D. Cal. 2011) (citing *Ileto v. Glock, Inc.*, 349 F.3d 1191, 1203 (9th Cir. 2003)). Wills did not plead facts to support all the elements of either claim. Instead, Wills did what *Twombly* and *Iqbal* forbid: she recited the elements of breach-of-contract and negligence and concluded that First Republic harmed her, without providing supporting factual allegations. Accordingly, the district court did not err by dismissing her claims.

The district court did not abuse its discretion by dismissing Wills’s claims with prejudice. The district court’s discretion to deny leave to amend is particularly broad where the plaintiff has previously filed an amended complaint. *Chodos v. W. Publ’g Co.*, 292 F.3d 992, 1003 (9th Cir. 2002). Before dismissing Wills’s claims with prejudice, the district court allowed her to file an amended complaint and provided her “with notice of the deficiencies in [her] complaint in order to ensure that” Wills would use “the opportunity to amend effectively.” *See Akhtar v. Mesa*, 698 F.3d 1202, 1212 (9th Cir. 2012). Wills did not address the deficiencies in her complaint despite the district court’s step-by-step guidance. We cannot say the court

abused its discretion in then dismissing the amended complaint with prejudice. *See Chinatown Neighborhood Ass'n v. Harris*, 794 F.3d 1136, 1144 (9th Cir. 2015).

**AFFIRMED.**

United States District Court  
Northern District of California

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

CYNTHIA S. WILLS and CARMEL  
RESORT SUPPLY,

Plaintiffs,

v.

HANSON BRIDGETT, LLP, and FIRST  
REPUBLIC BANK,

Defendants.

Case No. 19-cv-01819-NC

**ORDER GRANTING  
DEFENDANTS' MOTIONS TO  
DISMISS; DISMISSING CASE**

Re: Dkt. Nos. 48, 49

Pro se plaintiff Cynthia Wills brings claims for breach of contract, negligent infliction of emotional distress, and intentional infliction of emotional distress against defendants Hanson Bridgett LLP and First Republic Bank arising out of two checks that she alleges were not delivered on time. Dkt. No. 1, Ex. 1. Because Wills fails to allege sufficient facts to state any claims against Hanson Bridgett or First Republic Bank, all claims against both defendants are DISMISSED. No claims remain, so the case is hereby DISMISSED.

**I. BACKGROUND**

Cynthia Wills filed this case pro se in state court against defendants United Postal Service, Hanson Bridgett LLP, and First Republic Bank. Dkt. No. 1, Ex. 1 (Complaint). Defendants removed the case to federal court. Dkt. No. 1. This Court denied Wills's motion to remand. Dkt. No. 39. Defendants filed motions to dismiss all claims. Dkt. Nos. 7, 10, 14. The Court held a hearing on the motions. Dkt. No. 40. The Court granted the motions to dismiss, dismissing former defendant UPS from the case. Dkt. No. 42. The

**"APPENDIX B"**

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

CYNTHIA S. WILLS and CARMEL RESORT  
SUPPLY,

Plaintiffs,

v.

UNITED PARCEL SERVICE, HANSON  
BRIDGETT, LLP, and FIRST REPUBLIC BANK,

Defendants.

Case No. 19-cv-01819-NC

**JUDGMENT**

In accordance with the Court's September 13, 2019, order granting the defendants' motions to dismiss the amended complaint and the Court's July 8, 2019, order granting in part the motion to dismiss the complaint, judgment is entered in favor of United Parcel Service, Hanson Bridgett, LLP, and First Republic Bank and against Cynthia S. Wills and Carmel Resort Supply with respect to all claims asserted in this case. The clerk is ordered to terminate Case No. 19-cv-01819-NC.

**IT IS SO ORDERED.**

Dated: September 13, 2019

  
NATHANAEL M. COUSINS  
United States Magistrate Judge

United States District Court  
Northern District of California

United States District Court  
Northern District of California

1 Court dismissed all of Ms. Wills's claims against Hanson Bridgett and First Republic  
2 Bank, and granted Ms. Wills leave to amend. Dkt. No. 42.

3 The amended complaint lists "Cynthia S. Wills" and "Carmel Resort Supply" as  
4 plaintiffs. Dkt. No. 42 at 1. She explains that she is "an individual and sole proprietor,  
5 d/b/a Carmel Resort Supply." *Id.* Wills's amended complaint alleges that she entered into  
6 "partly written . . . oral and implied in fact contract/s" with First Republic Bank on May  
7 10, 2018, that obligated the bank "to secure timely delivery of a \$10,000 check to  
8 American Express" for payment on her account. FAC ¶ 9. She alleges that the check was  
9 not received by American Express on time, causing her to miss a payment.<sup>1</sup> *Id.* She  
10 alleges that she requested another check from FRB on July 13, 2018, this time for \$800  
11 and for delivery directly to her. FAC ¶ 10.

