EXHIBIT A

FILED

JUN 27 2022

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

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ARNOLD LEONG,

Plaintiff-Appellee,

v.

WARREN C. HAVENS,

Defendant-Appellant,

v.

ENVIRONMENTEL LLC; et al.,

Defendants-Appellees,

SUSAN L. UECKER,

Receiver-Appellee.

No. 20-17481

D.C. No. 4:20-cv-08091-JST
Northern District of California,
Oakland

ORDER

Before: TASHIMA, FRIEDLAND, and BADE, Circuit Judges.

We treat appellant's petition for panel rehearing (Docket Entry No. 40) as a motion for reconsideration of the March 16, 2022 order, and deny the motion. *See* 9th Cir. R. 27-10.

Appellant's motions for an extension of time to file a petition for rehearing (Docket Entry Nos. 38, 39) are denied as unnecessary.

MKS/MOATT

Appellant's motions filed at Docket Entry Nos. 41 and 42 are denied to the extent the motions seek relief in this case. The motions filed in Appeal Nos. 19-16043, 20-17455, and 20-17456 have been addressed in those dockets.

No further filings will be entertained in this closed case.

EXHIBIT B

FILED

MAR 16 2022

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

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ARNOLD LEONG, Plaintiff-Appellee, v. WARREN C. HAVENS, Defendant-Appellant, v. ENVIRONMENTEL LLC; et al., Defendants-Appellees, ---------- SUSAN L. UECKER, Receiver-Appellee.	No. 20-17481 D.C. No. 4:20-cv-08091-JST Northern District of California, Oakland ORDER

Before: TASHIMA, FRIEDLAND, and BADE, Circuit Judges.

Upon a review of the record and the responses to the January 18, 2022 order to show cause, we conclude that the questions raised in this appeal are so insubstantial as not to require further argument. *See United States v. Hooton*, 693 F.2d 857, 858 (9th Cir. 1982) (stating standard).

We summarily affirm the district court's order remanding the action to state

court. *See* 28 U.S.C. §§ 1333 (admiralty or maritime jurisdiction), 1442 (removal of action against federal officers); *BP P.L.C. v. Mayor & City Council of Baltimore*, 141 S. Ct. 1532, 1537-38 (2021) (holding that where the notice of removal cites 28 U.S.C. § 1442 as one of the grounds for removal, § 1447(d) authorizes a court of appeals to review the whole of the district court's remand order).

Appellant's request for clarification, set forth in his response to the January 18, 2022 order to show cause, is denied.

Appellant's request for an extension of time to file the opening brief, set forth in his response to the January 18, 2022 order to show cause, is denied as moot.

AFFIRMED.

EXHIBIT C

CONDITIONAL PETITION FOR REHEARING.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Form 27. Motion for extension of time to file petition for rehearing

Instructions for this form: http://www.ca9.uscourts.gov/forms/form27instructions.pdf

9th Cir. Case Number(s) 20-17481

Case Name ARNOLD LEONG, Plaintiff-Appellee, v. WARREN C. HAVENS, Defendant-Appellant, v. ENVIRONMENTEL LLC; et al., Defendants-Appellees (as captioned in the Order of 3-16-2022, referenced below).

Lower Court or Agency Case Number 4:20-cv-08091-JST

What is your name? Warren Havens, appellant.

1. **What** do you want the court to do?

(1) Grant the motion for extension of time to file a Petition for Rehearing that I filed earlier today, March 30. 2022, but if that is not granted, then process and grant the Conditional* Petition for Rehearing submitted herewith, in the Attachment, and apply the pro se standard: federal courts read "pro se pleadings generously, 'however inartfully pleaded'." Haines v. Kerner, 404 U.S. 519, 520 (1972). (2) Apply Cir. Rules 4-1(a) and 28.1(a): pro se party can submit informal-format petition or rehearing and need not comply with the technical requirements of FRAP. I do so using this Form and attachment./ *The "condition" is explained in the extension request, which is referenced herein.

2. **Why** should the court do this? Be specific. Include all relevant facts and law

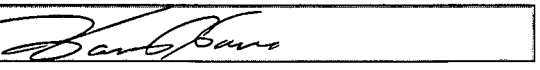
See 1 above. Then see the attachment hereto.

Your mailing address: I use ECF but also give my street address below.

2649 Benvenue Avenue

City BERKELEY State CA Zip Code 94704

Prisoner Inmate or A Number (if applicable)

Signature  **Date** 3-30-2022

Feedback or questions about this form? Email us at forms@ca9.uscourts.gov

Case 20-17481
Form 27 Attachment
Conditional Petition for Rehearing

(Continued from item 2 above.)

This is a Conditional Petition for Rehearing for reasons noted on for Form above, referring to my motion for any extension of time filed earlier today, on March 30, 2022. The extension request is referenced and incorporated herein for that purpose. The Order affirming of March 14, 2022 subject of this Petition (the "Order") is attached as Exhibit 1 hereto.

Rehearing should be granted for the following reasons, which I would amend, add to, and improve in a completed Petition for Rehearing if the extension request referenced above is granted. These reasons pose the issues shown in the numbered points below.

