22-7072

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

Montayya Sims — PETITIONER
(Your Name)

vs.

Fox Ridge Apartments — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Michigan Supreme Court
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Montayya Sims
(Your Name)

2220 Gull Road Apt H16
(Address)

Kalamazoo, MI 49048
(City, State, Zip Code)

269-352-0486
(Phone Number)

QUESTION(S) PRESENTED

"Whether" The United States Supreme Court Should vacate The Michigan Supreme Courts Order and Transfer the individual Claim to The Michigan Court of Claims As defined in the Michigan Law Review Volume 45 Issue 7 1947 Required Joinder of Claims., Under Rule 10(a)(b)(c) and Rule 11., of Rules of the Supreme Court of the United States.

LIST OF PARTIES

[x] All parties appear in the caption of the case on the cover page.

RELATED CASES

Fox Ridge Apartments v. Montoyya Sims No. 1909147LT, Trial Court Judgment entered on 11-5-2021
Fox Ridge Apartments v. Montoyya Sims No. Kalamazoo CC: 2021-000486 Order entered on 11-10-2021
Montoyya Sims v. Fox Ridge No. COA #360877 Order entered on 8-31-2022
Montoyya Sims v. Fox Ridge Apartments No. MSC #164786 Order entered on 11-30-2022 and 1-31-2023
Montoyya Sims v. United States et al., No. 22-000147 MM pending litigation see "Appendix E".,

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STATUTES AND RULES

OTHER

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[ ] For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

[X] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix C to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

The opinion of the Court of Appeals court appears at Appendix A to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

JURISDICTION

[ ] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

[ ] No petition for rehearing was timely filed in my case.

[ ] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[X] For cases from **state courts**:

The date on which the highest state court decided my case was 1-31-23.
A copy of that decision appears at Appendix D.

[ ] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

JURISDICTION

The State Court of Appeals Chief Clerk made Sims the plaintiff in March of 2022, The State Court of Appeal Judges entered an Order on August 31, 2022 denying plaintiff's leave to Appeal. The Michigan Supreme Court denied the plaintiffs timely petition for review orders entered on November 30, 2022 and January 31, 2023. This Court's jurisdiction is invoked under 28 U.S.C. § 1257(a). See, e.g., Bristol-Myers Squibb Co. v. Superior Court, 137 S. Ct. 1773, 1779 (2017) (granting certiorari to determine whether a state court's exercise of jurisdiction comports with the Due Process Clause of the Fourteenth Amendment).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Due Process clause of the fourteenth Amendment, U.S. Const. Amend. XIV, § 1, Provides: [N]or shall any state deprive any person of life, liberty, or property, without due process of law. Washington's statutory long arm provision provides, in relevant part. The fundamental purpose of judicial review is to determine whether public authorities are acting in accordance with the laws made by parliament. It provides protection for individuals against state power, and ensures government, public bodies and regulators can all be held accountable.

The California Supreme Court has recently clarified that specific jurisdiction is only appropriate where "the defendant's suit related conduct create[s] a substantial connection with the form state." Walden v. Fiore, 134 S. Ct. 1115, 1121 (2014). 5 conditions that are present to be considered fair and just under the due process. Elements to be considered include a) national legislation; b) what is at stake for the parties concerned; c) the complexity of the case; d) the conduct of the accused or the parties to the dispute; and e) the conduct of the authorities. See also Michigan Law Review Volume 45 Issue 7 1947 Required Joinder of Claims.

STATEMENT OF THE CASE

Sims was wrongfully evicted in November of 2019 in a non jury trial proceeding for possession of property in retaliation for reporting defendant Fox Ridge Apartments for infestation of mice and lack of repairs See A Practical Guide for Tenants & Landlords page 14-16 section B Q1-Q6. The eviction that was granted by the lower court Trial Judge is deemed as void due to a repayment agreement Sims was also forced to sign in May of 2019 by defendant Fox Ridge's leasing staff. The erroneous decisions made by the lower court trial judge is solely based on personal perspective of the trial judge and hearsay testimony while also going against the weight of evidence provided by the plaintiff see LeTarte v Malotke, 32 Mich App 289, 290 292; 188 NW2d 673 (1971). See also Heck v Bailey, 204 Mich 54, 55; 169 NW 940 (1918). Sims was refused a new trial from 2019-2023 see Rule 6.431(A)(1)(2)(3)(4)(B)(C). The Appeal also involved Title 48 Chapter 1 Subchapter A Part 3 Subpart 3.6. Sims preserved this issue by filing a motion for reconsideration, Motion to Stay, Request for Administrative investigation, filed grievances and multiple claims of Leave to Appeal. The Appeal Judges erroneously denied Sims Appeal, going against the findings of the Chief Clerk when reversing the claim in March of 2022 making Sims the plaintiff Rule 7.105(B)(G)(1)(2)(a)(b).
see 18 U.S.C. § 241 of title 18. See also 18 U.S.C. 242 of title 18.

REASONS FOR GRANTING THE PETITION

While a final judgment or order does not have to take any particular form, it has Been said that " [t]o be final, that is, binding and determinative of litigation , a judgment must do more than indicate the judges opinion as to the outcome of an action and must be rendered."'7A Michigan pleading and practice (2d ed), §53:7. As explained in 3 Longhofer, Michigan Court Rules Practice, Tex (7th ed),§ 2602.2:

[A] distinction exists between the court's decision or opinion and the judgment entered thereon.An opinion announces the court's decision and its reasons

therefore, but the further entry of a judgment is required to carry the decision into legal effect.

So, for example, a written opinion using language that is "prospective only" is not sufficient—i.e., a "judgment ... will enter. "LeTarte v Malotke, 32 Mich App 289,290,292; 188 NW2d 673 (1971). See also Heck v Bailey, 204 Mich 54, 55; 169 NW 940 (1918) (finding statement that the defendant was "entitled to a divorce " was not sufficient to constitute a rendered judgment); Hibbard v Hibbard, 27 Mich App 112, 113; 183 NW2d 358 (1970) (no final judgment may be entered in accordance with the foregoing opinion").

On the other hand, the Michigan Court of Appeals in Cheron, Inc v Don Jones,Inc, 244 Mich App 212; 625 NW2d 93 (2000), found the following language to be sufficient to constitute the trial court's "judgment";

Judgment should be entered for the plaintiff against defendant, Don Jones, Inc. in the amount of 57,000.

IT IS SO ORDERED.[Id. At 220 n 4 (emphasis added by the court).]

The dissent considered this language as indicating the trial court's future intent to enter a judgment, but the majority disagreed:

While the document was not entitled a "judgment," it functioned, for all intents and purposes, as a judgment. Indeed, "judgment" is defined as "[a] court's final determination of the rights and obligations of the parties in a case ."
See Black's Law Dictionary (7th ed), p 846. There is no requirement that this determination be contained in a document entitled a "judgment."
Such a requirement would elevate form over substance. Here, the trial court did indeed intend the "final determination of the rights and obligations of the parties, "[Id.]