12 Wills alleges that sometime between July 13 and July 19, 2018, she received a call  
13 from an attorney at Hanson Bridgett, a law firm representing FRB. FAC ¶ 11. She  
14 expressed concern in that phone call about the issues with the \$10,000 check. *Id.* On July  
15 19, 2018, Wills received a letter from Hanson Bridgett stating that FRB had retained their  
16 firm "to review [her] accusations and address [her] harassment of various personnel in  
17 offices in San Francisco and other bank branches," and informing her that her FRB  
18 account was being closed. *Id.* The \$800 check was not enclosed with the letter. *Id.* Wills  
19 found herself "in *banking hell*." *Id.* (emphasis in original).

20 Wills attaches to her complaint a letter from Hanson Bridgett dated July 20, 2018,  
21 which states that two checks were awaiting pick-up at the United States Post Office (one  
22 for \$800, and one for \$3,571.84). Dkt. No. 43, Ex. 3. The letter states that "[a]n employee  
23 of the United States Postal Service telephonically confirmed that the check is there waiting  
24

25 <sup>1</sup> The amended complaint is not clear as to when the \$10,000 check was eventually  
26 delivered. Wills states that "[later] AE then informed Wills that the \$10,000 check  
27 received bounced," which appears to indicate that the check was delivered at some point.  
28 FAC ¶ 9. She sent a letter to FRB concerning the \$10,000 check on July 10, 2018, so the  
amended complaint seems to suggest that it was delivered before that date. FAC ¶ 10. She  
later states that she "worked extensively with American Express to resolve the nightmare  
involving the \$10,000.00 check, which lasted until the third week in September and wasn't  
fully resolved until late October," though that resolution is not detailed. FAC ¶ 11.

1 for you to pick it up.” *Id.* Wills also attaches a letter that she wrote to Hanson Bridgett on  
 2 July 24, 2018, stating that she would not cash the checks and requesting that they be sent  
 3 to a different location. Dkt. No. 43, Ex. 4. She received the checks at that new location on  
 4 July 26, 2018. FAC ¶ 11. Timing was so tight that she had to hand deliver her next  
 5 payment to her creditor. *Id.* Wills states that her business suffered and that she was forced  
 6 to vacate her office space as a result of defendants’ actions. *Id.*

7 FRB and Hanson Bridgett moved to dismiss the entire complaint. Dkt. Nos. 48, 49.  
 8 Wills filed an opposition to the motions. Dkt. No. 52. All parties consented to the  
 9 jurisdiction of a magistrate judge under 28 U.S.C. § 636(c). Dkt. Nos. 11, 15, 16, 30.

## 10 II. LEGAL STANDARD

11 A motion to dismiss for failure to state a claim under Rule 12(b)(6) tests the legal  
 12 sufficiency of a complaint. *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). On a  
 13 motion to dismiss, all allegations of material fact are taken as true and construed in the  
 14 light most favorable to the non-movant. *Cahill v. Liberty Mut. Ins. Co.*, 80 F.3d 336, 337–  
 15 38 (9th Cir. 1996). The Court, however, need not accept as true “allegations that are  
 16 merely conclusory, unwarranted deductions of fact, or unreasonable inferences.” *In re*  
 17 *Gilead Scis. Secs. Litig.*, 536 F.3d 1049, 1055 (9th Cir. 2008). Although a complaint need  
 18 not allege detailed factual allegations, it must contain sufficient factual matter, accepted as  
 19 true, to “state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*,  
 20 550 U.S. 544, 570 (2007). A claim is facially plausible when it “allows the court to draw  
 21 the reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft*  
 22 *v. Iqbal*, 556 U.S. 662, 678 (2009). If a court grants a motion to dismiss, leave to amend  
 23 should be granted unless the pleading could not possibly be cured by the allegation of  
 24 other facts. *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000).

## 25 III. DISCUSSION

### 26 A. Breach of Contract

27 To plead a claim for breach of contract, a plaintiff must allege: (1) the existence of a  
 28 contract, (2) plaintiff’s performance or excuse for nonperformance; (3) defendant’s breach;



1 and (4) resulting damages to the plaintiff. *Oasis W. Realty, LLC v. Goldman*, 51 Cal. 4th  
2 811, 821 (2011). A contract can be created orally, in writing, or through conduct. Cal.  
3 Civ. Code §§ 1620–1622. An implied-in-fact contract can be inferred from the parties’  
4 conduct. *Division of Labor Law Enforcement v. Transpacific Transportation Co.*, 69 Cal.  
5 App. 3d 268, 275 (1977).