(1) The Order involves a US Supreme Court precedent referenced in the Order, *BP P.L.C. v. Mayor of Balt.* (the "*Baltimore*" case) that, directly construed, does not permit the Order which *barred* my presenting an opening brief, on the federal-officer-agent ground for the subject removal case below, and the other grounds that are also allowed under *Baltimore*, in a circuit court appeal-review of a remand of a removal that includes, as one ground, the federal officer (or federal officer agent) ground for removal. This 9th Cir. Order dramatically conflicts with rationale and the holdings of said Supreme Court *Baltimore* decision, and with other circuit courts decisions that follow it, and with this court's own past decisions. See also '(3)' below.

Where an Order has such conflict, is good cause to grant a rehearing.

The conflict is first shown in my responses in this appeal case to the first order to show ("OSC") cause, which the court accepted as discharging he OSC, and in my response to the second OSC, and the Order did not directly address the reasons-- facts and legal analysis and conclusions-- that I gave in both OSC responses. Where a court order does not address directly a

party's presentation, then the party can seek rehearing (or reconsideration, or the like) asking the court to clearly address those. I request that here. Under (3) below, I submit that is needed for due process of law, which is a related but additional reason to grant rehearing.

In the *Baltimore* case, *BP P.L.C. v. Mayor of Balt.,* 141 S. Ct. 1532, 1542-43; 1538 (2021) the Supreme Court explained:

> That leaves the City to argue about different consequences. It warns that our interpretation will invite gamesmanship: Defendants may frivolously add § 1442 or § 1443 to their other grounds for removal, all with an eye to ensuring appellate review down the line if the case is remanded. But the answers here too are familiar. Once more, this Court's task is to discern and apply the law's plain meaning as faithfully as we can, not "to assess the consequences of each approach and adopt the one that produces the least mischief." *Lewis v. Chicago*, 560 U.S. 205, 217, 130 S.Ct. 2191, 176 L.Ed.2d 967 (2010). [¶...] Congress, thus, has already addressed the City's concerns in other statutes and rules—just not in § 1447(d). To the extent that experience may prove these other measures insufficient, Congress is of course free to revise its work anytime. But that forum, not this one, is the proper place for such lawmaking.
>
> From this it would seem to follow that, when a district court's removal order rejects all of the defendants' grounds for removal, § 1447(d) authorizes a court of appeals to review each and every one of them. After all, the statute allows courts of appeals to examine the whole of a district court's "order," not just some of its parts or pieces.
>
> [1538] From this it would seem to follow that, when a district court's removal order rejects all of the defendants' grounds for removal, § 1447(d) authorizes a court of appeals to review each and every one of them. After all, the statute allows courts of appeals to examine the whole of a district court's "order," not just some of its parts or pieces.

The Order, subject of this conditional petition, not find my ground for removal under the 1442 to be "frivolously add[ed]" [1]but even if the Order authors believed that, upon their sua

[1] The order started, with no reasons given "the questions raised in this appeal are so insubstantial as not to require further argument." That is a less negative finding than "frivolous." Also, I did not submit an opening brief with an argument- it was prohibited. The court *sua sponte* reviewed and appears to have argued for me internally, and I lost by the court internal argument. That also violates the party

sponte review, it would not bar my rights to appeal under *Baltimore*, and an appeal means an appeal brief, not responses to vague orders to show cause as to why the appeal cannot be briefed.

(2) As my two briefs responding to the two OSCs presented, the subject District Court remand actions and handling of the removal violated the Supreme Court's ruling in *Dart Cherokee Basin Operating Co. v. Owens,* 574 U.S. 81 (2014), which this Ninth Circuit has followed, which I also cited. In *Dart* case, and at the oral argument, the Supreme Court explained that a Notice of Removal is like a complaint. It must have sufficient notice and content to show the grounds for removal, but it is not in itself the removal case. The District Court must allow the removing party rights to defend the removal action commenced by the notice of removal, if the it is challenged, by reasonable due process including if appropriate amending the notice of removal, discovery, motions practice, etc. In the action below, the District Court did not permit that, and for that reason alone, the remand is invalid.

On this (2) issue, the following is text, clipped and inserted,*/ from my "TIMELY RESPONSE TO 1-18-22 ORDER TO SHOW CAUSE,... February 8, 2022. For reasons above, since the following was not addressed in Order, I present it here as part of this petition of rehearing. /*/This clipped and inserted text is shown in boxes around the text.

[Go to next page]

---

presentation principle, as I see it. See *United States v. Sineneng-Smith*, 140 S. Ct. 1575 (2020)

7. Applying *Baltimore*. This Court has already applied *Baltimore* at many times and properly must do so here. *See Moser v. Benefytt, Inc.,* 8 F.4th 872, 876 (9th Cir. 2021) (underlining added):

> The Supreme Court's recent decision in *BP P.L.C. v. Mayor & City Council of Baltimore*, ... 141 S. Ct. 1532, 209 L.Ed.2d 631 (2021), ...considered the scope of appealable issues under 28 U.S.C. § 1447(d), which provides that "an order remanding a case to the State court from which it was removed pursuant to section 1442 or 1443 of this title shall be reviewable by appeal." BP held that this provision gave the court of appeals jurisdiction to review all the defendant's grounds for removal and not just those made under sections 1442 or 1443. 141 S. Ct. at 1537–40.
>
> BP explained that, like interlocutory appeals under 28 U.S.C. § 1292(b), " '[b]ecause it is the ... order that is appealable,' a court of appeals 'may address any issue fairly included within' it." Id. at 1540 (quoting Yamaha Motor Corp., U.S.A. v. Calhoun , 516 U.S. 199, 205, 116 S.Ct. 619, 133 L.Ed.2d 578 (1996) (alterations omitted)).