What about the requirement under MCR 2.602(A)(3) that an order or judgment certify whether it resolves the last pending claim' Language in Trial-Court

Orders:It's a (Potential) Trap," that can sometimes be helpful, but it isn't determinative. See Botsford Continuing Care Corp v Intelistaf Healthcare, Inc, 292 Mich App 51, 61; 807 NW2d 354 (2011) (holding that an order leaving certain claims intact wasn't final, regardless of the trial court's statement to the contrary). Thus, the question in every case is whether the judgment, order, or opinion at issue is intended to end the litigation, or whether it leaves open the possibility of some other action needing to be taken.

Federal rules

The federal rules make it easier to determine when a decision is final. With limited exceptions for orders disposing of certain post-judgment motions, Rule 58 provides that every Judgement motions "must be set out in a separate document." FR Civ P 58(a). The purpose of this requirement is to help avoid uncertainty "as to the date on which a judgment is entered, ' and thus, when the time for an appeal begins to run." United States v $525,695.24, Seized from JPMorgan Chase Bank Investment Account #xxxxxxxx, 869 F3d 429, 435 (CA 6, 2017) (citation omitted). Rule 54 provides additional guidance by stating that "[a] judgment should not include recitals of pleadings, a master's report, or record of prior proceedings. "FR Civ P 54 (a).

As a result, neither a court's findings of fact and conclusions of law after a bench trial (or evidentiary hearing) nor a written opinion granting a motion to dismiss or for summary judgment will start the time to appeal (or to file post- judgment motions).Instead, a separate document stating the court's "judgment" must be entered that is (1) "self-contained and separate from the opinion, "(2) "note[s] The relief granted," and (3) 'omit[s] (or at least substantially omit[s] the trial court's reason for disposing of claims." LeBoon v Lancaster Jewish Community Ctr Ass'n, 503 F3d 217, 224 (CA 3, 2007).If a separate document is not entered as required by rule 58(a), then judgment is automatically entered after 150 days. FR Civ P 4(a)(7)(A)(ii).

Conclusion

More often than not, the finality of a court's decision will not be difficult to assess. But care should be taken to ensure that it is in fact, final.

A version of this was previously published in the as a general matter, appellate jurisdiction in both Michigan Court of Appeals and the federal appellate court's stems from entry of a "final" decision.See MCR 7.203(A)(1)("The court has jurisdiction of an appeal of right filed by an aggrieved party from....shall have jurisdiction of appeals from all final decisions of the district courts of the United States...").But determining whether a decision is actually "final" for purposes of appeal is not always an easy task.

The "one final judgment rule" is a longstanding component of Anglo-American jurisprudence and provides that the deadline for filing a notice of appeal runs not on the date of a minute order, but rather commences on the date of entry of a final judgment. The bright-line one final judgment rule provides clear and easily determined notice, avoids unnecessary and duplicative appeals, and allows trial court's to exercise pre-appellate jurisdiction over important prejudgment motions. The Court of Appeals of Grand Rapids, MI erroneously departed from the one final judgment rule and this Supreme Court's precedent when issuing an order to grant waiver of filing fees only and denied the plaintiff's application for leave to appeal for lack of merit in the grounds presented. Ignoring the fact that the late leave to appeal deadline in Michigan is 60 days from the date of the minute order and the other deadline of claims due after entry of final judgment. However, pursuant to the one final judgment rule and longstanding precedent along with M.C.R. 2.602 , The Court of Appeals order to the contrary is erroneous and its dismissal of the appeal should be reversed. The Supreme Court Justices Failed to properly review Sims Writ even after being informed of the Treason, Bribery, Economic Tort, and violations to the plaintiffs 14th Amendment right and many other acts of Intimidation see racketeering activity.

As a Supreme Court Justice. (1) The Supreme Court hears cases to resolve conflict. (2) the court hears cases that are of great public importance such as Case No. 164786 and cases where an area of law is unsettled; sometimes the court will consider a highly unusual case which calls for the Supreme Court's intervention. One example is U.S v. Nixon which involved the Watergate scandal. Another more recent example is Bush v. Gore arising from the extremely close 2000 presidential election. See generally 18 U.S.C. § 1031.

The Court of Appeals order is inconsistent with precedent

The Court of Appeals must consider sua sponte whether an order is final and appealable under 28 U.S.C. § 1291. See Sahagun v. Landmark Fence Co., Inc., 559 F .3d 922, 923 (9th Cir. 2009) (order) (considering jurisdiction sua sponte and dismissing appeal where district court had only entered a default, and not a default judgment); Gupta v. Thai Airways Int'l, Ltd., 487 F .3d 759, 763 (9th Cir. 2007); WMX Tech., Inc. v. Miller, 104 F .3d 1133, 1135 (9th Cir. 1997(en banc); see also Couch v. Telescope Inc., 611 F .3d 629, 632 (9th Cir. 2010) (stating the court has " a special obligation to satisfy [itself of its] jurisdiction even where, ..., the parties do not contest it."). Appellate jurisdiction can be challenged at any time, and objections to jurisdiction cannot be waived. See Fiester v. Turner, 783 F .2d 1474, 1475 (9th Cir. 1986) (order); see also Taylor v. Cty. of Pima, 913 F .3d 930, 933 (9th Cir. 2019) ("Although we defer to the ruling of the motions panel granting an order for interlocutory appeal, we have an independent duty to confirm that our jurisdiction is proper.") Dannenberg v. Software Toolworks, Inc., 16 F .3d 1073, 1074 n.1 (9th Cir. 2004) (stating that merits panel has independent duty to determine appellate jurisdiction, even where motions panel has previously denied motion to dismiss on jurisdictional grounds); Fontana Empire Ctr., LLC v. City of Fontana, 307 F .3d 987, 990 n. 1 (9th Cir. 2002) (same).

PROCEDURAL HISTORY

On November 15, 2019, Defendant Fox Ridge was granted possession of property for Sims's "alleged" failure to comply with lease requirements that led to repeated infractions which resulted in the leasing office seeking possession of Sims unit. The trial judge went against the weight of evidence ruling in defendant Fox Ridges's favor based on testimony "only". After being made aware of the errors and Fraud on the court that was being committed. The trial judge repetitively denied several motions submitted by the plaintiff, for reconsideration, motion to stay and for relief from judgment; The trial judge failed to transfer the case to its proper venue and

disqualify himself after being informed in his official capacity he had been violating Sims' rights the trial judge denied Sims motion on November 5, 2021 order listed "Moot". Plaintiff then filed a leave to appeal with the 9th Circuit Court for review of the lower courts Judgment Selecting sec. 4(d) in the claim of appeal. Sec.4(d). state: A RULING THAT A PROVISION OF MICHIGAN CONSTITUTION, A MICHIGAN STATUTE, A RULE OR REGULATION INCLUDED IN THE MICHIGAN ADMINISTRATIVE CODE, OR ANY OTHER ACTION OF THE LEGISLATIVE OR EXECUTIVE BRANCH OF STATE GOVERNMENT IS VALID.