6 **1. First Republic Bank**

7 Wills alleges that she entered into written, oral, and implied in fact contract(s) with  
8 First Republic Bank in May and July, 2018, for the bank to send a \$10,000 check to  
9 American Express and then for the bank to send an \$800 check to her. FAC ¶¶ 9–10. In  
10 its previous order granting FRB’s motion to dismiss the original complaint, the Court  
11 found that Wills had not pleaded facts to establish that a contract existed between herself  
12 and FRB in the first place. Dkt. No. 42 at 3. The Court stated that “Wills must describe  
13 what the offer was, how it was accepted, and what consideration was exchanged” in order  
14 to allege that a contract existed to state a claim for breach. *Id.*

15 Wills has not cured this deficiency in the amended complaint. She calls the contract  
16 between herself and FRB “a valid a binding contract,” “valid and enforceable,” and “in full  
17 force and effect.” FAC ¶ 13, 15. But the Court cannot determine what contract ever  
18 existed. As the Court pointed out in its previous order, Wills does not attach copies of any  
19 alleged written contracts, nor does she describe their terms. Wills alleges that she spoke  
20 on the phone with an FRB employee but not that any contract was formed on any call.  
21 FAC ¶ 9. In a section of the amended complaint titled “Contract Overview and Breach,”  
22 Wills states that she sent an Unfair Trade Practices Act letter to FRB’s corporate office but  
23 again describes no contract between her and any FRB representative.

24 Instead of facts, Wills’s breach of contract claim consists of legal conclusions.  
25 Therefore, the Court finds that Wills has not cured the deficiencies identified in its prior  
26 order. Wills’s amended complaint fails to allege sufficient facts to state a facially  
27 plausible claim for breach of contract against FRB. The breach of contract claim against  
28 FRB is DISMISSED. Having already had an opportunity to allege additional facts and

1 having failed to do so, the Court finds that further amendment would be futile.

2 **2. Hanson Bridgett, LLP**

3 Wills alleges “the 2018 Agreement/s between Wills and Hanson Bridgett LLP was a  
4 valid and binding contract.” FAC ¶ 26. It is unclear what agreement(s) this refers to,  
5 except possibly a 2018 IRA Withdrawal Authorization form that Wills attaches to the  
6 complaint. Dkt. No. 43, Ex. 2. This form is not a contract between Wills and Hanson  
7 Bridgett. Hanson Bridgett did not sign the form, is not mentioned on the form, and Wills  
8 does not allege that anyone from Hanson Bridgett ever saw, read, or had knowledge of the  
9 form. Wills does not allege the existence of any other “2018 Agreement/s” between  
10 herself and the law firm. Wills alleges vaguely that Hanson Bridgett was obligated to  
11 “honor” any contract between herself and FRB. FAC ¶ 2. However, as the Court found  
12 above, Wills has not alleged the existence of any contract between herself and FRB and,  
13 further, has not shown why any such contract would obligate Hanson Bridgett.

14 The Court’s order granting the defendants’ previous motion to dismiss stated:  
15 “[b]ecause Hanson Bridgett is the Bank’s legal counsel and otherwise had no relationship  
16 with Wills, the Court is skeptical that Wills will be able to state any claim against Hanson  
17 Bridgett for breach of contract.” Dkt. No. 42. Indeed, the Court finds that Wills has not  
18 alleged sufficient facts to state a facially plausible claim for breach of contract against  
19 Hanson Bridgett. The breach of contract claim against Hanson Bridgett is DISMISSED.  
20 Having already had an opportunity to allege additional facts and having failed to do so, the  
21 Court finds that further amendment would be futile.

22 **B. Negligent Infliction of Emotional Distress and Negligence**

23 To plead a claim for negligent infliction of emotional distress, a plaintiff must  
24 allege an underlying tort—NIED is not a standalone cause of action. *Ragland v. U.S. Bank*  
25 *Nat’l Assn.*, 209 Cal. App. 4th 182, 205 (2012). In the event that Wills intends to plead a  
26 claim for negligence to underly her claim of NIED, the Court analyzes the complaint for a  
27 claim of negligence. A claim of negligence requires a duty of care owed by the defendant  
28 to the plaintiff, breach of that duty, and damages. *Potter v. Firestone Tire & Rubber Co.*, 6

1 Cal. 4th 965, 984 (1993). The plaintiff bears the burden of alleging that a duty is owed.  
 2 *Laico v. Chevron USA, Inc.*, 123 Cal. App. 4th 649 (2004). The plaintiff may allege facts  
 3 to show that a special relationship or other circumstances create an affirmative duty of  
 4 care. *Douri v. Spring Val. Water Co.*, 8 Cal. App. 588 (1908).