8. Applying *Dart*. (*Dart* is cited below.) This Court has already applied *Baltimore* at many times and properly must do so here. *In addition to all other reasons herein,* the Court should permit me to brief Appeal-1 -- and the pending OSC reasonably must be discharged -- due to the US Supreme Court and this Court's governing holdings that a *removal case may not be decided on the Notice of Removal by itself* (as the district court below imposed) but must allow subsequent evidence and briefs by the removing party to support and defend the

removal. (This is also applies to Appeals 2 and 3: see Appendix 2 below and the related exhibits. See the "NOTES..." section above.)

The clear holdings of the US Supreme Court, and thereafter of this Court, support my arguments in the district court removal cases that lead to these 3 Appeals in this Court -- that *the district court caused reversible error by remanding based on the notices of removal and ignoring or dismissing my post-notice pleadings in support of the removals*. The errors also violated basic due process of law, causing the removal proceedings and remand decisions to be void. The Supreme Court holdings, cited next below, have retroactive effect - see (see footnote 6 above) and thus apply here to the 3 Appeals and underlying district court cases.

As I explained in the District Court Cases underlying the 3 Appeals, *none* of my filings other than the initial notices of removal were responded to on their substance which renders the remand orders invalid, and as shown below, void for violation of basic Due Process rights.

See: *Acad. of Country Music v. Cont'l Cas. Co.*, 991 F.3d 1059 (9th Cir. 2021) (underlining added)

> The district court's requirement that a notice of removal prove subject matter jurisdiction is contrary to *Dart Cherokee Basin Operating Co., LLC v. Owens*, 574 U.S. 81, 89, 135 S.Ct. 547, 190 L.Ed.2d 495 (2014), and accordingly, is not a "colorable" ground under 28 U.SC. § 1447(c) [to remand]. *See Powerex Corp. v. Reliant Energy Servs.,*

Inc., 551 U.S. 224, 234, 127 S.Ct. 2411, 168 L.Ed.2d 112 (2007). Therefore, we vacate the district court's remand order.

This Supreme Court decision quoted above, *"Dart,"* and this Court's decisions following it (including *Cont'l Cas. Co.*, above)[13] are clear.[14] *Dart* rights are Due Process rights (as shown below). I specifically followed *Dart*, and emphatically plead *Dart* in the district court case below this Appeal-1 (4:20-cv-08091-JST). See Appendix 1 below, and as it notes, see Exhibit 1 hereto -- a full copy of my Amended Notice of Appeal submitted under, to begin with, *Dart* and citing *Dart* on its page 2. The remand order (doc. 38) ignored this Amended Notice of Removal and the evidence it provided, and the additional reasons given for the removal being valid, as to federal subject matter, timing, and other grounds. This remand order "granted" the motion to remand, but said motion did not, and the remand order did not, address or respond to my rights under *Dart* and the actual

[13] In at least 20 Ninth Circuit decisions to date, the Court cited to *Dart*.

[14] In addition, the oral argument in *Dart* (available on the Supreme Court's website) further makes clear that a notice of removal is treated like a complaint. It must sufficiently state grounds to commence the case, and then the case proceeds which includes the filing party responding to challenges, submitting evidence and arguments, etc. Neither in a removal action or an action under complaint can the court issue a dispositive order against the filing party unless said party has exercised rights to defend a challenge. That cannot be based solely on the notice of removal, or the complaint as the oral argument made clear - by the questions and comments of the justices. If this did not apply, then notices of removal would often be massive undertakings and filings not indicated in the language of and timing provided in the federal state-court removal statutes.

case for removal I submitted under *Dart* including my filings after the notice of removal (and none wer stricken or found impermissible). [15]

(I also specifically followed *Dart* in the other district court cases underling the other two of the 3 Appeals. See Appendix 2 below and the related exhibits. This is under the "NOTES..." section above.)

In the underlying district court cases (all JST cases) in Appeal 1 and the 2 other Appeals, I was denied *Dart* rights, and all my fillings other than the Notice of Removal that supported the removal were dismissed or ignored as the case records show including the remand orders, and several post-remand orders. In this regard:

(1) See *Autoport LLC v. Volkswagen Grp. of Am., Inc.*, No. 2:15-cv-04260-NKL (W.D. Mo. Jan. 11, 2016), at 6 (underlining added):

> ...[A] district court should assess the evidence after "both sides submit proof." *Dart Cherokee,* 135 S. Ct. at 554...the Ninth Circuit, in one case, proceeded by holding oral arguments, *LaCross v. Knight Transp. Inc.*, 775 F.3d 1200, 1202 (9th Cir. 2015), while the Eleventh Circuit has considered paper briefings and affidavits, *Dudley*, 778 F.3d at 912-13. But under any approach, a district court ... must... provide a

---

[15] The remand and other orders in the underlying case in Appeal 1 with those underlying Appeals 2 and 3, stated facts that were manifestly false (and not objectively or apparently impartial) including that there was *one* California state court action involved in the removal actions, first a removal action by legal counsel for me, and later by myself pro se. Also, the motions for remand avoided my showings to the contrary. However, proving up these and other reversible errors in these 3 Appeals is not in the scope of this Response to the 1-18-2022 OSC. What I point to above is the major error of law that this Court has already determined, following *Dart* and that is relevant to this Response.