The 9th Circuit Court denied Sims appeal on November 10, 2021 stating lack of jurisdiction while also failing to review Sims Leave to Appeal see Rule 2.602, see also Rule 7.205 see generally See 28 U.S.C. § 455(a)(b)(1). Plaintiff then filed a leave to appeal with the Court of Appeals where she became the plaintiff on March 30, 2022 Case No. 360837. The appellate judges denied Sims' delayed application for leave to appeal stating "lack of merits in the grounds presented" see 28 U.S.C. § 455(a)(1)(a)(b)(5)(ii)(iii). Sims then filed a leave to appeal to the Michigan Supreme Court, The justices denied Sims leave stating "the court is not persuaded the questions presented should be reviewed by the court. The Justices denied all motions filed by Sims for leave, stay and transfer. Sims then filed a motion for reconsideration, disqualification of the Supreme Court Justices and for transfer, The motion was denied on January 31, 2023 stating "on order of the court, the motion for reconsideration of this court's November 30,2022 order is considered, and it is DENIED, because we are not persuaded the reconsideration of our previous order is warranted. MCR 7.311(G). The motion to transfer to the Court of Claims is DENIED.

Under the "common sense" approach to finality, the court of appeals may in appropriate cases infer rejection of a claim or motion. See Alaska v. Andrus, 591 F .2d 537, 540 (9th Cir. 1979) (inferring rejection of claim where judgment did not expressly deny plaintiff's request for permanent injunctive relief, but prior court orders indicated that the plaintiff's request had been denied); see also Lovell v. Chandler, 303 F .3d 1039, 1049–50 (9th Cir. 2002) (inferring rejection of claims

where the claims were abandoned and it was clear the trial court intended to dispose of all claims before it); Federal Ins. Co. v. Scarsella Bros., Inc., 931 F .2d 599, 601 (1991) (inferring rejection of claims where they remained technically undecided, but decision "resolved all issues necessary to establish the legal rights and duties of the parties"), overruled on other grounds by Peralta v. Dillard, 744 F .3d 1076, 1088 (9th Cir. 2014) (en banc); United States Postal Serv. v. American Postal Workers Union, 893 F .2d 1117, 1119 (9th Cir. 1990) (inferring denial of motion where district court's ruling on certain motions necessarily dictated outcome of others because "[a]ll parties had a clear understanding of the practical effects of the judgment, and no prejudice results from construing the judgment as a final judgment" disposing of all motions).

ARGUMENT

A. Appeal from Interlocutory Decisions

The court of appeals has jurisdiction over appeals from interlocutory orders "granting, continuing, modifying, refusing, or dissolving injunctions." 28 U.S.C. § 1292(a)(1). The Supreme Court has made clear that the "label attached to an order is not dispositive. [Rather,] where an order has a 'practical effect' of granting or denying an injunction, it should be treated as such for purposes of appellate jurisdiction." Abbott v. Perez, 138 S. Ct. 2305, 2319 (2018).

Section 1292(a)(1) is to be constructed narrowly to encompass only appeals that " further the statutory purpose of permitting litigations to effectively challenge interlocutory orders of serious, perhaps irreparable consequence." Carson v. American Brands, Inc., 450 U.S. 79, 84 (1981) (internal quotations and citations omitted; see also Buckingham v. Gannon (In re Touch America Holdings, Inc. ERISA Litig.), 563 F .3d 903, 906 (9th Cir. 2009) (per curiam).

Note that the court of appeals' denial of permission to appeal under 28 U.S.C. § 1292(b) does not preclude appeal under 28 U.S.C. § 1292(a). See Armstrong v. Wilson, 124 F .3d 1019, 1021 (1997) (noting that interlocutory appeal under §

1292(b) is by permission while interlocutory appeal under § 1292(a) is by right). The appellate judges failed to list the proper laws and cases for the plaintiffs' denial for lack of the merits on August 31,2022.

An interlocutory order specifically granting or denying an injunction is appealable under 28 U.S.C. § 1292(a)(1) without a showing of irreparable harm. See Pom Wonderful LLc v. Hubbard, 775 F .3d 1118, 1122 (9th Cir. 2014) (involving district court's denial of motion for preliminary injunction); Arc of California v. Douglas, 102 F .3d 975, 992 (9th Cir. 2014) (appellate jurisdiction over district court's denial of Arc's motion for preliminary injunctive relief); Paige v. California, 102 F .3d 1035, 1038 (9th Cir. 1996) (involving appeal from grant of preliminary injunction); Shee Atika v. Sealaska Corp., 39 F .3d 247, 248- 49 (9th Cir. 1994) (involving appeal from denial of permanent injunction). See also Nat. Res. Def. Council v. Cty. of Los Angeles, 840 F .3d 1098, 1101 (9th Cir. 2016) (district court's dismissal of claims for injunctive relief on the basis of mootness conferred jurisdiction pursuant to 28 U.S.C. § 1292(a)(1)); Townley v. Miller, 693 F .3d 1041, 1042 (9th Cir. 2012) (order) (concluding that notices of appeal from order Granting preliminary injunction divested the district court jurisdiction , giving the court of appeals jurisdiction over interlocutory appeal pursuant to § 1292(a)(1)).

B. THE ONE FINAL JUDGMENT RULE

The foundation of the final judgment rule is the policy against piecemeal litigation. See Microsoft Corp. v. Baker, 137 S. Ct. 1702, 1707 (2017) (stating that § 1291's firm finality principle is designed to guard against piecemeal appeals); Catlin v. United States, 324 U.S. 229, 233–34 (1945); Nat'l Abortion Fed'n v. Ctr. for Med. Progress, 926 F .3d 534, 538 (9th Cir. 2019), cert. Denied sub nom. Cooley v Nat'l Abortion Fed'n, No. 19-525, 2020 WL 129591 (Jan. 13, 2020). Piecemeal appeals present the dangers of understanding the independence of the district judge, exposing litigants with just claims to the harassment and cost of successive appeals, and obstructing judicial efficiency. See Firestone Tire &

Rubber Co. v. Risjord, 449 U.S. 368, 374 (1981). Finality determinations require a balancing of "the inconvenience and cost of piecemeal review on the one hand and the danger of denying justice by delay on the other." Stone v. Heckler, 722 F .2d 464, 467 (9th Cir. 1983) (citations omitted).

The rules of finality are designed to create more certainty as to when an order is appealable. See Nat'l Distrib. Agency v. Nationwide Mut. Ins. Co., 117 F .3d 432, 434 (9th Cir. 1997); see also Budinich v. Becton Dickinson & Co., 486 U.S. 196, 202 (1988) ("the time of appealability, having jurisdictional consequences, should above all be clear.").