5 In its previous order granting the defendants' motion to dismiss this claim, the  
 6 Court found that Wills had not alleged the first element of negligence: that FRB or Hanson  
 7 Bridgett owed her a duty of care. Dkt. No. 42 at 6. Neither did Wills allege that a special  
 8 relationship existed between herself and either defendant to create an affirmative duty of  
 9 care. *Id.* Again, Wills's amended complaint fails on these grounds. The amended  
 10 complaint states the legal conclusion that "[t]he Defendant engaged in negligent conduct  
 11 and had a legal duty to use reasonable care to avoid causing the Plaintiff harm and owed a  
 12 duty of care to protect Wills from reasonably foreseeable negative consequences." FAC ¶  
 13 35. But Wills states no factual grounds for this alleged "duty" as to either defendant. As  
 14 with the original complaint, without establishing that the Bank or Hanson Bridgett owed  
 15 her a duty of care, Wills cannot plead a negligence claim based on a breach of that duty.

16 The Court finds that Wills has not alleged sufficient facts to state a facially  
 17 plausible claim for negligence or negligent infliction of emotional distress against FRB or  
 18 Hanson Bridgett. The NIED claim as to both defendants is DISMISSED. Having already  
 19 had an opportunity to allege additional facts and having failed to do so, the Court finds that  
 20 further amendment would be futile.

### 21 **C. Intentional Infliction of Emotional Distress**

22 To plead a claim for intentional infliction of emotional distress, a plaintiff must  
 23 allege (1) extreme and outrageous conduct by the defendant; (2) intention to cause, or  
 24 reckless disregard of the probability of causing, emotional distress; (3) severe emotional  
 25 suffering; and (4) actual and proximate causation of the emotional distress. *Hughes v.*  
 26 *Pair*, 46 Cal. 4th 1035, 1050 (2009). Conduct is "outrageous" when it is so "extreme as to  
 27 exceed all bounds of that usually tolerated in a civilized community." *Id.* at 1050–1051.  
 28 The emotional distress endured must be of "such substantial quality or enduring quality

1 that no reasonable [person] in civilized society should be expected to endure it.” *Potter*, 6  
2 Cal. 4th at 1004.

3 The Court previously found that Wills’s original complaint failed to state a claim  
4 for IIED because she did not allege extreme or outrageous conduct. Dkt. No. 42 at 7. The  
5 conduct alleged in the amended complaint is the same as in the first, with minor additional  
6 details. The amended complaint is still based on two checks that did not arrive in the mail  
7 on time. As the Court previously stated, “not only is this conduct not outrageous, it is  
8 rather ordinary.” *Id.* Wills further fails to allege that any defendant caused her distress  
9 intentionally or with reckless disregard. She only states legal conclusions, such as  
10 “Hanson Bridgett LLPs’ [sic] intentional and reckless failure and refusal to secure timely  
11 delivery” of her check “was extreme and outrageous.” FAC ¶ 40. This conclusory  
12 language does not include facts that go toward stating a claim.

13 Moreover, Wills still fails to allege that she endured substantial or enduring  
14 emotional distress. Wills states that her business suffered and that she was forced to vacate  
15 her office space as a result of defendants’ actions. FAC ¶ 11. The Court still appreciates  
16 Wills’s suffering, but, as alleged, it does not rise to the level of distress beyond what a  
17 person in a civilized society should be expected to ever endure. *Potter*, 6 Cal. 4th at 1004.

18 Wills has not alleged sufficient facts to state a facially plausible claim for  
19 intentional infliction of emotional distress against FRB or Hanson Bridgett. The IIED  
20 claim against both defendants is DISMISSED. Having already had an opportunity to  
21 allege additional facts and having failed to do so, the Court finds that further amendment  
22 would be futile.

#### 23 **D. Claims by Carmel Resort Supply**

24 Finally, the Court considers whether plaintiff “Carmel Resort Supply” has any  
25 claims that are independent of Wills. The amended complaint alleges on page one that  
26 Wills is a “sole proprietor, d/b/a Carmel Resort Supply.” She does not allege that Carmel  
27 Resort Supply entered into any contract or suffered any damages separate and apart from  
28 her own. The Court concludes that any claim by Carmel Resort Supply should be

1 dismissed for the same reasons as the claims asserted by Wills. As a consequence, the  
2 defendants' motions to dismiss are granted as to Carmel Resort Supply.