"fair opportunity" for both sides to submit proof. *Ibarra*, 775 F.3d at 1195.

(2) A "fair opportunity" "to submit proof" is the essence of due process of law. See Henry J. Friendly, "Some Kind of Hearing," in UNIVERSITY OF PENNSYLVANIA LAW REVIEW Vol. 123: 1267 et seq.[16] (underlining added and some formatting changed).

> While there is no definitive list of the "required procedures" that due process requires, Judge Henry Friendly generated a list that remains highly influential, as to both content and relative priority:
>
> - An unbiased tribunal.
> - Notice of the proposed action and the grounds asserted for it.
> - Opportunity to present reasons why the proposed action should not be taken.
> - The right to present evidence, including the right to call witnesses.
> - The right to know opposing evidence.
> - The right to cross-examine adverse witnesses.
> - A decision based exclusively on the evidence presented.
> - Opportunity to be represented by counsel.
> - Requirement that the tribunal prepare a record of the evidence presented.
> - Requirement that the tribunal prepare written findings of fact and reasons for its decision [after the above]

Violation or deprivation of *Dart* rights are thus violation or deprivation of Due Process rights, which are protected under the Fifth and Fourteenth

---

[16] Full copy at first link below / and cited, as above, in second link below. https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=5317&context=penn_law_review. / https://www.law.cornell.edu/wex/due_process

In short, the district court handing of the subject removal case and issuance of the remand violated Dart, in sum, by its holdings as follows. Dart Cherokee Basin Operating Co. v. Owens, 574 U.S. 81 (2014) (underlining added):

[p. 87] As noted above, a defendant seeking to remove a case to a federal court must file in the federal forum a notice of removal "containing a short and plain statement of the grounds for removal." § 1446(a). By design, § 1446(a) tracks the general pleading requirement stated in Rule 8(a) of the Federal Rules of Civil Procedure. See 14C C. Wright, A. Miller, E. Cooper, & J. Steinman, Federal Practice and Procedure § 3733, pp. 639–641 (4th ed. 2009) ("Section 1446(a) requires only that the grounds for removal be stated in 'a short and plain statement'—terms borrowed from the pleading requirement set forth in Federal Rule of Civil Procedure 8(a)."). The legislative history of § 1446(a) is corroborative. Congress, by borrowing the familiar "short and plain statement" standard from Rule 8(a), intended to "simplify the 'pleading' requirements for removal" and to clarify that courts should "apply the same liberal rules [to removal allegations] that are applied to other matters of pleading." H.R.Rep. No. 100–889, p. 71 (1988). See also ibid. (disapproving decisions requiring "detailed pleading").

[p. 89] In sum, as specified in § 1446(a), a defendant's notice of removal need include only a plausible allegation ... Evidence ... is required ... only when the plaintiff contests, or the court questions, the defendant's allegation.

The subject removal case shows I was prevented the *Dart* rights and procedures making the remand order invalid for violation of the basis due proses rights at issue. (The same applies to the two other related removal remand cases pending, also *Leong v Havens* cases.)

(3) The Order under the contemplated PFR also violates due process of law because it fails under the following due-process minimum standard, often cited. See Henry J. Friendly, "Some Kind of Hearing," in UNIVERSITY OF PENNSYLVANIA LAW REVIEW Vol. 123: 1267 et seq.[2]explaining that Judge Henry Friendly generated a list that remains highly influential as to due process requirements (underlining added) --

---

[2] Copy at https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=5317&context=penn_law_review. Referenced at https://www.law.cornell.edu/wex/due_process

> (1) An unbiased tribunal. (2) Notice of the proposed action and the grounds asserted for it. (3) Opportunity to present reasons why the proposed action should not be taken. (4) The right to present evidence, including the right to call witnesses. (5) The right to know opposing evidence. (6) The right to cross-examine adverse witnesses. (6) Decision based exclusively on the evidence presented. (7) Opportunity to be represented by counsel. (8) Requirement that the tribunal prepare a record of the evidence presented.(9) Requirement that the tribunal prepare written findings of fact and reasons for its decision [after the above].

The underlined items apply to the Order under the contemplated PFR, including since:

(a) I was not permitted to file an opening brief (with evidence and reasons),

(b) the court did not provide any coherent notice to me of its reasons (only two orders to show cause with the most general indications of a defect or defects in the appeal I filed) (and I discharged the first OSC and the second one did not indicate what more I needed to show),

(c) the Order gives no "findings of fact and reasons for its decision" but in general terms not specially related to the subject Notice of Appeal (which itself showed evidence and reasons to sustain the appeal) and related to my briefs in response to the two orders to show cause.