Pursuant to the longstanding "one final judgment " rule, the Court of Appeals dismissed the plaintiffs appeal for lack of merits see Stone v. Heckler, 722 F .2d 464, 467 (9th Cir. 1983) (citations omitted). The Supreme Court has repeatedly held that the grant of a demurrer does not start the period for filing a notice of appeal, and that the relevant date is instead that of subsequent entry of final judgment. See, e.g. Lavine v Jessup (1957) 48 nonappealable, and the appeal must be taken from the ensuing judgment. . . . [T]he time for appeal d[oes] not commence to run until the entry of judgment.) (citations omitted).
However, the Court of Appeals dismissal of the appeal, and its rejection of the Supreme Court's longstanding precedent, is not only erroneous, but profoundly pernicious. The Court of Appeal order requires the filing of multiple, duplicative appeals from a single order denying Sims Leave to Appeal. This order not only creates wasteful and duplicative filings in the Court of Appeal, but also prevents efficacious resolution in trial courts by requiring prejudgment appeals that divest the trial court of jurisdiction to entertain beneficial and sua sponte motions. The Court of Appeal's decision also conflicts not only with the Supreme court's precedents, but also its repeated and express admonition that the one final judgment rule is to be strictly and consistently applied.

Finally, the court of appeal's order not only causes substantial practical as well as doctrinal harm, but it does so needlessly. The Court of Appeals order Is as unwise as a matter of policy as it is unprecedented. Even were the Court of Appeals

writing without the backdrop of a century of consistent precedent, This Court should reject the unsound and unwise order of the Court of Appeal's creation of grounds for denial of Sims leave to appeal. The bright-line rule established by the one final judgment rule and repeatedly applied by the Supreme Court is far superior as a policy matter to the principle advanced by the Court of Appeal Judges on August 31,2022. The Court of Appeal's order endangers not only all of the deleterious consequences identified by the Court of Appeals pursuant to § 1292(a).

This Court should accordingly reverse the decision of the Court of Appeals Judges and reaffirm that the grant of leave to transfer to the Michigan Court of Claims to Join the case that led to the class claim tort actions which creates but a single appeal, the deadline for which commences on the date of the entry of the one final judgment.

C. THE COURT OF APPEALS ORDER IS INCONSISTENT WITH PRECEDENT

The Court of Appeal order determined that even though plaintiff filed Her appeal within the sixty days of the entry of judgment, her appeal for leave is denied for lack of merit in the grounds presented.

This order conflicts with several holdings of the Supreme Court.
First, the court of appeal's order conflicts with the legion of cases in which the Supreme Court has expressly applied the one final judgment rule and held that the time to appeal the grant of demurrer runs not from the date

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Transp. Co., Inc. (2009) 22 Ariz. 281; Palmer v. Friendly Ice Cream Corp. (2008) 285 Conn. 462; Levy v. Metro. Sanitary Dist. (1982) 92 I11.2d 80, 82-84. To the extent immediate appeals are permitted, it now largely is by legislative grant of authority. See, e.g., Fed. R. Civ. Proc. 23(f); Butler v. Audio/Video Affiliates Inc. (1992) 611 So.2d 33 (allowing death knell appeals), later codified in Ala. Code § 6-5-642 (1999).

of the order, but rather from the date on which judgment is entered. The Supreme Court in California has adopted this law since its founding, and has expressly declared as early as 1870 that "it is only from the judgment, and not from the order sustaining a demurrer, that the plaintiff could appeal. We have repeatedly held that an order sustaining or overruling a demurrer is not an appealable order." Agard v. Valencia (1870) 39 Cal. 292, 297."

The Supreme court reiterated throughout the nineteenth century that the one final judgment rule was categorically applicable to grant of a demurrer no appeal can be taken directly to this Court; the only method of review of such proceedings here is through an appeal from final judgment thereafter entered in the action itself, if such judgment be favorable." Ashley v. Olmstead (1880) 54 Cal. 616, 618.

Intervention

Certain orders denying leave to intervene under Rule 24 are final and appealable because they terminate the litigation as to the putative intervenor. See IX.A.2.a.i (regarding an intervenor's standing to appeal). **Intervention as of Right.**

An order denying a motion to intervene as of right is a final appealable order where the would-be intervenor is prevented from becoming a party in any respect. See Stringfellow v. Concerned Neighbors in Action, 480 U.S. 370, 377 (1987); Citizens for Balanced Use v Montana Wilderness Ass'n, 647 F .3d 893, 896 (9th Cir. 2011) (exercising jurisdiction over denial of a motion to intervene as of right as a final appealable order under 28 U.S.C. § 1291); League of United Latin Am. Citizens v. Wilson, 131 F .3d 1297, 1302 (9th Cir. 1997); Petrol Stops Northwest v. Continental Oil Co., 647 F .2d 1005, 1009 (9th Cir. 1981). Moreover,an order denying a motion to intervene as of right or permissively is immediately appealable even though the would-be intervenors were granted amicus status. See Forest Conservation Council v. United States Forest Serv., 66 F .3d 1489, 1491 & n.2 (9th Cir. 1995), abrogated on other ground by Wilderness Soc'y v. U.S. Forest Serv., 630 F .3d 1173 (9th Cir. 2011).

Order Denying Intervention in Part

An order denying a motion to intervene as of right is not immediately appealable where permissive intervention is granted. See Stringfellow v. Concerned Neighbors in Action, 480 U.S. 370–78 (1987) (observing that litigant granted permissive intervention was party to action and could effectively challenge denial of intervention as of right, and conditions attached to permissive intervention, after litigation of the merits). Similarly, an order granting in part a motion to intervene as of right is not immediately appealable. See Churchill Cty. v. Babbitt, 150 F .3d 1072, 1081–82 (9th Cir. 1998) (order granting intervention as of right as to remedial phase of trial appealable only after final judgment), amended and superseded by 158 F .3d 491 (9th Cir. 1998); See also Prete v. Bradbury, 438 F .3d 949, 959 n.14 (9th Cir. 2006).

Although an order denying permissive intervention has traditionally been held nonappealable, or appealable only if the district court has abused its discretion, "jurisdiction to review [such an order] exists as a practical matter because a consideration of the jurisdiction issue necessarily involves a consideration of the merits – whether an abuse of discretion occurred." Benny v. England (In re Benny), 791 F .2d 712, 720–21 (9th Cir. 1986); see also Canatella v. California, 404 F .3d 110, 1117 (9th Cir. 2005) league of United Latin Am. Citizens v. Wilson, 131 F .3d 1297, 1307–08 (9th Cir. 1997).

An order denying permissive intervention is appealable at least in conjunction with denial of intervention as of right. See Forest Conservation Council v. United States Forest Serv., 66 F .3d 1489, 1491 & n.2 (9th Cir. 1995) (concluding appellate jurisdiction existed where intervention as of right and permissive intervention denied, but amicus status granted), abrogated on other grounds by Wilderness Soc'y v. United States Forest Serv., 630 F .3d 1173 (9th Cir. 2011).