3 **IV. CONCLUSION**

4 Plaintiffs' claims for breach of contract, negligent infliction of emotional distress  
5 (and underlying negligence), and intentional infliction of emotional distress against  
6 defendants First Republic Bank and Hanson Bridgett LLP are DISMISSED. The Court  
7 finds that further opportunity to amend would be futile. Accordingly, this case is hereby  
8 DISMISSED.

9  
10 **IT IS SO ORDERED.**

11  
12 Dated: September 13, 2019

  
\_\_\_\_\_  
NATHANAEL M. COUSINS  
United States Magistrate Judge

United States District Court  
Northern District of California

UNITED STATES COURT OF APPEALS

FILED

FOR THE NINTH CIRCUIT

JUN 2 2022

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

CYNTHIA S. WILLS,

No. 19-17001

Plaintiff-Appellant,

D.C. No. 5:19-cv-01819-NC

v.

Northern District of California,  
San Jose

FIRST REPUBLIC BANK,

ORDER

Defendant-Appellee.

Before: HURWITZ and VANDYKE, Circuit Judges, and ERICKSEN,\* District Judge.

The full court has been advised of appellant's petition for panel rehearing and rehearing en banc, and no judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35. The panel judges have voted to deny the petition for panel rehearing. Judge Ericksen recommended denying the petition for rehearing en banc. Judges Hurwitz and VanDyke voted to deny the petition for rehearing en banc.

Accordingly, appellant's petition for panel rehearing and rehearing en banc, filed May 5, 2022 (ECF No. 70) is hereby DENIED.

**"APPENDIX C"**

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\* The Honorable Joan N. Ericksen, United States District Judge for the District of Minnesota, sitting by designation.

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United States District Court  
Northern District of California

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

CYNTHIA S. WILLS,  
Plaintiff,

v.

FIRST REPUBLIC BANK, HANSON  
BRIDGETT LLP, and UNITED  
PARCEL SERVICE, INC.,  
Defendants.

Case No. 19-cv-01819 NC

**ORDER DENYING PLAINTIFF'S  
MOTION TO REMAND**

Re: ECF 31

Presented to the Court is pro se plaintiff Cynthia Wills' motion to remand this case back to Monterey County Superior Court. ECF 31. The basis of Wills' motion is that there is a lack of diversity of citizenship among the parties, so subject matter jurisdiction under 28 U.S.C. § 1332 is not satisfied.

Wills is correct that if the Court lacks subject matter jurisdiction, then it must remand the case back to state court. Federal courts possess limited jurisdiction, which means that this Court may only resolve disputes in subject matter categories permitted by the Constitution or laws of the United States. The Court has an independent obligation to examine subject matter jurisdiction. Any doubts about jurisdiction should be resolved against federal jurisdiction.

**"APPENDIX D"**

1 Diversity of citizenship, however, is only one of the ways in which the Court may  
 2 exercise subject matter jurisdiction. Here, defendants removed the case to federal court  
 3 based on "federal question" jurisdiction. ECF 1 (Notice of Removal). Under 28 U.S.C. §  
 4 1331, the Court has jurisdiction of all civil actions "arising under the Constitution, laws, or  
 5 treaties of the United States." I find that the defendants' removal notice establishes under  
 6 § 1331 that this case arises under federal common law. *See Otterson v. Fed. Express*  
 7 *Corp.*, 2009 WL 536280, at \*7 (D. Or. Mar. 3, 2009). And the Court has supplemental  
 8 jurisdiction under 28 U.S.C. § 1367(a) over the related state law claims that are part of the  
 9 same "case or controversy."

10 Because the Court has jurisdiction under the federal question statute, § 1331, it does  
 11 not matter that the parties do not have diverse citizenship. Subject matter jurisdiction is  
 12 proper. Consequently, I deny plaintiff's motion to remand. No costs or fees are awarded.

13 The motions to dismiss remain scheduled for hearing on June 26 at 1:00 p.m. in San  
 14 Jose federal courthouse courtroom 5. Plaintiff Wills must be prepared to argue against the  
 15 defendants' motions and to explain why she should be granted leave to amend if the  
 16 defendants' motions to dismiss are granted. As a reminder to Wills, the pro se help desk  
 17 provides free information and consultation to pro se litigants. It may be reached at  
 18 408.297.1480.

19  
 20 **IT IS SO ORDERED.**

21  
 22 Dated: June 21, 2019

23   
 24 NATHANAEL M. COUSINS  
 25 United States Magistrate Judge  
 26  
 27  
 28