The Judge Friendly's list of minimum due process must apply to appeals (i) where in the case below, the lack of due process, under this list, is an apparent issue, as it is here, and (ii) in all appeals generally that are an appeal as of right. Appeal standards all include relevant evidence and authorities, for the appellant to submit and with a right to submit such in, at least, an opening brief, in an appeal as of right, and here, the removal statue allow and appeal as of right (under the federal officer agent grounds for removal, and appeal, and under the above noted Baltimore case rational and holdings).

In addition, where the subject Order considered under the Judge Friendly due process requirement list above, does not state clear evidence and reasons, it disables and appeal of the

Order, here a Petition for Rehearing, or a petition for certiorari before the Supreme Court--except for this threshold reason of deprivation of basic due process of law.

This is especially poses prejudicial land reversible error in a case and in an Order against, a pro se party, as is the subject Order in this appeal case, where I am a pro se party. Under judicial standards and guides, a court should explain its decisions to a pro se party, more so than to a party represented by legal counsel, since otherwise the pro se layperson will lack the basis for belief in administration of law, that is a foundation of society.

The Order, on this issue (3) conflicts with this Circuit Court's precedents, and also poses a split in the circuits. The following is from the PETITION FOR A WRIT OF CERTIORARI, in *WILLIAM C. BOND v. UNITED STATES OF AMERICA*, dated December 17, 2018, by David Boies with others, at BOIES SCHILLER; Ret. Judge Richard A. Posner, and Matthew J. Dowd, at DOWD SCHEFFE, at pp. 14-15 (underlining added):

> "The requirement that courts provide a pro se litigant with notice of the deficiencies in his or her complaint helps ensure that the pro se litigant can use the opportunity to amend effectively. Without the benefit of a statement of deficiencies, the pro se litigant will likely repeat previous errors." *Noll v. Carlson*, 809 F.2d 1446, 1448–49 (9th Cir. 1987) ("Amendments that are made without an understanding of underlying deficiencies are rarely sufficient to cure inadequate pleadings."), superseded on other grounds by statute as stated in *Lopez v. Smith*, 203 F.3d 1122 (9th Cir. 2000) (en banc); see also *Ferdik v. Bonzelet*, 963 F.2d 1258, 1261 (9th Cir. 1992) (explaining that, "before dismissing a pro se complaint the district court must provide the litigant with notice of the deficiencies in his complaint in order to ensure that the litigant uses the opportunity to amend effectively").

At the start of the petition, these well-regarded attorneys present the issues posed, and the circuit split involved. The issue I pose here is not identical but is similar and is compounded since it involves (i) both a district court failure to allow the case to proceed in the first place (see item (4) below), which is a due process violation, and (ii) this Circuit Court's refusal to allow me to brief this appeal (a further due process violation, under the Supreme Court *Baltimore* case)

and, in addition, to the pro-se party issue in the Boies, Posner, and Dowd petition, that a court should give *reasons* to a pro se party of a decision to disallow, dismiss or deny a brief, or claim, or entire case, and allow the pro se party a second-try cure of specific defects the court points out -- in short, due-process fair notice and opportunity, to the layman pro se party.

This issue (3) involves minimum due process even for a represented party, but that is more acute for a pro se party, as this Supreme Court petition by Boies, Posner, and Dowd presents. Underlining and some ¶ breaks added:

> INTRODUCTION
>
> This case raises fundamental issues concerning whether pro se litigants have meaningful access to federal court. In line with three other circuits, the decision below held that when denying a pro se litigant leave to amend the complaint, the district court need not identify the justifying reason for that denial if the reason for the denial is apparent from an investigation and analysis of the litigation record.
>
> Five circuits have held the opposite, ruling that a district court must identify the reason for denying a pro se litigant leave to amend in the denial order, itself.
>
> This circuit split has serious, practical implications for pro se litigants who bring cases in the jurisdictions that do not require district courts to provide a reason when denying leave to amend. Absent notice of their pleading deficiencies, very few pro se litigants can parse the record and identify how to successfully amend their complaints.
>
> This circuit split is especially problematic because the majority of pro se litigants bring claims seeking remedies for violations of the U.S. Constitution and federal civil rights statutes. See infra p. 17. Serious due process concerns arise when courts dismiss civil rights claims brought by vulnerable populations and protected classes because, without representation, these litigants cannot interpret the record to identify how to successfully amend their complaints.
>
> For most pro se litigants, it will be unreasonably difficult, if not impossible, to review the record and identify the reasons in the record that the court denied leave to amend. The minority rule requires that pro se litigants undertake an investigation and analysis that would be difficult for many fledgling attorneys.
>
> Additional due process concerns arise from the circuit split, itself. As a practical matter, the ability to amend a complaint and thus proceed to the merits depends on the geographical location of the pro se litigant. Pro se litigants in the circuits adhering to the minority rule are at a distinct and arbitrary disadvantage.