A party Must appeal denial of Intervention Immediately.

An order denying a motion to intervene as of right must be timely appealed following entry of the order. See United States v. Oakland, 958 F .2d 300, 302

(9th Cir. 1992) (dismissing appeal for lack of jurisdiction where appellate failed to appeal from denial from intervention as of right until after final judgment and neglected to move for leave to intervene for purposes of appeal).

Final Judgment by Magistrate Appealed Directly to the Court of Appeals

When a magistrate judge enters a final judgment under 28 U.S.C. § 636(c)(1), appeal is directly to the court of appeals. See 28 U.S.C. § 636(c)(3); Fed. R. Civ. P. 73(c); See also Robert Ito Farm, Inc. v. Cty. of Maui, 842 F .3d 681, 688 (9th Cir. 2016)("Section 636(c)(3) gives parties to a suit proceeding before a Magistrate judge the right to appeal the magistrate judge's final judgment to the Court of appeals."). "An appeal from a judgment by a magistrate judge in a civil case is taken in the same way as an appeal from any other district court judgment." Fed. R. App. P . 3(a)(3).

Parties consent to entry of final judgment by Magistrate

"[N]o Party will be denied independent review by an Article III judge unless all parties have consented to the magistrate judge exercising plenary jurisdiction." Branch v. Umphenour, 936 F .3d 994, 1001 (9th Cir. 2019). "[A] court may infer consent where 'the litigant or counsel was made aware of the need for consent and the right to refuse it, and still voluntarily appeared to try the case before the Magistrate Judge. '" Wilhen v. Rotman, 680 F .3d 1113, 1119–20 (9th Cir. 2012) (quoting Roell v. Withrow, 538 U.S. 580, 590 (2003) and recognizing that '"[t]o The extent that [the court] previously held that [it could] never infer consent, [the court has] been overruled by Supreme Court in Roell.") Sims was denied review by the 9th circuit judge Alexander Lipsey stating "lack of jurisdiction.

Potential for Error to Recur

The fourth and fifth Bauman factors will rarely both be present in a single case because one requires repetition and the other novelty. See Armster v. United States Dist. Court, 806 F .2d 1347, 1352 n. 4 (9th Cir. 1987) ("where one of the two is present, the absence of the other is of little or no significance."). But See

Barnes v. Sea Hawaii Rafting, LLC, 889 F .3d 517, 537 (9th Cir. 2018) (concluding that both factors supported mandamus relief where the district court's error was oft-repeated, and the questions involved were of first impression); Portillo v. United States Dist. Court, 15 F .3d 819, 822 (9th Cir. 1994) (observing that presentence urine testing raised issue of first impression and that routine testing "will constitute an otf-repeated error").

Important Question of first Impression

Mandamus relief may be appropriate to settle an important question of first impression that cannot be effectively reviewed after final judgment. See Medhekar v. United States Dist. Court, 99 F .3d 325, 327 (9th Cir. 1996) (per curiam) (noting that where the fifth Bauman factor is present, the third and fourth factors generally will not be present).

See also Barnes v. Sea Hawaii Rafting, LLC, 889 F .3d 517, 537 (9th Cir. 2018) (concluding that the fourth and fifth factors supported Mandamus relief where the district court's error was otf-repeated, and the questions involved were of first impression).

The Court of Appeals often rules on supervisory mandamus authority in cases raising an important question of law of first impression. See Calderon v. United States Dist. Court, 134 F .3d 981, 984 (9th Cir. 1998), abrogated on other grounds as recognized by Jackson v. Roe, 425 F .3d 654 (9th Cir. 2005); Arizona v. United States Dist. Court (In re Cement Antitrust Litig.), 688 F .2d 1297, 1307 (9th Cir. 1982).

Notice of Appeal Construed As Petition for Writ of Mandamus

The Court of Appeals has Discretion to construe an appeal as a petition for for writ mandamus. See Reynaga v. Cammisa, 971 F .2d 414, 418 (9th Cir. 1992); See also United States v. Zone, 403 F .3d 1101, 1110 (9th Cir. 2005) ("[W]e may even construe an appeal as a petition for a writ of mandamus sua sponte."). However, the court will construe an petition as a writ only in an

"extraordinary case." Lee v. City of Beaumont, 12 F .3d 933, 936 (9th Cir. 1993), overruled on other grounds by California Dep't of Water Resources v. Powerex Corp., 533 F .3d 1087 (9th Cir. 2008), and "mandamus may not be used as a substitute for an untimely notice of appeal," Demos v. United States Dist. Court, 925 F .2d 1160, 1161 n.3 (9th Cir 1991). '"Whether [the court] construe[s] the appeal as a writ of mandamus depends on whether mandamus is itself justified. '"Barnes v. Sea Hawaii Rafting, LLC, 889 F .3d 517, 535 (9th Cir. 2018) (quoting Hernandez v. Tanninen, 604 F .3d 1095, 1099 (9th Cir. 2010)).

In determining whether to construe an appeal as a petition, the court generally evaluates the appeal in light of the Bauman factors. See Lee, 12 F .3d at 936, overruled on other grounds by California Dep't of Water Resources, v. Powerex Corp., 533 F .3d 1087 (9th Cir. 2008).

An appeal has been construed as a petition where three Bauman factors were Clearly present in an appeal from an order appointing a special master to monitor compliance with a previously entered injunction. See Nat'l Org. for the Reform of Marjuana Laws v. Mullen, 828 F .2d 536, 542 (9th Cir. 1987) (denying petition).

An appeal has been construed as a petition for a writ of mandamus in an admiralty case where all five Bauman factors supported mandamus relief. See Barnes v. Sea Hawaii Rafting, LLC, 889 F .3d 517, 535–43 (9th Cir. 2018).

Pure Question of Law

The Court of Appeals may consider an issue raised for the first time on appeal "when the issue is purely one of law.". Parks Sch. of Bus., Inc. v. Symington, 51 F .3d 1480, 1488 (9th Cir. 1995); See also Kaass Law v. Wells Fargo Bank, N.A., 799 F .3d 1290, 1293 (9th Cir. 2015); Carrillo v. Cty. of Los Angeles, 798 F .3d 1210, 1223 (9th Cir. 2015) (addressing issue where it was purely one of law, and addressing it would not prejudice the plaintiffs); Self-Realization Fellowship Church v. Ananda Church of Self-Realization, 59 F .3d 902, 912 (9th Cir. 1995) (court of appeals has discretion to consider purely legal question raised for the first time in motion to reconsider grant of summary judgment).