> Whether pro se litigants are entitled to an explanation identifying the reason that they have been denied leave to amend their complaints presents an issue of national importance that impacts nearly one third of all federal civil litigants. See infra p. 17. This problem will only worsen as the cost of counsel continues to rise, forcing even more ordinary citizens to seek legal protections without the aid of counsel. See infra pp. 17–18.
>
> Neutral stakeholders, including the federal judiciary, have voiced concerns about the serious obstacles pro se litigants face and their inability to successfully plead otherwise meritorious claims on their first attempt. The Honorable Lois Bloom has observed that "the legally untrained face special difficulties in navigating and carrying out the arcane requirements of pleading." Lois Bloom & Helen Hershkoff, Federal Courts, Magistrate Judges, and the Pro Se Plaintiff, 16 Notre Dame J.L. Ethics & Pub. Pol'y 475, 483 (2002).
>
> The Second Circuit Task Force on Gender, Racial and Ethnic Fairness similarly acknowledged that "fundamental notions of justice require that the circuit adopt practices to assist such litigants in presenting their claims as clearly as possible and in using the required court procedures properly." John H. Doyle et al., Report of the Working Committees to the Second Circuit Task Force on Gender, Racial and Ethnic Fairness in the Courts, 1997 Ann. Surv. Am. L. 117, 300.
>
> The American Bar Association similarly recognizes that pro se litigants may require "reasonable accommodations" from the district courts hearing their cases in order "to ensure pro se litigants the opportunity to have their matters fairly heard." Am. Bar Ass'n, Model Code of Judicial Conduct R. 2.2 cmt. 4 (2014) (explaining that such reasonable accommodations do not violate Rule 2.2's requirement that judges remain impartial). Requiring district courts to identify a reason when denying pro se litigants leave to amend is a logical accommodation that would visit minimal burden upon the district courts while making them more transparent and thus more accessible....

(4) In *BP P.L.C. v. Mayor of Balt.*, 141 S. Ct. 1532 (2021) (see '(1)' above), the United States filed an amicus brief, written by attorneys for the Department of Justice's Environment and Natural Resources Division, on March 20, 2020. It agreed with the defendants' arguments regarding federal law, noting that "[t]hree federal courts of appeal have addressed whether the [Clean Air Act] preempts state common law claims attempting to impose liability on air emissions," with all three "holding that state common law would be preempted to the extent the emissions in question originated out-of-state." The United States similarly argued that

Baltimore's claims intruded on federal power because of their potential effects on foreign countries' energy production.

Materially the same applies in this appeal case since the federal officer-agent ground for removal was paired with the ground of elusive FCC authority and express and field preemption.

(5) After and citing Baltimore, the Supreme court wrote in *Goldman Sachs Grp. v. Ark. Teacher Ret. Sys.,* 141 S. Ct. 1951, 1969 (2021). Justice GORSUCH, with whom Justice THOMAS and Justice ALITO join, concurring in part and dissenting in part:

> After all, "[o]ur duty is to follow the law as we find it, not to follow rotely whatever lower courts might once have said about it." *BP P.L.C. v. Mayor and City Council of Baltimore* , 593 U. S. ——, ——– ———, 141 S.Ct. 1532, 1541, ––– L.Ed.2d —— (2021). The fact remains that nothing in our prior decisions has ever placed a burden of persuasion on the defendant with respect to any aspect of the plaintiff 's case.

This applies here, since (i) the subject Order (subject of the contemplated PFR), due to lack of content under the Judge Friendly due-process standard, above, indicated only a non-explained "rote" affirmation of the subject District Court remand, (ii) does not follow, and show that it follows, the "law as we find it" - in the Baltimore case (which is after the 9th Cir. case cited in the Order, and is stare decisis), and (iii) the Order effectively places the burden on me, the defendant-appellant, as to the plaintiff case to defend the remand, given the Supreme Court *Baltimore* rationale and holdings which is prejudicial error.

(6) Recent IRS action and related in the US Tax Court case (e.g., see Exhibit 2 hereto[3]). refenced in my extension requests granted for the two other appeal cases, noted on the above Form 27, also show grounds to grant the extension request here, and support the contemplated PFR. In sum, the receivership plaintiff-appellee (and alleged Environmentel LLC

---

[3] Citing Treas. Reg. § 301.7701-1(a)(2)- see End Note below.

party in the appeal), as I have asserted for years, are a type of de facto merger, and had to file tax returns as such (and FCC reports of such) but did not. And this lack of IRS compliance, under IRS law that preempts the State of California court actions and law, and renders the receivership (of the plaintiff-appellee here) subject to federal preemption, large penalties and fines, and required remedial actions, and cause it to be invalid and void in violation of federal law and federal law supremacy.

In addition, the FCC preemption grounds for the subject removal case (indicated by not explained int the Order subject of the contemplated PFR) is, under FCC law (statutes, rules and decisions) similar to the IRS issue noted above, now in investigation. Both the IRS and the FCC look to the actual de-facto nature of an asserted independent de jure legal entity, and apply the subject federal law under de facto analysis, and require the facts to be candidly disclosed and not hidden, and can impose severe sanctions and deem void actions that do not comply, and FCC licenses that are in violation (the material asserts of the subject receivership). This applies to the plaintiff-appellee receivership and the de jure legal entities involved.

Applying the above, that has now recently arisen in the noted IRS Tax Court action by IRS action (consistent with my analysis for years, but by the IRS) - I now argue (i) that the plaintiff- appellee, in the name of Arnold Leong [4] (and his chosen and maintained receiver, Susan Uecker) mislead the District Court in the case below and (ii) that federal preemption applies as a ground for removal, combined with the federal officer agent ground, that is the basis of the Baltimore decision discussed above.