However, a purely legal issue will be entertained on appeal only if "consideration of the issue would not prejudice [the opposing party's] ability to present relevant facts that could affect [the] decision." Kimes v. Stone, 84 F .3d 1121, 1126 (9th Cir. 1996); see also Lahr v. Nat'l Transp. Safety Bd., 569 F .3d 964, 980 (9th Cir. 2009) (declining to consider issue where doing so would unfairly prejudice the government).

Questions Considered

The following question have been considered for the first time on appeal on the grounds that they are purely legal and the opposing party was not prejudiced:

- Whether vicarious liability could be imposed under 42 U.S.C. § 1985. See Scott v. Ross, 140 F .3d 1275, 1283–84 (9th Cir. 1998).
- Whether Supremacy Clause precluded application of state litigation privilege to bar federal civil rights claim. See Kimes v. Stone, 84 F .3d 1121, 1126 (9th Cir. 1996).
- Whether legal principle was clearly established. Carrillo v. Cty. of Los Angeles, 798 F .3d 1210, 1223 (9th Cir. 2015).
- In Trueblood v. Washington State Dep't of Soc. & Health Servs., 822 F .3d 1037, 1043 (9th Cir. 2016), the court exercised it discretion to consider purely legal argument, raised for the first time on appeal, of whether there was a speedy trial violation under the Sixth Amendment, even though DSHS had previously relied on the Fourteenth Amendment as the basis for its arguments.
- Whether a law firm may be sanctioned under 28 U.S.C. § 1927 is "purely" an issue of law. See Kaass Law v. Wells Fargo Bank, N.A., 799 F .3d 1290, 1293 (9th Cir. 2015).

Alternative Basis for Affirming

The court of appeals may consider a legal theory not reached by the district court as an alternative ground for affirming a judgment. See Sec. Life Ins. Co. of Am. v.

Meyling, 146, F .3d 1184, 1190 (9th Cir. 1998) (stating that court can affirm "on any ground supported by the record"); see also United States v. Lemus, 582 F .3d 958, 961 (9th Cir. 2009) (explaining that court can affirm on any basis supported by the record, even if district court did not consider the issue).

A party is entitled to present additional citations on appeal to strengthen a contention made in district court. See Puerta v. United States, 121 F .3d 1338, 1341 (9th cir. 1997); Lake v. Lake, 817 F .2d 1416, 1424 (9th Cir. 1987. Moreover, the court of appeals is required to consider new legal authority on appeal from a grant of qualified immunity. See Elder v. Holloway, 510 U.S. 510, 512 (1994) (holding that court of appeals must consider "all relevant precedents, not simply those cited to, or discovered by, the district court"). See also Beck v. City of Upland, 527 F .3d 853,861 n.6 (9th Cir. 2008).

Sufficiency of Evidence

To preserve an objection of the evidence, a party must move for judgment as a matter of law at the close of all the evidence, and if the motion is denied, renew the motion after the verdict. See Fed. R. Cir. P. 50 (b); Nitco Holding Corp. v. Boujikian, 491 F .3d 1086, 1089b(9th Cir. 2007) (party must file a pre-verdict motion pursuant to Fed. R. Civ. P. 50(a) and a post-verdict motion for judgment as a matter of law to preserve an objection to sufficiency of the evidence). See also William v. Gaye, 895 F .3d 1106, 1134-35 (9th Cir. 2018) (as amended) (discussing Nitco).

D. "Death Knell" Doctrine.

There is a limited caveat to the one final judgment rule that follows From the Supreme Court's holding in Daar v. Yellow Cab Co. (1967) 67 Cal.2d 695, that permits a plaintiff to appeal to the dismissal of class claims when his individual claims have not been dismissed and thus remain to be litigated in the trial court. Id. at 699. Daar held that such orders effectively operate as the "death Knell" for the litigation because the core of the case — the class claims — has been dismissed but, due to the pending individual claims, no appeal yet lies. Id.

Such orders, Daar held, "virtually demolish[]" the lawsuit, as the one final judgment rule would ordinarily compel the plaintiff to litigate his (largely valueless) individual claims to final judgment before he could file an appeal, thereby resulting in proceedings that would be not only inefficient and unnecessary, but also practically infeasible.

For this reason, Daar held that when class claims are dismissed but individual claims remain, the "legal effect" of an immediately appealable dismissal. Id. The Supreme Court reasoned that when individual claims remain but class claims have been dismissed, resulting practical realities meant that [i]f the propriety of such disposition could not now be reviewed, it could never be reviewed." Id. On this basis, Daar held that when a demurrer is sustained " to all members of the class claims other than the plaintiff," the pendency of the individual claims does not deprive the appellate court of jurisdiction, and an appeal is permitted. Id. (emphasis added).

Courts have repeatedly recognized that the "death Knell" principle articulated in Daar necessarily relies upon the fact that individual claims persist that would ordinarily (and impractically) preclude appellate review. When there is a divergence between the treatment of the individual claims and the class claims, the "death Knell" doctrine authorizes an appeal given the realities of modern litigation, and refuses to allow pending individual claims to preclude appellate review. [4]

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[4] The holding in Daar has not been without critique, and many jurisdictions, as well as the federal courts, ultimately rejected its approach, requiring plaintiffs litigate pending individual claims to their conclusion before appealing denial of proceedings on behalf of a class. See, e.g., Coopers & Lybrand v. Livesay (1978) 437 U.S. 463, 465; Garza v. Swift The fact that individual claims persist is the central ingredient of the holding in Daar. Because the individual and class claims have been treated differently, "the death knell doctrine fits comfortably into the exception to distinct interests; when this is true, there can be a final and appealable judgment for each such party. Farwell v. Sunset Mesa Property Owners Ass'n (2008) 163 Cal.App.4th 1545, 1547.

Accordingly, under Daar's "death knell" doctrine, a plaintiff may immediately appeal the dismissal of class claims even though the individual claims remain to be litigated.

Moreover, not only is the Court of Appeal's order inconsistent with over a century of the Supreme Court's jurisprudence, but also conflicts with the "death Kneel" doctrine established in Daar. The Supreme Court articulated the "death knell" doctrine in order to permit plaintiffs to appeal immediately the dismissal of class claims because the persistence of individual claims remained did not detract from the reality that that lawsuit was effectively over even though a judgment on the individual claims might be years away. Daar, 67 Cal.2d at 699, 699. When the class claims are dismissed but individual claims persist, the individual and the class "have separate and distinct interests" (Farwell, 163 Cal.App.4th at 1547), as the class members want appellate review that would ordinarily be precluded by the pendency of the individual claims.