---

[4] Leong is represented a legally incapacitated since "earlier 2019" and with no guardian ad litem in this appeal case (or in the current, second receivership case in the subject state court action). With no guardian ad litem to act for him, by an attorney for such guardian, Leong is not a party including in this appeal case.

Some of the above summary of some of the issues and arguments of the contemplated completed PFR are presented here to show reasonable, colorable grounds for the contemplated completed PFR, and *thus the purpose of this Form 27 filing, a short extension request* (adding to the reasons in the Form 27 itself) to allow for the completion.

All of the above are part of this Conditional Petition for Rehearing in the insufficient time I have had explained in the extension request.

/s/ Warren Havens

Under my signature on the Form 27 above.

End Note (see footnote 2 above)

The IRS, as indicated in Exhibit 2, is investigating the following, as to the plaintiff-appeallee's reeivership legal entities, 7 LLCs (and a related nonprofit corporation) (underlining added).

26 CFR § 301.7701-1 - Classification of organizations for federal tax purposes.

(a) Organizations for federal tax purposes -

(1) In general. The Internal Revenue Code prescribes the classification of various organizations for federal tax purposes. Whether an organization is an entity separate from its owners for federal tax purposes is a matter of federal tax law and does not depend on whether the organization is recognized as an entity under local law.

(2) Certain joint undertakings give rise to entities for federal tax purposes. A joint venture or other contractual arrangement may create a separate entity for federal tax purposes if the participants carry on a trade, business, financial operation, or venture and divide the profits therefrom. For example, a separate entity exists for federal tax purposes if co- owners of an apartment building lease space and in addition provide services to the occupants either directly or through an agent. ....

(3) Certain local law entities not recognized. An entity formed under local law is not always recognized as a separate entity for federal tax purposes. ...

(4) Single owner organizations. ....

(b) Classification of organizations.

....

(c) Cost sharing arrangements.

A cost sharing arrangement that is described in § 1.482-7 of this chapter, including any arrangement that the Commissioner treats as a CSA under § 1.482-7(b)(5) of this chapter, is not recognized as a separate entity for purposes of the Internal Revenue Code. See § 1.482-7 of this chapter for the rules regarding CSAs.

(d) ....

(e) ....

(f) Effective/applicability dates. Except as provided in the following sentence, the rules of this section are applicable as of January 1, 1997. The rules of paragraph (c) of this section are applicable on January 5, 2009.

[T.D. 8697, 61 FR 66588, Dec. 18, 1996, as amended by T.D. 9153, 69 FR 49810, Aug. 12, 2004; T.D. 9246, 71 FR 4816, Jan. 30, 2006; T.D. 9441, 74 FR 390, Jan. 5, 2009; T.D. 9568, 76 FR 80136, Dec. 22, 2011]

EXHIBIT 1

FILED

MAR 16 2022

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

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ARNOLD LEONG,

Plaintiff-Appellee,

v.

WARREN C. HAVENS,

Defendant-Appellant,

v.

ENVIRONMENTEL LLC; et al.,

Defendants-Appellees,

SUSAN L. UECKER,

Receiver-Appellee.

No. 20-17481

D.C. No. 4:20-cv-08091-JST
Northern District of California,
Oakland

ORDER

Before: TASHIMA, FRIEDLAND, and BADE, Circuit Judges.

Upon a review of the record and the responses to the January 18, 2022 order to show cause, we conclude that the questions raised in this appeal are so insubstantial as not to require further argument. *See United States v. Hooton*, 693 F.2d 857, 858 (9th Cir. 1982) (stating standard).

We summarily affirm the district court's order remanding the action to state

MKS/MOATT

court. *See* 28 U.S.C. §§ 1333 (admiralty or maritime jurisdiction), 1442 (removal of action against federal officers); *BP P.L.C. v. Mayor & City Council of Baltimore*, 141 S. Ct. 1532, 1537-38 (2021) (holding that where the notice of removal cites 28 U.S.C. § 1442 as one of the grounds for removal, § 1447(d) authorizes a court of appeals to review the whole of the district court's remand order).

Appellant's request for clarification, set forth in his response to the January 18, 2022 order to show cause, is denied.

Appellant's request for an extension of time to file the opening brief, set forth in his response to the January 18, 2022 order to show cause, is denied as moot.

AFFIRMED.

Again, the above summary of some of the issues and arguments of the contemplated completed PFR are presented here to show reasonable, colorable grounds for the contemplated completed PFR, and *thus the purpose of this Form 27 filing, a short extension request* (adding to the reasons in the Form 27 itself) to allow for the completion.

/s/ Warren Havens

Under my signature on the Form 27 above.

End Note (see footnote 2 above)

The IRS, as indicated in Exhibit 2, is investigating the following, as to the plaintiff-appeallee's reeivership legal entities, 7 LLCs (and a related nonprofit corporation) (underlining added).

26 CFR § 301.7701-1 - Classification of organizations for federal tax purposes.

(a) Organizations for federal tax purposes -

(1) In general. The Internal Revenue Code prescribes the classification of various organizations for federal tax purposes. Whether an organization is an entity separate from its owners for federal tax purposes is a matter of federal tax law and does not depend on whether the organization is recognized as an entity under local law.