In such cases, in which there is divergence in the treatment of the individual and class claims—-i.e., when a demurrer is sustained "to all members of the class other than the plaintiff" (Daar, 67 Cal.2d at 699)----Daar permits an immediate appeal of the class claims, a holding that reflects the practical effect of this divergent treatment. Because the individual claims persist, at best the class would be forced to endure undue delay awaiting the resolution of the individual claims. Moreover, realistically, the potential for the dismissed class claims to evade review altogether is high, as a plaintiff with only individual claims remaining often little incentive to continue with the litigation to such point where final judgment is entered on the individual claims. Farwell, 163 Cal.App.4th at 1552 ("[T]he gist of the death knell doctrine is that the denial of class action certification is the death knell of the action itself, i.e., that without a class, the will not be an action or actions, as is true of cases when the individual plaintiff's recovery is to small to justify pursuing the action."). The purpose of the death knell doctrine is thus to ensure appellate review of important legal issue and to prevent unnecessary delay of the resolution of class claims solely because needless and inefficient individual claims remain to be resolved.

As the Supreme Court stated in Daar, as a practical matter, "[i]f the propriety of such disposition could not now be reviewed, it could never be reviewed." Daar, 67 Cal.2d at 699 The Court of Appeal's order is thus inconsistent even with Daar, which permitted an appeal solely to avoid the injustice, inefficiency, and avoidance of review that would otherwise exist in representative actions in which individual claims persist. The application of Daar to those cases in which the individual claims are dismissed both misreads Daar as well as a century-plus of jurisprudence from the Supreme Court.

E. The Supreme Court's order is Pernicious

The Supreme Court has repeatedly and consistently described the one final judgment rule as "a fundamental principle of appellate practice." Griset v. Fair Political Practices Comm'n (2001) 25 Cal.4th 688, 697; see also Walker v. Los Angeles County Metro. Trans. Auth. (2005) 35 Cal. 4th 15, 21 ("[T]he 'one final judgment' rule [is] a fundamental principle until final resolution of the case.") Pursuant to this longstanding doctrine, an order that dismisses a complaint gives rise to a single appeal; further, the deadline to file this appeal commences on entry of the judgment, not on the date of the order. Lavine v. Jessup (1957) 48 Cal .2d 611, 614. The Supreme Court has repeatedly emphasized the importance of the one final judgment rule and substantial deleterious consequences that result from departures from this principle. As the Supreme Court Explained in Morehart v. County of Santa Barbara (1994) 7 Cal.4th 725:

> There are sound reasons for the one final judgment rule .... [T]hese include the obvious fact that piecemeal disposition and multiple appeals tend to be oppressive and costly. Interlocutory appeals burden the courts and impede the judicial process in a number of ways: (1) They tend to clog the appellate courts with multiplicity of appeals. (2) Early resort to the appellate courts tend to produce uncertainty and delay in the trial court. (3) Until a final Judgment is rendered the trial court may completely obviate an appeal by altering the rulings from which an appeal would

> otherwise have been taken. (4) Later actions by the trial court may provide a more complete record for which dispels the appearance of error or establishes that it was harmless. (5) Having benefit of a complete adjudication will assist the reviewing court to remedy error (if any) by giving specific directions rather than remanding for another round of open-ended proceedings.

Id. at 741 n.9 (citations omitted).

The Supreme Court has not only repeatedly articulated this principle, but has been vigilant in its enforcement as well. Relatively recently, for example, even after granting review, the Supreme Court held that it was compelled to dismiss an appeal because although a demurrer had been sustained without leave to amend, no judgment had yet been entered and hence "the appeal in Zable v. Board of Supervisors must be dismissed" because "[n]o appeal lies from an order sustaining a demurrer without leave to amend." Youngblood 22, Cal.3d at 651.

1. **Duplicative and Unnecessary Appeals**

First, the Court of Appeal's order would engender multiple, duplicative appeals, and be both inefficient and unnecessarily wasteful.

A central function of the one final judgment rule is the avoidance of multiple and/or unnecessary appeals. Griset, 25 Cal.4th at 697. The one final judgment rule ensures that there is a single appeal, one that includes within its ambit each of the many related orders resulting from the action By contrast, the court of appeals denying Sims leave , and the superior court refusing to transfer or intervene to the prior entry of judgment allows multiple, often overlapping, appeals to be generated by a single lawsuit.

It is an "obvious fact that piecemeal disposition and multiple appeals tend to be oppressive and costly,' Morehart, 7 Cal.4th at 741 n.9, and serve to burden not only the parties, but the judiciary as well. Griset, 25 Cal.4th at 697. Under the Court of Appeal's order denying leave to appeal and the order from the superior court denying leave to the Court of Claims one of which must be filed within sixty

days of the minute order and the other after the final entry of judgment. This is the case even though these appeals arise from a single order, and even though these appeals overlap both factually and legally, especially when(as here) the Defendant Fox Ridge Apartments ("individual claim") is the main party in Case No. 22-000147MM with the "HONORABLE" Court of Claims Case filed on September 9, 2022 on nearly identical grounds. see Rule 18.02: Joinder of Remedies. See also Rule 20(a).

The Court of appeal's order breaks a plaintiff's action into pieces and promises a multiplicity of appeals in every class action in which individual and putative class claims are subject to a demurrer. This "would defeat the purpose of the one final judgment rule by permitting the very piecemeal dispositions and multiple appeals the rule is designed to prevent." Griset, 25 Cal.4th at 697.

Moreover, permitting a single order to result in multiple appellate deadlines is precisely the type of "absurd situations" the Supreme Court critiqued in Lavine as untenable. See Lavine, 48 Cal.2d at 615 (rejecting the absurd situation [that] would result if we were to hold that the portion of the ruling sustaining the demurrers is non-appealable... but that the portion of the ruling granting the motions [to strike] is final and immediately appealable.). Sims requested "De Novo" review in her appeal filed with the Grand Rapids Court of Appeals when the Court's Chief Clerk made Sims the Plaintiff. The Court of Appeal's order from the Judges granted Sims motion to waive fees only. The delayed application for leave to appeal is Denied for lack of merit in the Grounds presented.

The general conspiracy statute, 18 U.S.C § 371, creates an offense "[i}f two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose. (emphasis added). See Project, Tenth Annual Survey of White Collar Crime, 32 Am. Crim. L. Rev. 137, 379-406 (1995)(generally discussing §371).

The Court of Appeals and the Michigan Supreme Court refuses to reverse the reckless order of the lower Court's decision and it is based on the COA Judges

and MSC Justices personal perception no laws or cases were given to support the decision of the Court of Appeals Judges Order that was entered. The Supreme Court Justices failed to give a conscious Statement as to why the Justices agreed with the COA Judges decision; even though it went against the chief clerks' findings. The Plaintiff is entitled to a conscious statement Michigan Legislature 125.3606(1)(a)(b)(c)(d)(2)(3)(a)(b)(4). Sims is also respectfully requesting that the Writ be expedited considering the circumstances. See Amendment XIV Section 1.

The Courts Justices also failed to disqualify themselves after being informed in their official capacity that the plaintiffs Constitutional rights were being violated. See Sec. 6 Constitution of Michigan of 1963. See also 28 U.S.C. § 455.