(2) Certain joint undertakings give rise to entities for federal tax purposes. A joint venture or other contractual arrangement may create a separate entity for federal tax purposes if the participants carry on a trade, business, financial operation, or venture and divide the profits therefrom. For example, a separate entity exists for federal tax purposes if co- owners of an apartment building lease space and in addition provide services to the occupants either directly or through an agent. ....

(3) Certain local law entities not recognized. An entity formed under local law is not always recognized as a separate entity for federal tax purposes. ...

(4) Single owner organizations. ....

(b) Classification of organizations.

....

(c) Cost sharing arrangements.

A cost sharing arrangement that is described in § 1.482-7 of this chapter, including any arrangement that the Commissioner treats as a CSA under § 1.482-7(b)(5) of this chapter, is not recognized as a separate entity for purposes of the Internal Revenue Code. See § 1.482-7 of this chapter for the rules regarding CSAs.

(d) ....

(e) ....

(f) Effective/applicability dates. Except as provided in the following sentence, the rules of this section are applicable as of January 1, 1997. The rules of paragraph (c) of this section are applicable on January 5, 2009.

[T.D. 8697, 61 FR 66588, Dec. 18, 1996, as amended by T.D. 9153, 69 FR 49810, Aug. 12, 2004; T.D. 9246, 71 FR 4816, Jan. 30, 2006; T.D. 9441, 74 FR 390, Jan. 5, 2009; T.D. 9568, 76 FR 80136, Dec. 22, 2011]

EXHIBIT 2

THIS IRS MOTION WAS GRANTED AS THE ONLINE DOCKET SHOWS.

THIS IRS MOTION FOLLOWED MY 'FUTHER PRE-TRIAL MEMO' CITING *Jimastowlow Oil, LLC v. Commissioner,* T.C. Memo. 2013-195, SOON THEREAFER CITED IN THE IRS MOTION, WITH SIMILAR CONCLUSIONS.*

AS THE CASE DOCKET SHOWS, THIS MOTION WAS AFTER YEARS OF LITIGATION IN THIS CASE, AND SOON BEFORE THE SCHECULED TRIAL, WHICH INVOLVED, INTER ALIA, DOCUMENTATION FROM THE RECEIVERSHIP CASE AND REXCEICER.

* I raised relevant facts subject of the *Jimastowlow* issues and holdings, from the start of this US Tax Court case, in 2017, and in the California State Court receivership action even earlier.

Rec d
03/08/22 10:29 am

Filed
03/08/22

Intelligent Transportation & Monitoring Wireless LLC,
Warren C. Havens, Tax Matters Partner,

Petitioner

v.

Commissioner of Internal Revenue

Respondent

Electronically Filed
Docket No. 19514-17

Motion for Continuance

UNITED STATES TAX COURT

INTELLIGENT TRANSPORTATION & MONITORING WIRELESS LLC, WARREN C. HAVENS, TAX MATTERS PARTNER	)	
Petitioner,	)	
v.	)	Docket No. 19514-17
COMMISSIONER OF INTERNAL REVENUE,	)	Filed Electronically
Respondent.	)	

MOTION FOR CONTINUANCE OF TRIAL

RESPONDENT MOVES, pursuant to the provisions of Tax Court Rule 133, that the Court remove this case from the remote trial session of the Court scheduled to commence at San Francisco, California, on March 17, 2022, and restore the case to the general trial docket.

IN SUPPORT THEREOF, the parties respectfully state:

1. On February 15, 2022, the Court set this case for remote trial session at San Francisco, California for March 17, 2022.

2. On March 4, 2022, respondent became aware of a potential jurisdictional issue in this case: whether, during the years at issue, there was a joint undertaking by petitioner and other related LLCs which created a separate entity for federal tax purposes under Treas. Reg. § 301.7701-1(a)(2).

3. Respondent bears the burden of proving facts to establish the Court's jurisdiction to disallow deductions without a prior TEFRA audit of the potential separate entity. Jimastowlow Oil, LLC v. Commissioner, T.C. Memo. 2013-195 at *19.

4. Respondent requests additional time to request documentation and information from petitioner regarding the potential separate entity.

5. Further, respondent may need to coordinate this issue with respondent's National Office.

6. Petitioner does not object to the granting of this motion.

//

//

//

WHEREFORE, the respondent requests that this motion be granted.

DRITA TONUZI
Deputy Chief Counsel (Operations)
Internal Revenue Service

By: Heather Wolfe
HEATHER L. WOLFE
Attorney
(Small Business/Self-Employed)
Tax Court Bar No. WH0418
100 First St, Suite 1800
San Francisco, CA 94105
Telephone: 415-547-3761
Heather.L.Wolfe@irscounsel.treas.gov

Date: 3/7/2022

OF COUNSEL:
JOSEPH W. SPIRES
Division Counsel
(Small Business/Self-Employed)
KATHRYN A. MEYER
Area Counsel
(Small Business/Self-Employed:Area 7)
LESLEY A. HALE
Associate Area Counsel
(Small Business/Self-Employed: Area 7)