Constitution (Excerpt) Constitution of Michigan of 1963
§ 6 Decisions and dissents; writing, contents.
Sec. 6. States: Decisions of the Supreme Court, including all decisions on prerogative writs, shall be in writing and shall contain a concise statement of the facts and reasons for each decision and reasons for each denial of leave to appeal. When a Judge dissents in whole or in part he shall give in writing the reasons for this dissent.
History: Const. 1963, Art. VI, § 6, Eff. Jan. 1, 1964.
Former Constitution: See Const. 1908, Art, VII, § 6.

The Supreme Court Justices also acted in "BAD FAITH" when stating: On Order of the Court , the application for leave to appeal the August 31, 2022 order of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this court. The motions to transfer to the Court of Claims and for stay are DENIED. See 18 USC 2382: Misprision of treason.

§2382. Misprision of treason
Whoever, owing allegiance to the United States and having, knowledge of the commission of any treason against them, conceals and does not, as soon as may be, disclose and make known the same to the president or to some judge of the United States, or to the governor or to some judge or justice of a particular State, is guilty of misprision not more than seven years, or both.

(June 25,1948, ch. 645,62 stat. 807; Pub. L. 103-322, title xxxIII, §330016(1)(H), Sept. 13, 1994, 108 Stat. 2147.)

Historical and Revision Notes

Based on title 18, U.S.C., 1940 ed., §3 (Mar. 4, 1909, ch. 321, §3, 35 Stat. 1088).

The plaintiffs' Leave to Appeal in "both" appellate courts were timely and listed all of the relevant information showing that the plaintiffs rights were being violated and why a new trial should be granted. The Court of Appeal Judges and the Supreme Court Justices maliciously acted in "BAD FAITH", with personal bias behavior, while consciously and Recklessly breaching their duties to the Constitution of Michigan, with the malicious intent to deprive the plaintiff of her Constitutional Rights as an American Citizen when refusing to grant leave to appeal and grant the transfer of Identical claims on identical grounds to the Michigan Court of Claims.

BAUMAN FACTORS

The Court of Appeals considers the presence or absence of the following factors in evaluating a petition for writ of mandamus:

(1) The party seeking the writ has no other adequate means, such as a direct appeal, to attain the relief he or she desires. (2) The petitioner will be damaged or prejudiced in a way not correctable on appeal. (This guideline is closely related to the first.) (3) The District court's order is clearly erroneous as a matter of law. (4) The district Court's order is an oft-repeated error, or manifests a persistent disregard of the federal rules. (5) The district court's order raises new and important problems, or issues of law of first impressions.

Credit Suisse v. United States Dist. Court, 130 F .3d 1342, 1345 (9th Cir. 1997) (quoting Bauman v. United States Dist. Court, 557 F .2d 650, 654–55 (9th Cir. 1977)). See also Williams- Sonoma, Inc. v. United States Dist. Court. (In re Rafting, LLC, 889 F .3d 517, 535 (9th Cir. 2020); Barnes v. Sea Hawaii Chappell, 764 F .3d 990, 996 (9th Cir. 2014) (declining to construe appeal as a petition for writ of mandamus).

"None of these guidelines is determinative and all five guidelines need not be satisfied at once for a writ to issue." Credit Suisse, 130 F .3d at 1345 (only in rare cases will guidelines point in the same direction or even be relevant). See also Williams-Sonoma, 947 F .3d at 538 ("Not all of those factors need to be met to grand mandamus relief). "[I]ssuance of the writ is in large part a matter of discretion with the court to which the petition is addressed." Kerr v. United States Dist. Court, 426 U.S. 394, 403 (1976).

Note that the guidelines for issuing a writ are more flexible when the court of appeals exercises its supervisory mandamus authority, which is invoked in cases "involving questions of law of major importance to the administration of the district courts." Arizona v. United States Dist. Court (In re Cement Antitrust Litig.), 688 F .2d 1297, 1303, 1307 (9th Cir. 1982) (showing of actual injury and ordinary error may suffice).

Possibility of Irreparable Damage or Prejudice

The second Bauman Factor, which is closely related to the first, is satisfied by "severe prejudice that could not be remedied on direct appeal." Credit Suisse v. United States Dist. Court, 130 F .3d 1342, 1346 (9th Cir. 1997) (finding server prejudice where an order compelling a bank to respond to discovery request forced the bank to choose between contempt of court and violation of swiss banking security and penal laws); See also Barnes v. Sea Hawaii Rafting, LLC, 889 F .3d 517, 536 (9th Cir. 2018); Philippine Nat'l Bank v. United States Dist. Court, 397 F .3d 768, 774 (9th Cir. 2005) (finding severe prejudice where bank would be forced to choose between violating Philippine law and contempt of court); Medhekar v. United States Dist. Court, 99 F .3d 325, 326–27 (9th Cir. 1996) (percuriam) (finding irreparable harm where an order compelled defendants in a securities fraud action to undergo the burden and expense of initial disclosures prior to the district court ruling on a motion to dismiss because the issue would be moot on appeal from final judgment).

In a supervisory mandamus case, the injury requirement may be satisfied by a showing of "actual injury." See Arizona v. United States Dist. Court (In re Cement Antitrust Litig.), 688 F .2d 1297, 1303, 137 (9th cir. 1982) (stating that supervisory authority is invoked in cases "involving questions of law of major importance to the administration of the district courts").

Clear Error by District Court

Note that in a supervisory mandamus case, the petitioner only need to show an ordinary error, not clear error, See Barnes v. Sea Hawaii Rafting, LLC, 889 F .3d 517, 537 (9th Cir. 2018) ("Where a petition for mandamus raises an important issue of first impression, however, a petitioner need show only ordinary (as opposed to clear) error." (internal quotation marks and citations omitted)); Calderon v. United States Dist. Court, 134 F .3 981, 984 (9th Cir. 1998) (recognizing a lesser showing is required in supervisory mandamus cases, where the petition raises an important question of law of first impression, the answer to abrogated on other grounds as recognized by Jackson v. Roe, 425 F .3d 654 (9th Cir. 2005); Arizona v. United States Dist.Court (In re Cement Antitrust Litig.), 688 F .2d 1297, 1307 (9th Cir. 1982) (stating that supervisory authority is invoked in cases "involving questions of law of major importance to the administration of the district courts").

CONCLUSION

The United States Supreme Court should accordingly vacate the decision of the Court of Appeals and Michigan Supreme Court and grant leave to transfer to the "HONORABLE" Michigan Court of Claims to create a single claim, and single Judgment for Tort actions. Under Rule 10(a)(b)(c)., and Rule 11.
The petition for Writ of Certiorari should be granted.

Respectfully Submitted,

Dated: 3-17-2023

David J. DeVries
DAVID J. DE VRIES
NOTARY PUBLIC - STATE OF MICHIGAN
COUNTY OF KALAMAZOO
My Commission Expires November 1, 2028
Acting in the County of KALAMAZOO
MARCH 17, 2023